Considered Under the Stand-Alone Cost Methodology, as follows:

§ 1109.4 Mandatory Mediation in Rate Cases To Be Considered Under the Stand-Alone Cost Methodology.

(a) A shipper seeking rate relief from a railroad or railroads in a case involving the stand-alone cost methodology must engage in non-binding mediation of its dispute with the railroad prior to filing a formal complaint under part 1111.

(b) The shipper must file a request for mediation with the Board, indicating its intent to file a complaint alleging a violation of 49 U.S.C. 10701 and 10704. This request will engage the Board's processes and serve to fix the relevant limitations period for any relief for rates or charges already paid, just as would the filing of a formal complaint. The request for mediation must specify the relevant facts and nature of the dispute in sufficient detail to frame the issues requiring mediation. The shipper must serve a copy of its request on the defendant railroad as specified in § 1104.12. A mediator will be assigned by the Board within 5 business days of filing of the shipper's request.

(c) The mediator will work with the parties to try to reach a settlement of all or some of their dispute or to narrow the issues in dispute, and reach stipulations that may be incorporated into any subsequent adjudication before the Board if mediation does not fully resolve the dispute.

(d) If the parties reach a settlement, the mediator may assist in preparing a settlement agreement. If the parties fail to reach a settlement, the shipper may proceed to file a formal complaint with the Board. If the parties reach a partial settlement, the shipper may proceed to file a formal complaint with the Board on the remaining issues, which will be handled under the Board's existing rules.

(e) Within 5 business days of the assignment to mediate, the mediator shall contact the parties to discuss ground rules and the time and location of any meeting. The precise procedure used to facilitate the mediation is flexible and is within the mediator's discretion.

(f) The entire mediation process shall be private and confidential, and shall be completed within 60 days of the filing of the shipper's request. If the mediation process cannot be competed in 60 days, a request for an extension may be filed by the mediator, after consultation with the parties, prior to the end of the 60 day period, and may be considered by the Board.

PART 1114—EVIDENCE; DISCOVERY

1. Amend § 1114.21 as follows:

a. Revise the first sentence of paragraph (a)(1);

b. Redesignate current paragraphs (b)–(f) as (c)–(g);

c. Add new paragraph (b).

The revised and added text reads as follows:

§ 1114.21 Applicability; general provisions.

(a) *When discovery is available.* (1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding or a rate case to be considered under the stand-alone cost methodology. * * *

(b) *Discovery in stand-alone cost rate cases.* In a rate case to be considered under the stand-alone cost methodology, parties may obtain discovery only of information for which the party seeking discovery has a clear, demonstrable need in order to make its case and which is not readily available to it through means other than discovery.

2. Add to § 1114.31, new paragraphs (a)(1)–(4) as follows:

§ 1114.31 Failure to respond to discovery.

(a) * * *

(1) *Reply to motion to compel generally.* Except in rate cases to be considered under the stand-alone cost methodology, the time for filing a reply to a motion to compel is governed by § 1104.13.

(2) *Reply to motion to compel in stand-alone cost rate cases.* A reply to a motion to compel must be filed with the Board within 10 days thereafter in a rate case to be considered under the stand-alone cost methodology.

(3) *Conference with parties.* Within 5 business days after the filing of a reply to a motion to compel in a rate case to be considered under the stand-alone cost methodology, Board staff may convene an informal conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling.

(4) *Ruling on motion to compel in stand-alone cost rate cases.* Within 5 business days after a conference with the parties convened pursuant to subparagraph (a)(3) of this section, the Secretary will issue a summary ruling on the motion to compel discovery in a stand-alone cost rate case. If no conference is convened, the Secretary will issue this summary ruling within 10 business days after the filing of the reply to the motion to compel.

* * * * *

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI60

Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of Black-footed Ferrets in South-central South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the Rosebud Sioux Tribe (Tribe), the U.S. Forest Service, and the U.S. Bureau of Indian Affairs propose to reintroduce endangered black-footed ferrets (*Mustela nigripes*) into south-central South Dakota on the Rosebud Sioux Reservation. The purposes of this proposed reintroduction are to implement actions required for recovery of the species and to evaluate and improve reintroduction techniques and management applications. If this rule is finalized by October 2002, we will release surplus captive-raised and/or wild-born black-footed ferrets in the fall of 2002, and release additional animals annually for several years thereafter until a self-sustaining population is established. If this reintroduction program is successful, a wild population could be established in 5 years or less. The Rosebud Sioux Reservation black-footed ferret population would be established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). We would manage this population under provisions of this proposed special rule. A draft environmental assessment has been prepared on this proposed action.

