

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

RIN 1018-AD99

**Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Black-footed Ferrets in Northwestern Colorado and Northeastern Utah**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we), in cooperation with the Bureau of Land Management, the Colorado Division of Wildlife, and the Utah Division of Wildlife Resources will reintroduce black-footed ferrets (*Mustela nigripes*) into northwestern Colorado and northeastern Utah. The purposes of this reintroduction are to implement actions required for the recovery of the species and to evaluate release techniques. We will release surplus captive-raised black-footed ferrets in 1998, if possible, and release additional animals annually for several years thereafter or until we establish a self-sustaining population. If the northwestern Colorado/northeastern Utah program is successful, a wild population could be established within about 5 years. The northwestern Colorado/northeastern Utah population is designated as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. We will manage this population under the provisions of section 10(j) through this rule.

**DATES:** This rule is effective October 1, 1998.

**ADDRESSES:** You may inspect the complete file for this rule during normal business hours at the following offices: U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet, Suite 361, Lakewood, Colorado 80215; U.S. Fish and Wildlife Service, Ecological Service's Office at 764 Horizon Drive, South Annex A, Grand Junction, Colorado, 81506-3946; U.S. Fish and Wildlife Service, Utah Field Office, 145 East 1300 South, Suite 404, Salt Lake City, Utah, 84115.

You must make an appointment in advance if you wish to inspect the file.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Leachman at the Grand Junction address above, telephone: 970/243-2778; or Mr. Edward Owens at the Salt

Lake City address above, telephone: 801/524-5001.

**SUPPLEMENTARY INFORMATION:****Background**

A proposal to designate a nonessential experimental population in northwestern Colorado and northeastern Utah was published in the **Federal Register** on April 29, 1997 (62 FR 23202).

1. *Legislative:* Significant changes to the Endangered Species Act of 1973 (Act), as amended, were made in 1984 with addition of subsection 10(j) to allow for the designation of specific populations of listed species as "experimental populations." Previously, we were authorized to reintroduce populations into unoccupied portions of a listed species' historical range when it would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Interior can designate reintroduced populations established outside the species' current range but within its historical range as "experimental." This designation allows us considerable flexibility in managing reintroduced populations of endangered species. The Act provides for treating experimental populations as threatened species under the Act, affording us greater discretion in devising management programs and special regulations for listed species. These regulations are usually less restrictive than those established for endangered species and can allow for greater compatibility with established human activities in the reintroduction area.

The Secretary of Interior can so designate populations under section 10(j) of the Act, and based on the best available information, must determine whether such populations are essential, or nonessential, to the continued existence of the species. Regulatory restrictions may be considerably reduced under a nonessential experimental population (NEP) designation, which is defined as being nonessential to the recovery of the species. For the purposes of section 7 of the Act, we treat NEPs as if they are species proposed for listing if they are located outside of the National Wildlife Refuge System or National Park System. If a NEP is located within a park or refuge it is treated as if it is listed as a threatened species. Section 7 provisions for Federal agency coordination have limited application to experimental populations found outside the above

two systems. The two provisions that apply are: (1) section 7(a)(1)—which requires all Federal agencies to use their authority to conserve listed species; and (2) section 7(a)(4)—which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species throughout its range. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

However, pursuant to section 7(a)(2), a donor population can be the source of individuals used to establish an experimental population, provided their removal is not likely to jeopardize the continued existence of the species, and appropriate permits are issued in accordance with 50 CFR 17.22 prior to their removal. In this case, the donor population is a captive bred population, propagated with the intention of reestablishing wild populations where feasible, to achieve recovery goals.

2. *Biological:* The black-footed ferret has a black facemask, black legs, and a black-tipped tail; is nearly 60 centimeters (2 feet) in length and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret species native to North America. The historical range of the species, based on specimen collections, extends over 12 western States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. Prehistoric evidence indicates that ferrets once occurred from the Yukon Territory in Canada to New Mexico and Texas (Anderson et al. 1986).

Black-footed ferrets depend almost exclusively on prairie dog colonies for food, shelter, and denning (Henderson et al. 1969, Forrest et al. 1985). The range of the ferret coincides with that of prairie dogs (Anderson et al. 1986), and ferrets with young have been documented only in the vicinity of active prairie dog colonies. Historically, black-footed ferrets have been reported from black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) towns (Anderson et al. 1986).

Drastic reductions in prairie dog numbers and distribution occurred during the last century, due to widespread poisoning of prairie dogs, the conversion of native prairie to farmlands, and outbreaks of sylvatic plague; particularly in the southern portions of their range. This severe reduction in the availability of their principal prey species in combination

with other factors such as secondary poisoning from prairie dog toxicants and canine distemper, resulted in the near extinction of the black-footed ferret in the wild.

In 1974, a remnant wild population of ferrets in South Dakota, originally discovered in 1964, suddenly disappeared. We then believed the species to be extinct until 1981, when a small population was discovered near Meeteetse, Wyoming. In 1985–1986, the Meeteetse population declined to only 18 animals due to an outbreak of canine distemper. Following this critical decline, the remaining individuals were taken into captivity in 1986–1987 to serve as founders for a captive propagation program. Since that time, highly successful captive breeding efforts have provided the basis for ferret reintroductions over a broad area of their formerly occupied range. Today, the captive population of juveniles and adults annually fluctuates between 300 and 600 animals depending on time of year, yearly reproductive success, and annual mortalities. The captive ferret population is currently divided among 7 captive breeding facilities throughout the United States and Canada, with a small number on display for educational purposes at several facilities.

3. *Recovery Goals/Objectives:* The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) establishes a national recovery objective to ensure the survival of the species by:

(a) Increasing the captive population of ferrets to 200 breeding adults by 1991, which has been achieved;

(b) Establishing a prebreeding census population of 1,500 free-ranging breeding adults in 10 or more different populations, with no fewer than 30 breeding adults in each population by the year 2010; and,

(c) Encouraging the widest possible distribution of reintroduced animals throughout their historic range.

We can reclassify the black-footed ferret to threatened status when we meet the conditions of the national recovery objective, assuming that the mortality rate of established populations remains at or below a rate at which new populations are established or increasing. We have been successful in cooperative efforts to rear black-footed ferrets in captivity and in only 8 years, the captive population has increased from 18 to nearly 400 animals. In 1988, we divided the single captive population into three subpopulations to avoid the possibility of a catastrophic event (e.g., contagious disease) eliminating the entire captive population. Presently, there are 7 separate subpopulations in captivity.

Current recovery efforts emphasize the reintroduction of animals back into the wild from the captive source stock. This is possible due to achievement of the minimum captive population goal of 240 breeding adults. Surplus individuals produced in captivity are now available for use in nonessential experimental populations (i.e., for reintroductions).

4. *Reintroduction Sites:* The Service, in cooperation with 11 western State wildlife agencies, identified potential ferret reintroduction sites within the historical range of the species. We selected these reintroduction sites in coordination with the Black-footed Ferret Interstate Coordinating Committee and the Black-footed Ferret Recovery Implementation Team. The Northwestern Colorado/Northeastern Utah Black-footed Ferret Experimental Population Area (ExPA) is the fifth of these release sites selected thus far for ferrets, and occupies portions of Rio Blanco and Moffat Counties, Colorado; Sweetwater County, Wyoming; and Uintah and Duchesne Counties, Utah.

In Colorado, the ExPA occupies all of Moffat and Rio Blanco Counties west of Colorado State Highway 13, west to the Utah State line, and north to the Wyoming State line. In Wyoming, the ExPA runs between Range 96 and 97 West (eastern edge), Range 102 and 103 West (western edge), and Township 14 and 15 North (northern edge). In Utah, the ExPA occupies all of Uintah and Duchesne Counties in northeastern Utah. The eastern border of Uintah County adjoins the western borders of Moffat and Rio Blanco Counties in Colorado. Coyote Basin, located on the Utah/Colorado border is a relatively flat valley surrounded by low hills and ridges. This site is bounded on the south by the White River and the west by Kennedy Wash. The Coyote Basin Primary Management Zone is bounded by the Utah-Colorado State line on the east, by the east-west line separating Townships 7 and 8 South on the north, by the north-south line separating Ranges 23 and 24 East on the west, and by the east-west section line 1.6 kilometers (1 mile) south of Township 8 South on the south.

White-tailed prairie dog colonies in the ExPA form a complex extending from southwestern Wyoming, south to Elk Springs, Colorado, and west to Vernal, Utah. We do not expect ferrets to disperse outside the proposed experimental area. This is highly unlikely due to its large size (3,218,907 hectares or 7,953,920 acres), the absence of suitable surrounding habitat (lack of prairie dog towns), and the presence of vegetative and topographical barriers.

There are approximately 95,073 hectares (234,926 acres) of white-tailed prairie dog colonies in the ExPA that could potentially support at least 139 families of ferrets.

Contiguous prairie dog colonies and the lack of any physical barriers between the White River Resource Area in Colorado and Coyote Basin in Utah should provide for the movement of ferrets between the two areas. Ferrets released in Coyote Basin are likely to disperse to suitable contiguous habitats in Colorado. Due to the presence of physical barriers and less suitable prairie dog towns, the dispersal of ferrets from the Little Snake Management Area release site to other areas within the ExPA is unlikely. The NEP designation will apply to any ferret found within the boundaries of the ExPA.

a. *Northwestern Colorado Experimental Population Sub-Area:* In 1987, the Colorado Prairie Dog Management Group and the Black-footed Ferret Recovery Working Group selected northwestern Colorado as a potential release site because of: (1) the historical presence of ferrets in the area; (2) the abundance of prairie dogs; (3) the extensive amount of lands under management by the Bureau of Land Management (BLM); and (4) the area's relative isolation from human activities.

The Northwestern Colorado Experimental Population Sub-Area includes lands in northwestern Colorado and southwestern Wyoming. Black-footed ferrets historically occurred in this area, but recent ferret surveys indicate they have been extirpated from the area. Numerous surveys conducted from 1981 to 1993 by the Service, the Colorado Division of Wildlife, the BLM, and private consultants failed to locate any ferrets and we believe this adequately confirms their absence from the area. The Wyoming Black-footed Ferret Advisory Team endorses the experimental population area as defined in this rule (Bob Luce, Wyoming Game and Fish Department, *in litt.* 1993). The Colorado sub-area is about 1,218,633 hectares (3,011,210 acres) in size, and consists of approximately 49.5 percent BLM lands, 38 percent private lands, 6 percent State school lands, 5 percent National Park Service lands, 1 percent Colorado Division of Wildlife lands, and 0.5 percent National Wildlife Refuge lands. Prairie dog towns cover approximately 65,620 hectares (162,146 acres) of this sub-area and they occur primarily on BLM lands within their Little Snake Resource Area, the White River Resource Area, and the Green River Resource Area.

b. *Northeastern Utah Experimental Population Sub-Area*: The Northeastern Utah Experimental Population Sub-Area, containing 2,001,101 hectares (4,942,720 acres) of habitat, includes all of Uintah and Duchesne Counties in Utah. Landownership in the NEP area is 54 percent Federal public lands (i.e., BLM, Forest Service, Fish and Wildlife Service, Bureau of Reclamation, National Park Service), 24 percent private lands, 16 percent Ute Indian Tribe trust reservation lands, and 6 percent state lands. The sub-area lies within the historic range of the species. The Utah Black-footed Ferret Working Group selected Coyote Basin as the preferred reintroduction site because of its prairie dog numbers and their distribution. Based on surveys in 1985 and 1986, about 4,215 hectares (10,416 acres) of occupied white-tailed prairie dog habitat occurs within the immediate release area proposed, and another 25,238 hectares (62,364 acres) occur in the surrounding ExPA. The BLM and the Utah School and Institutional Trust Lands Administration manage most of the lands in Coyote Basin.

We will release black-footed ferrets in the management areas only if suitable biological conditions exist, and the management framework developed by the Colorado Division of Wildlife, the Utah Division of Wildlife Resources, the Service, the Ute Indian Tribe, and private landowners is implemented. We will reevaluate this reintroduction effort should any of the following conditions occur:

(a) Failure to maintain sufficient habitat to support at least 30 breeding adults after 5 years.

(b) Failure to maintain at least 90 percent of prairie dog habitat that was available in 1993.

(c) A wild ferret population is found within the ExPA following the initial reintroduction and prior to the first breeding season. The only black-footed ferrets currently occurring in the wild result from reintroductions in Wyoming, Montana, South Dakota, and Arizona. Consequently, the discovery of a black-footed ferret at the proposed experimental population area prior to the reintroduction would confirm the presence of a new population, which would prevent designation of an experimental population for the area.

(d) Discovery of an active case of canine distemper or any other contagious disease in any animal on or near the reintroduction area 6 months prior to the scheduled release.

(e) Less than 20 captive black-footed ferrets are available for the first release.

(f) Funding is not available to implement the reintroduction phase of

the project in northwestern Colorado/northeastern Utah.

(g) Land ownership changes or cooperators withdraw from the project.

All the above conditions will be based on information routinely collected by us or the BLM. None of the conditions are dependent on information from private parties.

5. *Reintroduction protocol*: The reintroduction protocol calls for the release of 20 or more captive ferrets in the first year of the program, and up to 50 or more animals annually for the following 2 to 4 years. Release candidates must be excess animals available for the reintroduction and not required for the continuation of the captive breeding program. Any loss of these animals will not affect the overall genetic diversity of the captive population. Since captive breeding of ferrets will continue, a source of additional ferrets will be available to replace those removed for the reintroduction effort. In future releases, it may be necessary to obtain and translocate ferrets from established, reintroduced populations in order to maintain maximum genetic diversity in other wild populations.

Release methods for reintroducing captive ferrets into the wild include varying degrees of preparation or conditioning. A hard release involves releasing ferrets raised entirely within an indoor captive breeding facility to the wild without any exposure to natural environmental conditions, or when ferrets are exposed to some degree of pre-conditioning at one site and subsequently are taken to another site for immediate release. A soft release involves an acclimation period during which the ferrets receive food, shelter, and protection from predators for an extended period of time after relocation to the release site and prior to their release. In each method, we release ferrets from above-ground cages connected to underground nest boxes. In either method, captive-bred ferrets may also undergo an extensive period of pre-conditioning by placing them in large pens enclosing a portion of a prairie-dog colony. The enclosure exposes ferrets to prairie dog burrows, requires ferrets to practice predatory skills, and allows ferrets to become physiologically fine-tuned to local environmental conditions. It may also be necessary to surround each above-ground cage with an electric fence to prevent damage from livestock or access by predators. We will decide, in coordination with our cooperators, on the best reintroduction method for the release. We are developing a specific release protocol to serve as a condition

of the endangered species permit authorizing the northwestern Colorado/northeastern Utah release. To enhance reintroduction success, we will move pregnant females to the release site prior to giving birth. We will release adult ferrets and their offspring into the wild as family groups.

We vaccinate released animals against certain diseases (including canine distemper) and take appropriate measures to reduce predation from coyotes, badgers, and raptors. All ferrets we release are marked with passive integrated transponder tags (PIT tags) and we will monitor several animals with radio-collars to document their behavior and movements. Other monitoring will include spotlight surveys, snow tracking surveys, and visual surveillance.

Since captive-born ferrets are more susceptible to predation, starvation, and environmental conditions than wild animals, up to 90 percent of the animals could die during the first year of release. Mortality is usually the highest during the first month of release. In the first year of the program, a realistic goal is to have at least 10 percent of the animals survive the first winter.

The goal of the Colorado/Utah reintroduction is to establish a free-ranging population of at least 30 adults within the ExPA after 5 years of release. At the release site, we will monitor population demographics and all sources of mortality on an annual basis (for up to five years). We do not expect to change the nonessential experimental designation for this population unless: 1) we deem this reintroduction a failure (i.e., we are unable to establish a wild ferret population in the area, and no free-ranging ferrets remain in the ExPA), or 2) the black-footed ferret is fully recovered in the wild and no longer needs the protection of the Endangered Species Act.

6. *Status of Reintroduced Population*: We determine this reintroduction to be nonessential to the continued existence of the species for the following reasons:

(a) The captive population (founder population of the species) is protected against the threat of extinction from a single catastrophic event by housing ferrets in seven separate subpopulations. Hence, any loss of an experimental population in the wild will not threaten the survival of the species as a whole.

(b) The primary repository of genetic diversity for the species are the 240 adults in the captive breeding population. Animals selected for reintroduction purposes are surplus to the captive population. Hence, any loss of animals in reintroduction will not

affect the overall genetic diversity of the species.

(c) Captive breeding will provide for the replacement of any animals lost during this reintroduction attempt. Juvenile ferrets produced in excess of the numbers needed to maintain the breeding population in captivity are available for reintroduction.

This reintroduction is the fifth release of ferrets back into the wild. The other experimental populations occur in Wyoming, southwestern South Dakota, northcentral Montana, and Arizona. Reintroductions are necessary to further the recovery of this species to the extent that reclassification can occur. The nonessential experimental population designation alleviates landowner concerns about possible land use restrictions that would otherwise apply under the provisions of the Act. This nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners can continue.

**7. Location of Reintroduced Population:** Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. Since 1991, extensive ferret surveys in the area (conducted by the Service and our cooperators) have failed to locate any ferrets or evidence of their presence (sign such as skulls, feces, trenches). Therefore, we conclude that wild ferrets are no longer present in the ExPA, and that this reintroduction will not overlap with any wild population.

Before the first breeding season, the nonessential experimental population will include all marked ferrets in the ExPA. After the first breeding season, the nonessential experimental population will include all ferrets located in the ExPA, including any unmarked offspring. All released ferrets and their offspring should remain in the ExPA because of prime prairie dog colonies and the surrounding geographic barriers. We will capture any ferret that leaves the ExPA and will either return it to the release site, translocate it to another site, place it in captivity, or leave it. If a ferret leaves the reintroduction area (but remains within the ExPA) and takes up residence on private property (including Ute Indian reservation trust lands), the landowner can request its removal. Therefore, ferrets will remain on private lands only when the landowner does not object to their presence on his/her property.

We will mark all released ferrets and will attempt to determine the source of

any unmarked animals found at the release site. An endangered species designation as allowed under the Act will apply to any ferret found outside the ExPA until genetic testing can confirm that it originated in the captive population or is the progeny of the released captive ferrets. If the animal is unrelated to members of the experimental population (possibly a wild animal), we will place it in captivity as part of the breeding population to improve the overall genetic diversity of the population. Existing contingency plans allow for the capture and retention of up to nine ferrets shown to have a wild heritage. If a landowner outside the experimental population area wishes black-footed ferrets to remain on his/her property, we will develop a conservation agreement in cooperation with the landowner.

**8. Management:** This reintroduction is undertaken with the cooperation of the BLM, the Colorado Division of Wildlife, and the Utah Division of Wildlife Resources and in accordance with the Cooperative Management Plan for Black-footed Ferrets-Little Snake Management Area and the Cooperative Plan for the Reintroduction and Management of Black-footed Ferrets in Coyote Basin, Uintah County, Utah. You may obtain copies of the respective plans by contacting the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado, 81625, and/or the Regional Manager, Utah Division of Wildlife Resources, Northern Region, 152 East 100 North, Vernal, Utah 84078.

We discuss additional considerations pertinent to the reintroduction below:

**a. Monitoring:** Several monitoring efforts will occur during the first five years of the program. We will annually monitor prairie dog distribution and numbers, and the occurrence of sylvatic plague. Testing for canine distemper will begin prior to the release, and continue each year. We will monitor the released ferrets and their offspring using spotlight surveys, snowtracking, other visual survey techniques, and radio-telemetry of some individuals. The survey design will incorporate methods to monitor breeding success and juvenile survival rates.

Through public outreach programs, we will inform the public and other State and Federal agencies about the presence of ferrets in the ExPA and the handling of any sick or injured animals. We have requested that the Colorado Division of Wildlife and the Utah Division of Wildlife Resources serve as the primary contacts for governmental agencies and private landowners whose jurisdictions are within the

reintroduction area. To meet our responsibilities under Secretarial Order 3206, we will request that the Ute Indian Tribe in Utah inform Tribal members regarding the potential for ferrets on reservation trust lands, and the proper handling of any sick or injured ferrets that are found. The agencies and the Ute Indian Tribe will also serve as the primary contacts to report any injured or dead ferrets. Report any injured or dead ferrets to the appropriate Service Field Supervisor in each respective State (see **ADDRESSES** section). The Field Supervisor will also notify the Service's Division of Law Enforcement concerning any dead or injured ferret. It is important that we determine the cause of death for any ferret carcass found so if you discover a ferret carcass, do not disturb it, but instead report the carcass as soon as possible to the appropriate Service office.

**b. Disease Considerations:** The presence of canine distemper in any mammal on or near the reintroduction site will cause us to reevaluate the reintroduction program. Prior to a release, we will establish the presence/absence of canine distemper in the release area by collecting at least 10 coyotes (and possibly other predators), from the release site. The predators will be tested for canine distemper using accepted techniques.

We will attempt to limit the spread of distemper by discouraging people from bringing unvaccinated pets into the ExPA. We are requesting people to report any dead mammal or any unusual behavior observed in animals found within the area. Efforts are underway to develop an effective canine distemper vaccine for black-footed ferrets.