DATES: Comments from all parties on both the proposed rule and the draft environmental assessment must be received by: October 11, 2002. A public hearing has been scheduled for September 26, 2002 from 4:00 p.m. until 6:00 p.m. in the Commons Area at the Multi-Cultural Center in Mission, South Dakota. An informational meeting/open house will be held prior to this meeting

from 10:00 a.m. until 4:00 p.m. at the same location.

ADDRESSES: Send your comments on this proposed rule or the draft environmental assessment to Pete Gober, Field Supervisor, or Scott Larson, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501, or telephone (605) 224–8693. Comments received will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling (605) 224–8693.

FOR FURTHER INFORMATION CONTACT: Mike Lockhart at (307) 721–8805.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Congress made significant changes to the Act in 1982 with addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as ''experimental.'' Based on the best available information, we must determine whether an experimental population is ''essential'' or ''nonessential'' to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. 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.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies consult with the Service before authorizing, funding, or carrying out any activity that would likely jeopardize the continued existence of a listed species or adversely modify its critical habitats. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 would apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individuals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In this case, the donor ferret population is a captive-bred population, which was propagated with the intention of re-establishing wild populations to achieve recovery goals. In addition, wild progeny from other NEP areas (and which also originated from captive sources) may be directly translocated to the proposed reintroduction site.

2. *Biological:* The black-footed ferret is a member of the Mustelid or weasel family; 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 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, updated 1974; 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 in association with black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) towns (Anderson *et al.* 1986).

Significant reductions in both prairie dog numbers and distribution occurred during the last century due to widespread poisoning of prairie dogs, the conversion of native prairie to farmland, and outbreaks of sylvatic plague, particularly in the southern portions of several species of prairie dog ranges in North America. Sylvatic plague arrived from Asia in approximately 1900. It is an exotic disease foreign to the evolutionary

history of prairie dogs, who have little or no immunity to it. Black-footed ferrets are also highly susceptible to sylvatic plague. This severe reduction in the availability of their principal prey species, in combination with other factors such as secondary poisoning from prairie dog toxicants, resulted in the near extinction of the black-footed ferret in the wild by the early 1970s.

In 1974, a remnant wild population of ferrets in South Dakota, originally discovered in 1964, abruptly disappeared. As a result, we believed the species to be extinct. However in 1981, a small population was discovered near Meeteetse, Wyoming. In 1985–1986, the Meeteetse population declined to only 18 animals due to an outbreak of sylvatic plague and 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, captive-breeding efforts have been highly successful and have facilitated ferret reintroductions over a broad area of formally 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 six captive-breeding facilities throughout the United States and Canada, with a small number on display for educational purposes at several facilities. Also, 65 to 90 ferrets are located at several field-based captive-breeding sites in Arizona, Colorado, Montana, and New Mexico.

3. *Recovery Goals/Objectives:* The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) contains the following recovery objectives for downlisting, that is, reclassification from endangered to threatened:

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

(b) Establishing a prebreeding 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 (on-going); and,

(c) Encouraging the widest possible distribution of reintroduced animals throughout their historical range (on-going).

Although several reintroduction efforts have occurred throughout the ferret's range, populations may have become self-sufficient at only one site in South Dakota.

We can reclassify the black-footed ferret from endangered to threatened status when the recovery objectives listed above have been achieved, assuming that the mortality rate of established populations remains at or below a rate at which new populations become established or increase. We have been successful in rearing black-footed ferrets in captivity, and in 1997 we reached captive-breeding program objectives.

In 1988, we divided the single captive population into three subpopulations to avoid the possibility of a catastrophic event eliminating the entire captive population (*e.g.*, contagious disease). Additional breeding centers were added later, and currently there are six separate subpopulations in captivity. Current recovery efforts emphasize the reintroduction of animals back into the wild from the captive source stock. Surplus individuals produced in captivity are now available for use on reintroduction areas.