Routine sampling for sylvatic plague within prairie dog towns will take place before and during the reintroduction efforts.

**c. Genetic Considerations:** Ferrets selected for the reintroduction are excess to the needs of the captive population. Experimental populations of ferrets are usually less genetically diverse than the overall captive populations. Selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases can correct this disparity. The ultimate goal is to establish wild ferret populations with the maximum genetic diversity possible to attain with the founder individuals.

**d. Prairie Dog Management:** We will work with landowners, Federal and State agencies, and the Ute Indian Tribe in the ExPA to resolve any management conflicts in order to: (1) maintain sufficient prairie dog colonies to

support up to 30 adult black-footed ferrets and; (2) to maintain at least 90 percent of the prairie dog habitat that was available in 1993.

e. *Mortality*: We will only use animals which are surplus to the captive breeding program for this reintroduction. Predator control, prairie dog management, vaccination, supplemental feeding, and/or improved release methods should partially offset any natural mortality. Public education will help reduce potential sources of human-related mortality.

The Act defines "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. A person may take a ferret within the ExPA provided that any resulting injury or mortality to a ferret is unintentional, and was not due to negligence or malicious conduct. Such conduct will not constitute "knowingly taking" and we will not pursue any legal recourse. However, when we have evidence of knowingly (i.e., intentionally) taking a ferret we will refer matters to the appropriate authorities for prosecution. We request that you report any take of a black-footed ferret, whether incidental or not, to the local Service Field Supervisor (see ADDRESSES section). We expect a low level of incidental take since the reintroduction is compatible with traditional land use practices in the area.

Studies of wild black-footed ferrets at Meeteetse, Wyoming, found that ferrets were occasionally killed by motor vehicles and dogs. We expect a rate of take similar to what was documented at Meeteetse, and therefore, we estimate a human-related mortality of about 12 percent of all reintroduced ferrets and their offspring, annually. If this level is exceeded in any given year we will develop and implement measures to reduce the level of take occurring.

f. *Special Handling*: Under special regulations that apply to experimental populations, Service employees and agents acting on behalf of the Service may handle black-footed ferrets for scientific purposes, relocation efforts to avoid conflict with human activities, recovery efforts, relocation to other reintroduction sites, and in aiding sick, injured, and orphaned animals, or salvaging dead animals. We will return to captivity any ferret we determine to be unfit to remain in the wild. We will also determine the disposition of all sick, injured, orphaned, and dead animals.

g. *Coordination with Landowners and Land Managers*: The Service and our cooperators tried to identify all major issues associated with this

reintroduction before the development of the proposed rule. We discussed this reintroduction with State agencies, private landowners, and the Ute Indian Tribe within the release site. The initial opposition to the project by the Ute Indian Tribe has been resolved (see part "I"), and the state agencies support the project provided: (1) we release animals in the ExPA with the nonessential experimental population designation; and (2) we do not restrict land use activities in the ExPA without the knowledge and consent of the landowners. Some individual citizens remain opposed to the project because they still believe it will impact their use of public lands, that we intend to change the experimental population designation, and/or that the funding level necessary for the reintroduction is unacceptably high. The comment section of this final rule addresses their concerns.

h. *Potential for Conflict with Oil, Gas and Mineral Development Activities*: Development of minerals, oil and gas in the Little Snake Resource Area could reduce available ferret habitat by approximately 3 percent (890 hectares, or 2,200 acres), if oversight is not provided. Within Coyote Basin in Utah, mineral extraction is the primary land use. However, the development of existing oil, gas, and mineral resources will not jeopardize the establishment of ferrets in the release area. We will work with exploration companies to avoid any adverse impacts to ferrets and their habitat, should they develop any new oil or gas fields in the Coyote Basin. We encourage land management agencies and landowners within the management area to adopt the Coyote Basin Management Plan mineral extraction guidelines. Contingencies included in the black-footed ferret management plans developed for Utah and Colorado, the BLM's resource management plans, as well as the recommendations developed by the local black-footed ferret working groups, will guide the development of mineral resources.

i. *Potential for Conflict with Grazing and Recreational Activities*: We do not expect conflicts between livestock grazing and ferret management. Grazing or prairie dog management on private lands within the ExPA will continue without additional restriction during implementation of the ferret recovery activities. If proposed prairie dog control on private, State trust lands, or Ute Indian Tribe reservation trust lands locally affects ferret prey base within a specific area, State and Federal biologists will jointly determine potential impacts to ferrets. We do not expect adverse impacts to ferrets from

big game hunting, prairie dog shooting, and trapping of furbearers or predators in the ExPA. If private activities impede the establishment of ferrets, we will work closely with landowners to develop appropriate procedures to minimize the conflicts.

j. *Protection of Black-footed Ferrets*: We will release ferrets in a manner that provides short-term protection from natural (predators, disease, lack of prey base) and human related sources of mortality. Improved release methods, vaccination, predator control, and the management of prairie dog populations should help reduce natural mortality. Releasing ferrets in areas with little human activity and development will minimize opportunities for human-related sources of mortality. We will work with landowners to help avoid certain activities that could impair ferret recovery.

k. *Public Awareness and Cooperation*: We will undertake educational efforts to inform the general public of the importance of this reintroduction project in the overall recovery of the black-footed ferret. This program should increase public awareness of the significance of the ExPA program and the habitats upon which ferrets depend.

l. *Ute Indian Tribe*: On June 10, 1997, the Ute Indian Tribe in Utah provided a letter to the BLM in Vernal adamantly opposing the reintroduction of black-footed ferrets on the Ute Indian Reservation in Utah. The Ute Indian Tribe identified the following concerns:

(1) The Service may withdraw the experimental designation in the future, or, may impose stricter rules governing activities that occur near experimental populations. The Ute Indian Tribe states that either of these circumstances could impact resource development on their reservation, cause expansion of prairie dog colonies on the reservation, and increase the cost of resource development.

(2) The Ute Indian Tribe cites circuit court decisions that require the consideration of Tribal resources and values when off-reservation activities occur near a reservation. Specifically, the Ute Indian Tribe states that in their view, the BLM did not adequately address the cultural, social, and economic impacts of ferret reintroduction in its National Environmental Policy Act (NEPA) compliance responsibilities.

Many individuals in other States where black-footed ferret reintroduction is now occurring, have also expressed concern that the Service will remove the experimental population designation (see Service response for issue #2). However, as stated at section 5 of the

final rule, the Service does not intend to make such a change unless: (1) the ferret release is determined to be a failure (i.e., we are unable to establish a wild ferret population in the area, and no free-ranging individuals remain in the ExPA), or (2) the black-footed ferret fully recovers to the extent that Endangered Species Act protection for the species is no longer needed.

Regarding the imposition of stricter rules near the experimental population area, we intend to manage all reintroduced populations of black-footed ferrets in Utah in accordance with "A Cooperative Plan for the Reintroduction and Management of Black-footed Ferrets in Coyote Basin, Uintah County, Utah", cited elsewhere in this final rule. This plan allows for continued, compatible natural resource development, and does not impose more strict regulations because of the reintroduction of black-footed ferrets.

Regarding the lack of adequate attention to Ute tribal concerns through NEPA, the BLM in Utah is only in the early stages of its NEPA compliance responsibilities. The BLM has determined that to comply with NEPA, its resource management plan for the Book Cliffs Resource Management Area must be amended to include the black-footed ferret. The process that the BLM is using to prepare the amendment will address all the issues the Tribe has provided to the BLM.

The Service will not release ferrets on the Ute Indian Tribe trust lands without prior approval of the Ute Tribe. We interpret the Tribe's June 10 letter, and subsequent meetings with their representatives, as concern that ferret releases off their trust lands could impact resource development on Tribal Reservation trust lands. To further clarify the Tribe's concerns, we met with representatives of the Ute Indian Tribe on April 22, 1998 to discuss our proposal to reintroduce black-footed ferrets into northeastern Utah and northwestern Colorado. During the meeting the Tribe stated that they wanted assurance from us that they would not have any obligations to provide habitat for black-footed ferrets, i.e., that no requirement would be made of them to maintain existing prairie dog populations or create more prairie dog acres. On May 7, 1998, we provided a letter to the Tribe assuring we would not require additional protection of prairie dogs due to the release of black-footed ferrets. We, therefore, will not require any habitat protection by the Tribe for the black-footed ferret, nor will we conduct any ferret release in any portion of the nonessential, experimental population area that we

determine may affect Ute Indian Tribe reservation trust lands, and that the Tribe requests not take place. The Service believes this commitment, combined with maintaining the experimental population boundary as originally proposed, maximizes future management opportunities for black-footed ferrets in the experimental population boundary, addresses the Ute Indian Tribe concerns, and meets timely recovery of the black-footed ferret in the western United States. By this coordination and commitment, we believe we have also met the requirements of Secretarial Order 3206.

m. *Overall:* The designation of the northwestern Colorado/northeastern Utah population as a nonessential experimental population should encourage local cooperation since it allows greater flexibility in conducting normal activities within the release site. This designation is necessary in order to receive full cooperation from landowners, Federal, State and local governmental agencies, and recreational interests within the release site. Based on the above information, and utilizing the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing black-footed ferrets into the ExPA will further the conservation and recovery of the species.

#### **Summary of Comments and Recommendations**

The April 29, 1997, proposed rule and associated notifications requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment and advertising public hearings on the proposal were published in Colorado in the *Denver Post* on May 13, 1997, the *Northwest Colorado Daily Press* in Craig on May 16, 1997, the *Rangely Times* on May 15, 1997. We published an invitation for public comment in Rock Springs, Wyoming, in the *Rocket Miner* on May 14, 1997. Notices were also published in Utah in the *Salt Lake City Tribune* on June 3, 1997, the *Utah Basin Standard* in Roosevelt on June 3, 1997, and the *Vernal Express* on June 4, 1997.

The Service mailed the proposed rule to 152 people representing individuals, State, Federal, and local governments and corporations, nongovernmental organizations affiliated with environmental, grazing, and recreational interests in Colorado, Utah and

Wyoming, and the Ute Indian Tribe in Utah. This mailing list is from previous meetings and open houses we conducted in Utah and Colorado since 1990 regarding black-footed ferret recovery. A total of ten written comments were received from the three State area. Six supported the designation and four were opposed.

Public hearings regarding the proposal were conducted in Denver, Craig, and Rangely, Colorado on June 2, 1997, June 3, 1997, and June 4, 1997, respectively. We conducted a public hearing in Rock Springs, Wyoming on June 5, 1997. Public hearings were conducted in Salt Lake City and Vernal, Utah on June 9, 1997, and June 10, 1997, respectively. Each hearing began with verbal statements from the Service hearing officer and a Service biologist who gave background information on the rule process, described the hearing format, and provided details of black-footed ferret biology and Service recovery goals for the ferret. The hearing officer then invited the public to make statements, and a certified court reporter recorded each statement. A total of 38 verbal comments were received at the public hearings. Seven supported the proposal, 19 opposed the proposal, and 12 sought clarification of the proposals potential to impact land uses within the experimental population boundary.

Following the closure of the comment period, all written and verbal comments were grouped by issue. Most of the written and verbal comments received addressed the potential for the designation to interfere with current and proposed land uses within the experimental population boundary, the cost of the black-footed ferret recovery program, and the concern that the Service would change the experimental nonessential population designation in the future. The following summary addresses the written and verbal comments presented at the public hearings and received during the comment period. Our response to each issue is given below.

*Issue #1:* The Ute Indian Tribe commented that Coyote Basin, Utah "is to some extent bordered by Indian land and lies wholly within the jurisdictional boundaries of the Ute Indian Tribe . . ." A separate commenter suggested consideration of the present jurisdiction of the Tribe.

*Service Response:* The Ute Indian trust lands are wholly within the experimental population boundary, but about 9 miles west of the Coyote Basin Primary Management Zone. There will be no release of black-footed ferrets on the Ute Indian Reservation trust lands, or on lands that the Service determines

may impact the reservation trust lands, without concurrence by the Ute Indian Tribe (see above). We chose to include the Ute Indian Reservation trust lands within the experimental population boundary to extend the provisions of section 10(j) of the Endangered Species Act to the Reservation lands in the event that ferrets emigrate from the Coyote Basin Primary Management Zone to the Ute Indian trust lands. Black-footed ferrets released in Montana and South Dakota have not dispersed from their release site more than 6 miles. Lands between the Coyote Basin Primary Management Zone and the trust lands consist of pinyon-juniper woodlands and sagebrush flats which prevent occupancy by prairie dogs. Consequently, while it is conceivable that ferrets could travel 9 miles to reach the trust lands, the absence of contiguous prairie dog colonies makes such an event highly unlikely. The Ute Indian Tribe may request the removal of any ferret found within their reservation trust lands. Sections 7, 8f, 8i, and 8j under Supplementary Information in this final rule contain contingencies for the removal of ferrets from private lands when land use conflicts may occur.

*Issue #2:* Concern that the Service will change the experimental, nonessential population designation in the future.

*Service Response:* As stated in Section 5 of the Supplementary Information portion of this final rule, we do not expect to change the designation unless the reintroduction effort fails, or the species recovers. All the black-footed ferret experimental nonessential population designations made for release sites in Arizona, Montana, South Dakota, and Wyoming remain in effect as described in section (g)(9) of this final rule. Presently there are no proposals by the Service, or any requests on the part of other agencies or nongovernmental organizations, to amend any of the prior designations. Consequently, it is anticipated that the experimental, nonessential population designation for northwestern Colorado and northeastern Utah will continue in the future. If the release fails, we would likely abandon the experimental population designation because such a designation is unnecessary given the absence of the species in the area. If the release is successful and reclassification of the black-footed ferret is warranted, we will then consider whether it is appropriate to retain the designation or pursue its retraction. Success under a nonessential experimental population designation would argue against upgrading the designation to essential, or reinstating an endangered or threatened designation because of potential

conflicts with ongoing activities in the area. If the Service and cooperating agencies are able to recover a species under a nonessential, experimental population designation, there would be no cause to increase the degree of protection otherwise allowed under the Endangered Species Act. In any case, with publication of this final rule, making any change to the nonessential, experimental population designation would require a new proposed rule, a public comment period, public meetings, NEPA compliance, and other documentation prior to publication of a final rule to change or abandon the designation.

*Issue #3:* Ferrets may disperse from their release site, potentially affecting land uses in areas outside the release area, and cause the Service to impose stricter rules governing resource development activities outside the boundaries of the experimental population area.

*Service Response:* Investigations of black-footed ferret dispersal at existing experimental release sites, and research conducted at Meeteetse, Wyoming, confirm that ferret dispersal to areas outside of active prairie dog colonies is rare. Ferrets are not known to establish residence off of active prairie dog colonies. Recent modifications to ferret husbandry techniques have been successful in developing captive reared animals that stay nearer to release sites than the ferrets raised in captivity and released in earlier trials. The northwestern Colorado/northeastern Utah experimental population boundary encompasses all prairie dog colonies believed to be suitable for long-term occupation by ferrets. Consequently, we believe it is unlikely that ferrets will disperse to, and establish permanent residence within, areas outside the experimental population boundary. Contingencies stated in section 7 of the Supplementary Information in this final rule allow for capture and return of ferrets to the experimental release area, should this occur. Also see response to issue #36.

*Issue #4:* The Ute Tribe suggested that ferret releases occur on lands that lie outside the Reservation.

*Service Response:* We will not release black-footed ferrets on Ute Indian Trust lands, nor is it likely that ferrets will travel to the trust lands and establish permanent residence. Contingencies included in this final rule allow for removal of ferrets from private lands when landowners do not want them on their property. We will implement these contingencies at the request of the Ute Indian Tribe. Also see response to issue 1. The Service and its cooperators

evaluated the Coyote Basin Primary Management Zone and found it to be the only suitable release site within the experimental population boundary in Utah. Further investigations will continue and additional sites recommended when appropriate. Identification of additional sites outside of the designated experimental population area will require initiation of a new experimental rule process.

*Issue #5:* The rule ignores the wishes and needs of the Ute Tribe relating to ferret recovery.

*Service Response:* The Service has not ignored the wishes and needs of the Ute Indian Tribe during the evaluation of the Coyote Basin Primary Management Zone. Congress amended the Endangered Species Act to incorporate section 10(j) to enhance the opportunity for release of federally listed species on private lands. We could have chosen to select an experimental population boundary that excluded Ute trust lands. However, we believe including the trust lands within the boundary will provide the flexibility for management of ferrets sought by the Tribe and the Service. With adoption of a boundary that excluded the trust lands, any ferret found on the trust lands following the release would be subject to all prohibitions of the Endangered Species Act. We address the Ute Tribe's concern for resource development on their trust lands by including the trust lands within the experimental population boundary. As stated above, we will not release ferrets that may impact reservation trust lands without concurrence from the Ute Indian Tribe.

*Issue #6:* The Ute Tribe believes greater attention must be given to the cultural, social, and economic impact of ferret reintroduction, as well as tribal consultation demands, and implementing regulations and case law.

*Service Response:* The BLM in Utah is only in the early stages of its NEPA compliance responsibilities. The BLM has determined that to comply with NEPA, its resource management plan for the Book Cliffs Resource Management Area requires amendments to include the black-footed ferret. The process that the BLM is using to prepare the amendment will address all the issues the Tribe has provided to the BLM. The Service has also complied with Secretarial Order No. 3206, signed on June 5, 1997, and entitled "American Indian Tribal Rights, Federal-Tribe Trust Responsibilities, and the Endangered Species Act." See paragraph 8.1 of this final rule.

*Issue #7:* A commenter from Colorado said the Service did not disclose intentions to release ferrets in Utah



during previous meetings held in Colorado.

**Service Response:** The Service conducted a series of open houses regarding the proposal to release ferrets into northwestern Colorado in April 1995. Eighteen people attended the meeting in Rangely, Colorado on April 20, 1995. We have no official record of all issues discussed during the Rangely meeting; however, it may be that little or no attention was given to the potential for a black-footed ferret release in Utah because independent planning processes occurred in the two States. In 1996, we decided to pursue an experimental population designation that would encompass all prairie dog colonies in Utah, Colorado, and Wyoming that had a likelihood to be impacted by the release of ferrets in Utah or Colorado. While the plan to release ferrets in Utah may not have been advertised in Colorado, the public outreach process in Utah paralleled that in Colorado which included forming a local work group to address land use issues. This local work group in Utah will continue to function. Further, we have no reason to conceal a future release of ferrets in Utah from the Colorado public. We believe designation of an experimental, nonessential population of ferrets released in Utah protects land users in Colorado to a greater extent from the prohibitions of the Act.

**Issue #8:** Black-footed ferrets have never occurred within the experimental population area. The proposal therefore, is not a "reintroduction," but rather an introduction of a species outside its historical range.

**Service Response:** Published literature (available on request) documents that black-footed ferrets occurred in Rio Blanco and Moffat Counties, Colorado, and San Juan County, Utah. For example, a black-footed ferret was collected at Morapos Creek about 19 miles southwest of Craig in 1941. All confirmed records of black-footed ferrets in North America overlap the prairie dog distribution in North America. Therefore, in the absence of physical evidence (e.g., carcass, bones, skulls), we assume that black-footed ferrets were historically a common predator within all active prairie dog colonies throughout North America. Consequently, while physical evidence may be lacking for specific areas within the experimental population boundary, we assume ferrets once occupied all active prairie dog colony complexes, based on the documented historical record from Colorado and Utah, and the presence of suitable habitat.

**Issue #9:** The short- and long-term costs of the black-footed ferret program may be prohibitively high.

**Service Response:** In 1995 (the most recent year analyzed), the cost of raising a black-footed ferret in captivity for delivery to a recovery site ranged from \$4,000 to \$5,000. The cost for each black-footed ferret surviving for 7 to 8 months after release to breed in the wild was estimated at about \$100,000. These costs are all inclusive of all captive rearing facilities, recovery site administration, mortalities of release ferrets, and salaries of staff. Since 1995, rearing ferrets in captivity has become more efficient and survival of ferrets released has increased. These modifications indicate that the cost of each ferret raised in captivity and surviving in the wild for 7 to 8 months is decreasing. Continuing improvements to husbandry and field monitoring will reduce costs of these program elements. Because all costs associated with the recovery program are not static, we cannot provide a reliable estimate of the final cost of black-footed ferret recovery.

**Issue #10:** When designing recovery measures for endangered species, the Service leaves man "out of the equation."

**Service Response:** Social, economic, and cultural considerations are important elements in designing strategies to conserve endangered species. In light of these considerations, and in an effort to encourage public acceptance of endangered species reintroductions, Congress amended the Endangered Species Act in 1982 to include a new section 10(j) that allowed the Secretary of the Interior the opportunity to designate reintroduced populations as "experimental." This section gives the Service more flexibility in the management of these populations by treating experimental populations as if they were threatened species, independent of the status of the donor populations, and providing for development of special rules for their management that are consistent with local land uses.

**Issue #11:** We did not adequately describe in the public notices what form of presentation the public should use at the public hearings (e.g., prepared statements, verbal testimony, etc.).

**Service Response:** The Service stated at the beginning of each hearing that written statements and verbal statements would receive equal consideration. Written statements were not expected, nor required, of anyone choosing to speak at the public hearings. The Service believes the 60-day comment period allowed on the proposed rule gave the public an

opportunity to provide written comments if the hearings were considered an unacceptable forum.