4. *Reintroduction Sites:* The Service, in cooperation with western State and Federal agencies, Tribal representatives, and conservation groups, evaluates potential black-footed ferret reintroduction sites and has previously initiated ferret reintroduction projects at several sites within the historical range of the species. The first reintroduction project occurred in Wyoming in 1991 and subsequent efforts have taken place in South Dakota and Montana in 1994, Arizona in 1996, a second effort in Montana in 1997, in Colorado/Utah in 1999, a second site in South Dakota in 2000, and Mexico in 2001. The Service and the Black-footed Ferret Recovery Implementation Team (comprised of 27 State and Federal agencies, Indian Tribes, or conservation organizations) have identified the Rosebud Sioux Reservation (Reservation) as a high-priority black-footed ferret reintroduction site due to its extensive black-tailed prairie dog habitat and the absence of sylvatic plague (Black-footed Ferret Recovery Implementation Team 2000).

In the early 1990s, the Bureau of Indian Affairs (1995) estimated the acreage of prairie dog colonies on Rosebud Tribal Trust lands at 18,218 hectares (ha) (45,000 acres (ac)). In the mid-1990s, the Tribe evaluated a black-footed ferret reintroduction effort and completed some of the activities (habitat evaluations) necessary to begin such reintroduction efforts. In 2001, the Tribe began additional activities to work toward a ferret reintroduction and has worked with the Service to gather information necessary to establish an NEP designation for any ferret reintroductions that may occur.

a. *Rosebud Sioux Reservation Experimental Population Reintroduction Area:* The proposed area to be designated as the Rosebud Sioux Reservation Black-footed Ferret Experimental Population Area (Experimental Population Area) overlays all of Gregory, Mellette, Todd, and Tripp Counties in South Dakota. Any black-footed ferret found within these four counties would be considered part of an NEP. Within the Experimental Population Area, the proposed primary reintroduction area will be in large black-tailed prairie dog complexes located in Todd County near the town of Parmelee. The Town of Rosebud is approximately 10 air miles away and is the location of the Rosebud Sioux Tribal offices. Rosebud is approximately 160 kilometers (100 miles) south of Pierre, the capital of South Dakota.

The Experimental Population Area supports at least two large complexes of black-tailed prairie dog colonies located within the four-county area. These counties encompass approximately 1,391,862 ha (3,437,900 ac). Approximately 26 percent or 356,411 ha (880,336 ac) of the Experimental Population Area is Tribal and Allotted Trust lands of the Rosebud Sioux Tribe. The majority of this Tribal and Allotted Trust land is native rangeland used for grazing.

Large acreages within the Experimental Population Area are owned by private landowners (approximately 70 percent), although much less in the primary reintroduction area, but no ferrets will be released on private lands. Designating reintroduced ferrets as an NEP should minimize potential issues that may arise with a reintroduction in the vicinity of private lands. The Tribe and other cooperators agree that if ferrets disperse onto private lands, they will capture and translocate the ferrets back to Tribal lands if requested by the landowner or if necessary for the protection of the ferrets. Any activity needing access to private lands will be conducted only with the permission of the landowner.

Black-footed ferret dispersal to and occupation of areas outside of the Experimental Population Area is unlikely to occur towards the east, north, and south due to the large size of the Experimental Population Area, the absence of suitable nearby habitat (large contiguous prairie dog colonies), cropland barriers (e.g., expansive cultivation over the eastern portion of the Experimental Population Area), and physical barriers (e.g., the Missouri River to the east). Any expansion

westerly from the reintroduction site will be handled by recapturing ferrets and bringing them into the Experimental Population Area or through future cooperative efforts with the Pine Ridge Indian Reservation. The Tribe estimates a minimum of approximately 6,072 ha (15,000 ac) of black-tailed prairie dog colonies are potentially available to black-footed ferrets in a localized area in northwestern Todd County and could support over 150 ferret families (characterized as an adult female, three kits, and one-half an adult male; i.e., one adult male for every two adult females). Large, contiguous prairie dog colonies and the absence of physical barriers between prairie dog colonies in this portion of the Reservation (the primary ferret release area) should facilitate ferret distribution throughout this complex.

b. *Primary Reintroduction Areas:* The proposed primary reintroduction area within the Experimental Population Area would occur on prairie dog colonies near Parmelee, in northwestern Todd County. The last remaining population of ferrets in South Dakota was known to exist in this area and adjacent Mellette County until the early 1970s (Henderson *et al.* 1969, updated 1974). This population was studied and monitored extensively until it disappeared from the wild by 1974. During monitoring efforts of this ferret population in the 1960s, researchers located eight road-killed ferrets during their years of work (Hillman and Linder 1973). No road-killed ferrets have been turned in or noted from that area since the population was believed extirpated in the early 1970s. There have been many ferret surveys conducted in this area in the 1980s and 1990s with no ferrets being located. The Tribe conducted additional ferret surveys in 2002 and did not locate any ferrets.