**Issue #12:** A request was made for a copy of the Congressional Record reporting the commenter's verbal and written testimony.

**Service Response:** The commenter may be confusing the **Federal Register** with the Congressional Record. None of the comments regarding the proposal to release ferrets, or the comments received by the public on the proposal, will appear in the Congressional Record. All the verbal and written comments received were reviewed, grouped by topic, responded to by the Service, and published in this issue of the **Federal Register**. We will mail a copy of the final rule to all individuals providing either written or verbal comment on the proposed rule.

**Issue #13:** Release of ferrets will reduce or foreclose development of mineral and coal resources, hunting, ranching, and employment opportunities on lands within the experimental population area.

**Service Response:** Development of "The Cooperative Management Plan for Black-footed Ferrets—Little Snake Management Area" and "A Cooperative Plan for the Reintroduction and Management of Black-footed Ferrets in Coyote Basin, Uintah County, Utah," included participation by representatives from oil and gas, hunting, off-highway vehicle, and ranching interests. The management plans recognize that the existing land uses are important to the cultural and economic vitality of local communities, and each plan includes specific measures to ensure the compatibility of the ferret release with these existing land uses. Specific measures are in place to ensure that oil and gas development can continue without impacting the ferret or prairie dogs to a degree that would threaten the potential success of the release effort. We will adopt an identical planning strategy to evaluate the potential for release of black-footed ferrets at other sites within the experimental population area.

**Issue #14:** The Utah School and Institutional Trust Lands Administration suggested that the release of black-footed ferrets in Utah duplicate the strategy used for the release of California condors.

**Service Response:** A Memorandum of Agreement between us and a coalition of county and local governments in Utah preceded the release of California condors in Utah. The agreement ensures, to the maximum extent practicable, that a condor release will not affect the current and future land,



water, or air uses within the experimental population area in Utah. We are a signatory to the Agreement, and will consider a similar approach for the release of ferrets in Utah.

**Issue #15:** The Utah School and Institutional Trust Lands Administration made a request to “. . . allow non-federal mineral estate owners to trigger ferret removal and rule revocation in the event that they feel that reintroduction is causing a detrimental effect on mineral development.”

**Service Response:** The management plans adopted for the release of ferrets in Utah and Colorado provide for capture and removal of ferrets from private lands, if the private landowner does not want the ferrets on their property. The plan also provides contingencies for development of mineral resources (see section 7 and section 8h of the Supplementary Information in this final rule). The local black-footed ferret working groups will provide a forum for all land users to recommend removal of ferrets from an area when the objectives of ferret recovery and resource development appear to be in conflict, or when habitat conditions for ferrets have deteriorated. The Service cannot delegate the decision to capture and remove an endangered species to the private landowners. Similarly, we cannot delegate the authority to revoke the experimental designation to anyone else.

**Issue #16:** Prairie dog numbers are low in parts of the experimental population area.

**Service Response:** Prairie dog abundance in the experimental population area is dynamic due to disease, predation, and habitat modification. Prairie dogs are a food source for many predators, and are also highly susceptible to sylvatic plague. While prairie dog abundance and distribution may fluctuate between years, prairie dog abundance and distribution in the experimental population area is adequate to support its designation as a black-footed ferret recovery site.

**Issue #17:** Ferrets and their habitat should receive as much protection as possible, and the experimental, nonessential designation may not provide adequate protection for recovery of the species.

**Service Response:** The Service has spent many years working with local land users and agencies to fully evaluate existing and future potential threats to the black-footed ferret. We believe the nonessential experimental designation adequately protects the existing and

future needs of ferrets and their habitat. Local black-footed ferret working groups will continue to alert everyone of potential conflicts between ferret recovery and proposed land uses. Furthermore, releasing ferrets as an endangered species, or an experimental, essential population, did not receive adequate support of the public or cooperating agencies. Consequently, while a stricter process for review of Federal actions would occur by releasing ferrets as endangered or as an experimental, essential population, public support would likely be absent, and the proposal would not likely be going forward. At this time, therefore, ferret release in the experimental population area would be unfeasible without the nonessential experimental population designation. This “nonessential” designation has proven to be an invaluable tool and has provided adequate protection for ferrets and their associated habitats at the other established release sites in Wyoming, Montana, South Dakota, and Arizona.

The Service and cooperating agencies are fully aware of the need to maintain suitable habitat. It will be the responsibility of the cooperating agencies to ensure that anticipated land use changes are compatible with the needs of the ferrets. The establishment of local working groups with the participation of local land users will allow disclosure and evaluation of potential threats to ferrets prior to project construction.

**Issue #18:** Several requests were made to change the experimental population boundary to protect commodity production. These requests were from Colowyo Coal Company L.P. in Colorado, a member of the public in Wyoming who stated that the boundary in Wyoming has changed since presented in 1995, and a member of the public in Utah.

**Service Response:** Designation of the experimental population for the area described is unlikely to have any impact on existing or future coal mining operations by Colowyo Coal Company L.P. for the following reasons: (1) There are not sufficient prairie dog colonies within the areas leased by Colowyo to qualify as suitable habitat for black-footed ferrets. Consequently, there are no plans to release ferrets into Colowyo's leased lands; (2) If ferrets released at other locations in the experimental population area disperse onto lands leased by Colowyo Coal Company, the experimental nonessential designation will relax the requirements under section 7 of the Endangered Species Act; and (3) Due to the absence of suitable ferret habitat on

lands leased by Colowyo, circumstances requiring restrictions on the leased lands to protect black-footed ferrets are not foreseeable. Therefore, we conclude that the requested boundary adjustment is not warranted.

The boundary in Sweetwater County is the same as initially established in 1995. We described the boundary in this final rule to the Sweetwater County Commissioners on April 4, 1995, and to the public at an open house at Western Wyoming Community College in Rock Springs in April 1995. Amending the boundary of this proposal to include Grand County, Utah is not biologically justified for the release of ferrets in the Coyote Basin.

**Issue #19:** There should be more information regarding the development of new oil and gas guidelines mentioned on page 23206 of the proposed rule.

**Service Response:** In 1990, the Service developed draft “Guidelines for Oil and Gas Activities in Prairie Dog Ecosystems Managed for Black-footed Ferret Recovery.” We abandoned adoption of the guidelines in 1995. Oil and gas activities on Federal lands within the experimental population boundary will implement the strategies identified in the Little Snake Black-footed Ferret Management Plan, the Little Snake Resource Area Resource Management Plan, the White River Resource Area Resource Management Plan, the Cooperative Plan for the Reintroduction and Management of Black-footed Ferrets in Coyote Basin, Uintah County, Utah, the Book Cliffs Resource Area Resource Management Plan, and the Green River Resource Area Resource Management Plan. We will invite oil and gas industry representatives to participate in the local working group to help us and our cooperators to determine when ferret activities may conflict with their proposals, and what specific measures are available to ensure compatibility between the two objectives. Because the oil and gas guidelines do not exist, the text in the Supplementary Information section 8.h of the final rule is reworded.

**Issue #20:** Canine distemper and/or sylvatic plague in parts of the experimental population area may prevent the long-term success of the reintroduction proposal.

**Service Response:** Section 8.b of the Supplementary Information of this final rule addresses the implications of disease to the success of the proposal. The management plans for releases in Utah and Colorado also have contingencies developed relating to disease management. These contingencies include vaccinating all black-footed ferrets prior to release into

pre-release conditioning pens; vaccinating black-footed ferret kits at least once prior to release; re-administering medications to ferrets captured during monitoring; discouraging presence of domestic dogs near the pre-conditioning pens; encouraging routine vaccination of dogs; and educating upland bird hunters regarding the impact of distemper to ferrets. Additionally, local residents are encouraged in this rule to report wildlife that appear to be sick. Cooperators in the ferret recovery program will also conduct sylvatic plague research to more fully understand its consequences and identify potential remediation techniques.

*Issue #21:* The Coyote Basin area is not suitable for the release of black-footed ferrets, due to ongoing and potential natural resource development.

*Service Response:* Several commenters suggested that the Cisco Desert in west central Utah, areas in the vicinity of Flaming Gorge Reservoir, and other areas in the vicinity of existing Federal monuments, would be better alternative ferret release locations. At this time no adequate inventory of prairie dog abundance in the Cisco Desert to determine its suitability for ferret release is available. Because the Cisco Desert is outside the experimental population boundary, its designation as a future recovery site requires confirmation of its biological suitability as well as an additional rulemaking process comparable to the process described in this rule. Also, data indicates that there is not a sufficient prey base in the vicinity of Flaming Gorge Reservoir, nor at existing Federal monuments in Utah. We will evaluate other potential acceptable sites when they become known.

*Issue #22:* If a black-footed ferret population is found in Utah, will oil and gas drilling continue?

*Service Response:* The "Cooperative Plan for the Reintroduction and Management of Black-footed Ferrets in Coyote Basin, Uintah County, Utah" will direct the management of the black-footed ferrets within the Coyote Basin in Utah. This management plan contains recommendations on how to offset impacts of surface disturbance associated with potential oil and gas drilling. With this final rule, we conclude there are no wild ferrets occurring within the experimental population area, and we assume any ferret found within the experimental population area boundary to be a released animal. We will not require the oil and gas industry to search for black-

footed ferrets; cooperators will conduct all necessary searches.

*Issue #23:* The Service should comply with the guidelines developed by the Coyote Basin Black-footed Ferret Steering Committee if ferrets are reintroduced.

*Service Response:* We agree. The local working groups established in both Utah and Colorado continue to evaluate and review the ferret release and its potential impacts to commodity production and recreation on an ongoing basis.

*Issue #24:* The working group established for preparation of the BLM's Little Snake Resource Area Resource Management Plan should be reestablished and consider all views of Moffat County land users.

*Service Response:* We will convene a local black-footed ferret working group to review release activities, identify potential conflicts with current land uses, and where appropriate, select alternatives or modifications to ensure that ferret release activities are compatible with existing land uses. We will invite Moffat County and other members of the public to be members of the working group.

*Issue #25:* The Service should notify all interested parties of all the efforts on reintroduction of the ferret, and allow parties participation in the working groups.

*Service Response:* As stated in response to the above issue, we will form a local black-footed ferret working group, and invite participation from all people that have expressed an interest in this proposal. Recent events in the release program will be broadcast to the public in a local newsletter.

*Issue #26:* Thousands of prairie dogs occur in the Rangely, Colorado, area and have no natural enemies.

*Service Response:* Studies conducted by the cooperators since 1989 confirm that prairie dogs are abundant in the experimental population area, although prairie dog abundance can fluctuate due to sylvatic plague. Contrary to the commenter's statement, prairie dogs have many natural enemies in the experimental population area, including coyote, badger, red fox, ferruginous hawk, golden eagle, and the sport-hunting public. The reintroduction of the black-footed ferret as a natural predator of the prairie dog is unlikely to reduce prairie dog abundance in the experimental population area by an amount that would be noticeable by the public.

*Issue #27:* It is difficult to obtain prairie dog control in the Rangely, Colorado area, and the presence of

black-footed ferrets may make control more difficult to obtain in the future.

*Service Response:* The proposed designation will not affect the ability to control prairie dogs in Rangely using currently available rodenticides. Most of these rodenticides require coordination with the Service prior to their use to determine whether a black-footed ferret search should precede prairie dog control. Existing label restrictions will continue to regulate rodenticide use on private lands. If there is a request for prairie dog control on private lands following release of ferrets, the cooperating agencies will determine whether it is likely that ferrets occupy the control site. To make sure that prairie dog control does not impact ferrets, the Service and cooperators will determine whether ferrets occur on the control site, remove the ferrets prior to release, or provide an alternative for control that poses no risk to black-footed ferrets.

*Issue #28:* A commenter recalled the Service making a statement at the open house in Rangely, Colorado in 1995, that the ferret population was very low, and that a ferret release was very unlikely.

*Service Response:* In 1995, the Service budget for endangered species recovery was not sufficient to allow any consideration of ferret release, and the outlook for funding in the future was poor. Black-footed ferret funding is not a line item in the Congressional budget process; consequently, funding for specific ferret recovery tasks do not receive approval years in advance of implementation. Due to the increase in funds available to the endangered species recovery program above levels in 1995, we can now initiate ferret reintroduction to the sites described in this rule. Since 1995, the BLM, the Colorado Division of Wildlife, the Animal and Plant Health Inspection Service, and Great Outdoors Colorado (lottery funds) have agreed to participate in ferret recovery activities.

In 1995, there were fewer ferret kits produced in captivity than in any other year. Consequently, had all approvals been in place at that time, a ferret release was unlikely in Utah/Colorado due to the needs at existing release sites in Wyoming, South Dakota, and Montana. Ferret production in 1998 exceeded that of previous years, and ferret allocations to release sites now include adults as well as juveniles. Consequently, as the availability of ferrets has increased, conditions for releases at the Utah/Colorado sites are now more favorable.

*Issue #29:* The Service has not shown the same diligence to full disclosure of issues relating to ferret recovery that the

public must demonstrate when defending their individual tax returns to the IRS.

*Service Response:* Since 1990, no fewer than 24 open houses, public hearings, and other meetings have occurred to disclose the proposal to release ferrets into the experimental population area. We have always been candid regarding the proposed release, its implications to land uses, and the likelihood of the release in the near future. We have clearly stated our long-term commitment to ferret recovery in Colorado and Utah, but also stated that a target release date is dependent on availability of ferrets, an adequate prey base (prairie dogs), the prevalence of disease, and the compatibility of the release with existing land uses. We have fulfilled our commitment to the public to fully disclose details of the release and its potential impacts to them.

*Issue #30:* What are the penalties for killing black-footed ferrets while driving cars or conducting other activities in the experimental population area?

*Service Response:* Section (g)(5) of this final rule addresses the issue of incidental take of black-footed ferrets within the experimental population boundary. Basically, any take of a ferret within the experimental population boundary that is incidental to an otherwise lawful activity will not constitute "knowing take" for the purposes of this regulation. Consequently, we will investigate any ferret killed by an automobile to determine if the collision was entirely accidental, or whether there was any intention to deliberately strike the ferret. We will notify proper authorities and investigate any incident we conclude to be "knowing take" of ferrets.

*Issue #31:* There is a conflict in terminology in the Service's use of the terms "critically endangered" and "experimental" when referring to black-footed ferrets. How can an experimental population designation and release to the wild be appropriate for an animal classified as critically endangered?

*Service Response:* Paragraph 6 under the Supplementary Information section of this final rule provides the Service's rationale for designating this reintroduction as experimental, nonessential. Briefly, the experimental population designation relaxes certain prohibitions under the Endangered Species Act to assure compatibility with existing land uses and thus acceptability to the general public. Critically endangered relates to those animals remaining in captivity, and the absence of any known, self-sustaining populations of the ferrets in the wild.

*Issue #32:* How will the public be brought into the 5-year review of the release?

*Service Response:* We will re-convene local black-footed ferret working groups to assist in the review of specific land use proposals or ferret recovery actions, and determine how the implementation of each can be compatible. Public representation on the working groups will ensure the public an opportunity to provide input along with the agencies and other cooperators.

*Issue #33:* We were asked to provide a more complete description of the experimental population boundary.

*Service Response:* The proposed rule and this final rule provides a complete description of the experimental population boundary using township/range demarcations, county lines, and highway numbers. The experimental population boundary in Wyoming covers about 16 miles north to south, and 36 miles east to west (about 560 square miles). During final preparation of the release sites in Colorado or Utah, we will place signs to alert the public of the location of the management areas, experimental population boundary, and pre-release conditioning pen sites.

*Issue #34:* A commenter stated that the Sweetwater County Commissioners previously requested expansion of the nonessential experimental boundary north to Interstate Highway 80.

*Service Response:* The Service, the Wyoming Game and Fish Department, and the BLM briefed the Sweetwater County Commissioners regarding the proposal to release ferrets in Colorado and its implications to Wyoming on April 4, 1995. The Service presented the experimental boundary in this final rule to the Commissioners at that time. We have no record that the Sweetwater County Commissioners requested that an expansion of the boundary to Interstate 80, and the Sweetwater County Commissioners did not provide comments on the proposed rule. The established boundary includes all known prairie dog colony complexes that may be within the range of black-footed ferrets released in Colorado. It is unlikely that ferrets would successfully establish residence in any area outside this boundary, and the Wyoming Game and Fish Department does not consider prairie dog colonies in Sweetwater County suitable for the establishment of a self-sustaining population of ferrets. Consequently, there is no biological basis for extending the boundary to Interstate 80, and we have not adopted this suggestion.

*Issue #35:* What are the effects of the proposal on private lands?

*Service Response:* This experimental, nonessential designation will impose no additional restrictions on activities on private lands other than those that currently exist, but would relax the consultation process under section 7 of the Endangered Species Act for any activity requiring Federal approval. For example, prairie dog control on private lands will continue to be subject to the rodenticide label restrictions that require contact with the Service prior to their use. Killing a black-footed ferret on private lands, requires reporting the incident to the proper authorities for determination of whether the take was incidental or intentional. The black-footed ferret management plans prepared for both the Little Snake Management Area and Coyote Basin Primary Management Zone predict that all current lands uses on private lands in these areas will continue to operate following reintroduction of black-footed ferrets.

*Issue #36:* A black-footed ferret may disperse up to 35 miles, which could result in overlap with future coal mining proposals.

*Service Response:* (SEE ALSO #4 AND #10) We address the basic concerns expressed here under Supplementary Information Item 7 of this rule. Black-footed ferrets may travel up to 4.5 miles each day searching for food. A black-footed ferret raised in an indoor caged environment and released at Shirley Basin, Wyoming traveled about 16 miles from its initial release site. Ferrets raised in pre-conditioning pens and released in Montana and South Dakota have not traveled more than about 6 miles from their initial release site. Therefore, we expect ferrets reared in outdoor pre-release conditioning pens to disperse considerably shorter distances than those raised in indoor cages.

The experimental boundary in Wyoming includes all prairie dog colonies within the range of ferrets potentially released in Colorado. It is unlikely that ferrets would establish residence outside of the experimental boundary, due to the lack of suitable ferret habitat. The discovery of a ferret outside the experimental population boundary will trigger genetic testing to determine whether it is a released ferret, or offspring of a released ferret. If the animal is genetically unrelated to members of the experimental population (possibly a wild animal), it will become part of the captive breeding population; however, we will return it to the release site if genetic testing proves it is part of the experimental population. Any ferret found outside the experimental population area will be

fully protected by the Act pending conclusion of the genetic testing.

#### Effective Date Justification

The 30-day delay between publication of this final rule and its effective date as provided by the Administrative Procedure Act (5 U.S.C. 533(d)(3)) is waived. This is to allow for the timely transfer of suitable black-footed ferret release candidates to pens for acclimation and breeding purposes. The following biological considerations necessitate this approach. The approved reintroduction of captive black-footed ferrets requires transfer from indoor, captive breeding facilities to outdoor pre-conditioning/breeding pens in the recovery area. The purpose of the pens is to increase successful reproduction of ferrets in field situations, and increase the probability of the survival of ferret progeny upon their release to the wild. The outdoor pens expose ferrets to prairie dog burrows and local climatic events, which demands that they become familiar with prairie dog burrows, practice their predatory instincts, and adapt to local environmental rigors. An acclimation period of several months at the release site prior to the breeding period maximizes breeding and whelping success.

Ferret experts have concluded that placement of breeding aged females into the pens at least several months prior to the breeding period allows adequate time to adapt to the local environment. Because ferrets can begin breeding in February, breeding aged ferrets require placement in pens no later than early November. However, approval of the pens requires testing pen integrity against escape by ferrets as well as invasion by predators. Prairie dogs and male black-footed ferrets are used to test for escapement, which can require 2 months. The pens must prevent escapement of the prairie dogs and male black-footed ferrets prior to introduction of breeding aged females and/or juveniles. Delaying the effective date of the rule for 30 days following its publication would postpone the introduction of ferrets to pre-conditioning/breeding pens, which would prevent us from meeting local and national recovery objectives.

The proposed rule for this designation was made available for public review and comment as part of the ferret reintroduction proposal. The 60-day comment period, combined with the public meetings and hearings throughout the ExPA provided sufficient opportunity for public discussion and debate. The rule making process was responsive to extensive

input from the public, Ute Indian Tribe, and agencies and further review is unlikely to reveal new substantive issues. Because of the biological conditions described above, the extensive public review of the proposed rule, and the Record of Decision for this action, ferret reintroduction should begin as soon as possible after the publication of this rule. Therefore, due to biological considerations and the extensive public review process already conducted, good cause exists under 5 U.S.C. 553(d) for the rule to be effective immediately upon publication.

#### National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA). We have prepared an environmental assessment (EA) as defined under the authority of NEPA, which is available from the Service Offices identified in the ADDRESSES section. In that EA we determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment.

#### Required Determinations

The designation of a reintroduced population of a federally listed species as NEPs significantly reduces regulatory requirements regarding the take of the reintroduced species. Under NEP designations, the Act requires a Federal agency to confer with the Service if the agency determines that its actions within the NEP is likely to jeopardize the continued existence of the reintroduced species. However, the Act does not compel a Federal agency to stop a project, deny issuing a permit, or cease any activity. Additionally, this rule includes stipulations that unavoidable and unintentional take of reintroduced ferrets, when such take is non-negligent and incidental to an otherwise lawful activity, and the activity is in accordance with State laws or regulations, do not constitute a violation of the Act. The Colorado Division of Wildlife, the Utah Division of Wildlife Resources, and the Wyoming Game and Fish Department have endorsed the ferret reintroduction under a NEP designation, however, such designation will not require any of these state agencies to specifically manage for any reintroduced species.

This final rule contains collections of information requiring the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* A request for renewal and revision of the authorization for this information collection has been approved by OMB and has been assigned control number

1018-0095. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

This rule will not create inconsistencies with other agencies' actions. The Federal agencies that will be most interested in this rulemaking are primarily other Department of Interior bureaus (i.e., BLM, National Park Service). The action proposed by this rulemaking is consistent with the policies and guidelines of the other Interior bureaus. Additional coordination will be required of the other agencies, but they are in support of the proposal to release ferrets under the nonessential, experimental population (NEP) designation. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of the black-footed ferret in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. User fees may be imposed by the BLM for the exploration of minerals and grazing domestic livestock on public lands. The user fee rates for these activities are not influenced by the establishment of a population of black-footed ferrets. Some mineral exploration and development companies may be required to modify their operations, but the modifications will not significantly affect their rights for mineral development, extraction, or marketing.

This rule does not raise novel legal or policy issues. The Service has previously designated experimental populations of black-footed ferrets at four other locations (in Montana, South Dakota, Arizona, and Wyoming), and for other species at numerous locations throughout the nation.

Reintroduction of ferrets as proposed in this rulemaking would not have any significant effect on recreational activities in the experimental area. No closures or roads, trails or other recreation areas are expected, and only voluntary reductions in prairie dog

shooting activities are expected. Because present regulations require that oil, gas and other mineral operations within the affected area comply with restrictions associated with wildlife, special status plant species, and livestock lambing grounds, ferret reintroduction is not expected to cause any significant change in these activities. Current mining projects would proceed as planned and any conflicts with future projects would be worked out in the early planning stages. No changes in current BLM grazing allotments are expected as a result of ferret reintroduction, and only temporary grazing restrictions within one quarter mile of release cages or other equipment are expected. Because only voluntary participation in ferret reintroduction by private landowners is proposed, this rulemaking is not expected to have any significant impact on private activities in the affected area.

We reviewed this rule under provisions of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) to determine whether this reintroduction would have a significant effect on a substantial number of small entities, including businesses, organizations, or governmental jurisdictions. Because no substantial changes in economic activity are expected, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act.

The nonessential experimental population designation will not place any additional requirements on any city, county, or other local municipalities. The site designated for release of the experimental population is predominantly public land administered by the BLM. Some affected lands are state school lands managed by Department's of Natural Resource agencies in their respective states. These agencies have expressed their desire for accomplishing the reintroduction through a nonessential experimental designation. Accordingly, this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required.

Because this rulemaking does not require that any action be taken by local or state government or private entities, we have determined and certify pursuant to the Unfunded Mandates Act, 2, U.S.A. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or state governments or private entities, i.e., it is not a "significant regulatory action" under the Act.

Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements regarding the reintroduced listed species within the NEP. Under NEP designations, the Act does require a Federal agency to confer with the Service if the agency determines that its action within the NEP is likely to jeopardize the continued existence of the reintroduced species. However, even if an agency action totally eliminated a reintroduced species from a NEP and jeopardized the species' continued existence, the Act does not compel a Federal agency to stop a project, deny issuing a permit, or cease any activity. Additionally, regulatory relief can be provided regarding take of reintroduced species within NEP areas. A special rule has been developed stipulating that there would be no violation of the Act for unavoidable and unintentional take (including killing or injuring) of the reintroduced black-footed ferrets, when such take is non-negligent and incidental to a legal activity (e.g., livestock management, mineral development) and the activity is in accordance with State laws or regulations.

Most of the lands within the experimental population area are public lands administered by the BLM. Multiple use management of these lands for industry and recreation will not change as a result of the experimental designation. Private landowners within the experimental population area will still be allowed to control prairie dogs, and may elect to have black-footed ferrets removed from their land should ferrets seek private lands for food and/or shelter.

Because of the substantial regulatory relief provided by NEP designations, the Service does not believe the reintroduction of the ferrets would conflict with existing human activities or hinder public use of the area. In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

As stated above, most of the lands within the experimental population area are public lands, and multiple use management of these lands will not change to accommodate black-footed ferrets. The designation will not impose any new restrictions on the states of Colorado, Utah, or Wyoming. The Service has coordinated extensively with each of these states on the proposed reintroduction. Each of the states endorses pursuit of the NEP designation as the only feasible way to pursue ferret recovery in the area. In

accordance with Executive Order 12612, the rule does not have significant Federalism effects. A Federalism assessment is not required.

The Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of Executive Order 12988, and provides a clear standard for compliance.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2 we have identified potential effects on Indian trust resources and they are addressed in this rule. We have met with the Ute Indian Tribe and their legal counsel to fully discuss the potential for the release of ferrets to impact the Ute Indian Tribe's ability to manage natural resources occurring on their reservation trust lands in Utah. The Fish and Wildlife Service has communicated to the Tribe that the release of ferrets will place no additional burden on the Tribe to maintain a population of prairie dogs to achieve recovery objectives for the black-footed ferret. Accordingly:

- a. We have consulted with the Ute Indian Tribe in Utah.
- b. We have coordinated this proposal with the Ute Indian Tribe on a government-to-government basis and the consultations have been open and candid in order for the Ute Indian Tribe to fully evaluate the potential impact of the rule on their trust resources.
- c. We have fully considered and addressed tribal views in the final rule.
- d. We have consulted with the appropriate bureaus and offices of the Department about the identified effects of this rule on the Ute Indian Tribe. The Bureau of Indian Affairs at the Regional level is aware of our consultation with the Ute Indian Tribe and know of the results.

#### References Cited

- Anderson E., S.C. Forrest, T.W. Clark, and L. Richardson. 1986. Paleobiology, biogeography, and systematics of the black-footed ferret *Mustela nigripes* (Audubon and Bachman), 1851. Great Basin Naturalist Memoirs 8:11-62.
- Forrest, S.C., T.W. Clark, L. Richardson, and T.M. Campbell III. 1985. Black-footed ferret habitat: some management and reintroduction considerations. Wyoming Bureau of Land Management, Wildlife Technical Bulletin, No. 2. 49 pages.
- Henderson, F.R., P.F. Springer, and R. Adrian. 1969. The black-footed ferret in South Dakota. South Dakota Department of Game, Fish and Parks, Technical Bulletin 4:1-36.

U.S. Fish and Wildlife Service. 1988. Black-footed ferret recovery plan. U.S. Fish and Wildlife Service, Denver, Colorado. 154 pages.

#### Authors

The primary authors of this rule are Robert Leachman (see **FOR FURTHER INFORMATION CONTACT** section) and Marilet A. Zablan (see **ADDRESSES** section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, and Transportation.

#### Regulation Promulgation

##### PART 17—[AMENDED]

Accordingly, the Service amends Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by revising the existing entry for the “Ferret, black-footed” under “MAMMALS” to read as follows:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* MAMMALS	*	*	*	*	*		*
* Ferret, black-footed	* Mustela nigripes ....	* Western U.S.A., Western Canada.	* Entire, except where listed as an experimental population.	* E	* 1, 3, 433, 545, 546, 582, 646.		* NA NA
Do .....	.....do... ..	.....do... ..	U.S.A. [specific portions of WY, SD, MT, AZ, CO, and UT, see 17.84(g)(9)].	XN	433, 545, 546, 582, 646.	NA	17.84(g)
*	*	*	*	*	*		*

3. Amend § 17.84 by revising the text of paragraph (g) as follows and adding a map to follow the existing maps at the end of this paragraph (g):

#### § 17.84 Special rules—vertebrates.

\* \* \* \* \*

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret populations identified in paragraph (g)(9)(i), (g)(9)(ii), and (g)(9)(iii), and (g)(9)(iv) of this section are nonessential experimental populations. We will manage each of these populations will be managed in accordance with their respective management plans.

(2) No person may take this species in the wild in the experimental population area, except as provided in paragraphs (g)(3), (4), (5), and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under section 17.32 may take black-footed ferrets in the wild in the experimental population areas.

(4) Any employee or agent of the Service or appropriate State wildlife agency designated for such purposes, acting in the course of official duties, may take a black-footed ferret in the wild in the experimental population areas if such action is necessary:

(i) For scientific purposes;

(ii) To relocate a ferret to avoid conflict with human activities;

(iii) To relocate a ferret that has moved outside the Little Snake Black-footed Ferret Management Area/Coyote Basin Primary Management Zone when removal is necessary to protect the ferret, or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section;

(iv) To relocate ferrets within the experimental population area to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population areas into other ferret reintroduction areas or captivity;

(vi) To aid a sick, injured, or orphaned animal; or

(vii) To salvage a dead specimen for scientific purposes.

(5) A person may take a ferret in the wild within the experimental population areas, provided such take is incidental to and not the purpose of, the carrying out of an otherwise lawful activity and if such ferret injury or mortality was unavoidable, unintentional, and did not result from

negligent conduct. Such conduct is not considered intentional or “knowing take” for the purposes of this regulation, and the Service will not take legal action for such conduct. However, we will refer cases of knowing take to the appropriate authorities for prosecution.

(6) You must report any taking pursuant to paragraphs (g)(3), (4)(vi) and (vii), and (5) of this section to the appropriate Service Field Supervisor, who will determine the disposition of any live or dead specimens.

(i) Report such taking in the Shirley Basin/Medicine Bow experimental population area to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772–2374).

(ii) Report such taking in the Conata Basin/Badlands experimental population area to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224–8693).

(iii) Report such taking in the northcentral Montana experimental population area to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Helena, Montana (telephone: 406/449–5225).

(iv) Report such taking in the Aubrey Valley experimental population area to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Phoenix, Arizona (telephone: 602/640-2720).

(v) Report such taking in the northwestern Colorado/northeastern Utah experimental population area to the appropriate Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Lakewood, Colorado (telephone: 303/275-2370), or Salt Lake City, Utah (telephone: 801/524-5001).

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any ferret or part thereof from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to commit, any offense defined in paragraphs (g)(2) and (7) of this section.

(9) The sites for reintroduction of black-footed ferrets are within the historical range of the species.

(i) We consider the Shirley Basin/Medicine Bow Management Area on the attached map of Wyoming to be the core recovery area for this species in southeastern Wyoming. The boundaries of the nonessential experimental population are that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany Counties (see Wyoming map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases constituted the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases comprise the nonessential experimental population, thereafter.

(ii) We consider the Conata Basin/Badlands Reintroduction Area on the attached map for South Dakota to be the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area occur north of State Highway 44 and BIA Highway 2 east of the Cheyenne River and BIA Highway 41, south of I-90, and west of State Highway 73 within Pennington, Shannon, and Jackson Counties, South Dakota. Any black-footed ferret found in the wild within these boundaries is part of the nonessential experimental population after the first breeding season following

the first year of releases of black-footed ferret in the Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota is considered as endangered but may be captured for genetic testing. We will dispose of the captured animal in one of the following ways if necessary:

(A) We may return an animal genetically related to the experimental population to the Reintroduction Area or to a captive facility.

(B) Under an existing contingency plan, we will use up to nine black-footed ferrets genetically unrelated to the experimental population in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, we will develop a conservation agreement or easement with the landowner.

(iii) We consider the Northcentral Montana Reintroduction Area shown on the attached map for Montana to be the core recovery area for this species in northcentral Montana. The boundaries of the nonessential experimental population are those parts of Phillips and Blaine Counties, Montana, described as the area bounded on the north beginning at the northwest corner of the Fort Belknap Indian Reservation on the Milk River; east following the Milk River to the east Phillips County line; then south along said line to the Missouri River; then west along the Missouri River to the west boundary of Phillips County; then north along said county line to the west boundary of Fort Belknap Indian Reservation; then further north along said boundary to the point of origin at the Milk River. All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases constituted the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases comprise the nonessential experimental population thereafter. A black-footed ferret occurring outside the experimental area in Montana is initially considered as endangered but may be captured for genetic testing. We will dispose of the captured animal in one of the following ways if necessary:

(A) We may return an animal genetically related to the experimental population to the reintroduction area or to a captive facility.

(B) Under an existing contingency plan, we will use up to nine black-footed ferrets genetically unrelated to the experimental population in the captive-breeding program. If a

landowner outside the experimental population area wishes to retain black-footed ferrets on his property, we will develop a conservation agreement or easement with the landowner.

(iv) We consider the Aubrey Valley Experimental Population Area shown on the attached map for Arizona to be the core recovery area for this species in northwestern Arizona. The boundary of the nonessential experimental population area is those parts of Coconino, Mohave, and Yavapai Counties that include the Aubrey Valley west of the Aubrey Cliffs, starting from Chino Point, north along the crest of the Aubrey cliffs to the Supai Road (State Route 18), southwest along the Supai Road to Township 26 North, then west to Range 11 West, then south to the Hualapai Indian Reservation boundary, then east and northeast along the Hualapai Indian Reservation boundary to U.S. Highway Route 66; then southeast along Route 66 for approximately 6 km (2.3 miles) to a point intercepting the east boundary of section 27, Township 25 North, Range 9 West; then south along a line to where the Atchison-Topeka Railroad enters Yampa Divide Canyon; then southeast along the Atchison-Topeka Railroad alignment to the intersection of the Range 9 West/Range 8 West boundary; then south to the SE corner of section 12, Township 24 North, Range 9 West; then southeast to SE corner section 20, Township 24 West, Range 8 West; then south to the SE corner section 29, Township 24 North, Range 8 West; then southeast to the half section point on the east boundary line of section 33, Township 24 North, Range 8 West; then northeast to the SE corner of section 27, Township 24 North, Range 8 West; then southeast to the SE corner Section 35, Township 24 North, Range 8 West; then southeast to the half section point on the east boundary line of section 12, Township 23 North, Range 8 West; then southeast to the SE corner of section 8, Township 23 North, Range 7 West; then southeast to the SE corner of section 16, Township 23 North, Range 7 West; then east to the half section point of the north boundary line of section 14, Township 23 North, Range 7 West; then south to the half section point on the north boundary line of section 26, Township 23 North, Range 7 West; then east along section line to route 66; then southeast along route 66 to the point of origin at Chino Point. Any black-footed ferrets found in the wild within these boundaries is part of the nonessential experimental population after the first breeding season following the first year of releases of ferrets into the



reintroduction area. A black-footed ferret occurring outside the experimental area in Arizona is initially considered as endangered but may be captured for genetic testing. We will dispose of the captured animal in one of the following ways if necessary:

(A) We may return an animal genetically related to the experimental population to the reintroduction area or to a captive facility. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, we will develop a conservation agreement or easement with the landowner.

(B) Under an existing contingency plan, we will use up to nine black-footed ferrets genetically unrelated to the experimental population in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, we will develop a conservation agreement or easement with the landowner.

(v) We consider the Little Snake Black-footed Ferret Management Area in Colorado and the Coyote Basin Black-footed Ferret Primary Management Zone in Utah as the initial recovery sites for this species within the Northwestern Colorado/Northeastern Utah Experimental Population Area (see Colorado/Utah map). The boundaries of the nonessential Experimental Population Area will be all of Moffat and Rio Blanco Counties in Colorado west of Colorado State Highway 13; all of Uintah and Duchesne Counties in Utah; and in Sweetwater County, Wyoming, the line between Range 96 and 97 West (eastern edge), Range 102 and 103 West (western edge), and Township 14 and 15 North (northern

edge). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of release will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases of ferrets into the reintroduction area will comprise the nonessential experimental population thereafter. A black-footed ferret occurring outside the Experimental Population Area is initially considered as endangered but may be captured for genetic testing. We will dispose of the captured animal in one of the following ways if necessary:

(A) We may return an animal genetically related to the experimental population to the Reintroduction Area or to a captive facility.

(B) Under an existing contingency plan, we will use up to nine black-footed ferrets genetically unrelated to the experimental population in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, we will develop a conservation agreement or easement with the landowner.

(10) Monitoring the reintroduced populations will occur continually during the life of the project, including the use of radio telemetry and other remote sensing devices, as appropriate. Vaccination of all released animals will occur prior to release, as appropriate, to prevent diseases prevalent in mustelids. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or appropriate State wildlife agency or their agents and given

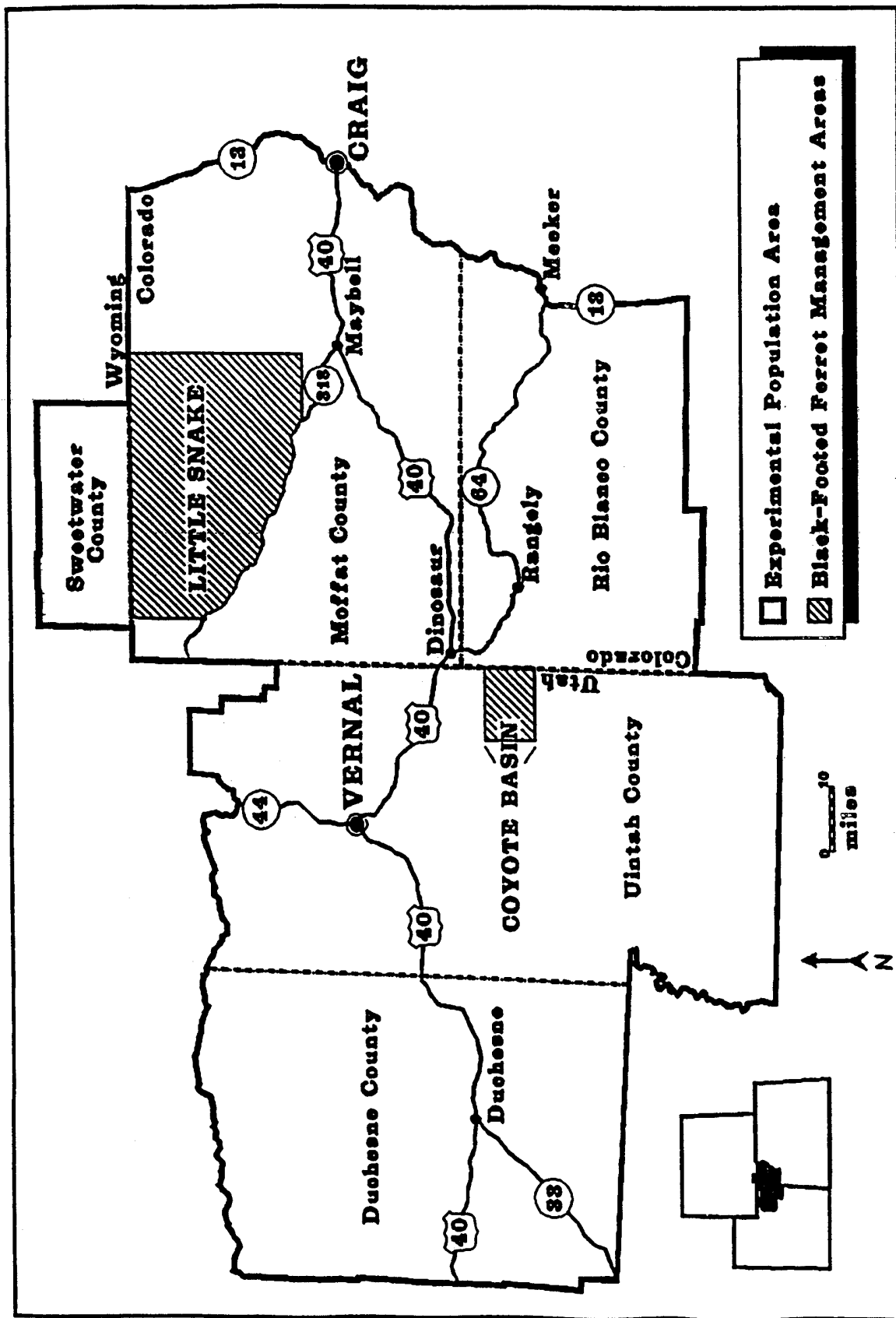
appropriate care. Such an animal may be released back to its appropriate reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) We will reevaluate the status of the experimental population within the first five years after the first year of release of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released into the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described areas. We will propose reclassification of the black-footed ferret when we meet the appropriate recovery objectives for the species.

(12) We will not include a reevaluation of the "nonessential experimental" designation for these populations during our review of the initial five year reintroduction program. We do not foresee any likely situation justifying alteration of the nonessential experimental status of these populations. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black-footed ferrets on their lands may rescind their consent, and at their request, we will relocate the ferrets pursuant to paragraph (g)(4)(iii) of this section.

\* \* \* \* \*

BILLING CODE 4310-55-P



Map Showing the Boundaries of the Black-footed Ferret Experimental Population Area and the Management Area/PMZ for Northwestern Colorado/Northeastern Utah.

Dated: September 22, 1998.

**Stephen C. Saunders,**

*Acting Assistant Secretary, Fish and Wildlife  
and Parks.*

[FR Doc. 98-26096 Filed 9-30-98; 8:45 am]

BILLING CODE 4310-55-C