Black-footed ferrets will be released only if biological conditions are suitable, and meet the management framework developed by the Tribe, in cooperation with the Bureau of Indian Affairs, the Service, and landowners/land managers. The Service will re-evaluate ferret reintroduction efforts in the Experimental Population Area should any of the following conditions occur:

(i) Failure to maintain sufficient habitat on specific reintroduction areas to support at least 30 breeding adults after 5 years.

(ii) Failure to maintain prairie dog habitat in the primary reintroduction area at or near the level available in 2002.

(iii) A wild ferret population is found within the Experimental Population Area 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 Arizona, Colorado/Utah, Montana, South Dakota, Wyoming, and Mexico. 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 and would prevent designation of an experimental population for the area.

(iv) Discovery of an active case of canine distemper or any other disease contagious to black-footed ferrets in any animal on or near the reintroduction area within 6 months prior to the scheduled release that the cooperators believe may compromise the reintroduction.

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

(vi) Funding is not available to implement the reintroduction phase of the project on the Reservation.

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

All the above conditions will be based on information routinely collected by us or the Tribe.

5. *Reintroduction Procedures:* In conformance with standard black-footed ferret reintroduction protocol, no fewer than 20 captive-raised or wild-translocated black-footed ferrets will be released in the Experimental Population Area in the first year of the program, and 20 or more animals will be released annually for the next 2 to 4 years. Under this proposal, we anticipate releasing 50 or more ferrets in the first year and believe a self-sustaining wild population could be established on the Reservation within 5 years. Released ferrets will be excess to the needs of the captive-breeding program and their use will not affect the genetic diversity of the captive ferret population (ferrets used for reintroduction efforts can be replaced through captive breeding). In the future, it may be necessary to interchange ferrets from established, reintroduced populations to enhance the genetic diversity of the population on the Experimental Population Area.

Recent studies (Biggins *et al.* 1998, Vargas *et al.* 1998) have documented the importance of outdoor ''preconditioning'' experience on captive-reared ferrets prior to release in the wild. Ferrets exposed to natural prairie dog burrows in outdoor pens and natural prey prior to release survive in the wild at significantly higher rates than do cage-reared, non-preconditioned ferrets. At a minimum, all captive-reared ferrets released within the Experimental Population Area will receive adequate preconditioning treatments at existing pen facilities in South Dakota or other western States. In addition, we may translocate wild-born ferrets (from other NEPs with self-sustaining populations of ferrets) to the Experimental Population Area.

The Tribe will develop specific reintroduction plans and submit them in a proposal to the Service as part of an established, annual black-footed ferret allocation process. Ferret reintroduction cooperators submit proposals by mid-March of each year, and the Service makes preliminary allocation decisions (numbers of ferrets provided to specific projects) by May. Proposals submitted to the Service include updated information on habitat, disease, project/ferret status, proposed reintroduction and monitoring methods, and predator management. In this manner, the Service and reintroduction cooperators evaluate the success of prior year efforts and apply current knowledge to various aspects of reintroduction efforts, thereby providing greater assurance of long-range reintroduction success.

We will transport ferrets to identified reintroduction areas within the Experimental Population Area and release them directly from transport cages into prairie dog burrows. Depending on the availability of suitable vaccine, we will vaccinate released animals against certain diseases (particularly canine distemper) and take appropriate measures to reduce predation from coyotes, badgers, and raptors, where warranted. All ferrets we release will be marked with passive integrated transponder tags (PIT tags), and we may promote radio-telemetry studies to document ferret behavior and movements. Other monitoring will include spotlight surveys, snowtracking 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 released ferrets could die during the first year of release. Mortality is usually highest during the first month following release. In the first year of the program, a realistic goal is to have at least 25 percent of the animals survive the first winter. The goal of the Reservation reintroduction project is to establish a free-ranging population of at least 30 adults within the Experimental Population Area within 5 years of release. At the release site, population demographics and potential sources of

mortality will be monitored on an annual basis (for up to 5 years). We do not intend to change the nonessential designation for this experimental population unless we deem this reintroduction a failure or the black-footed ferret is recovered in the wild.

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 six separate subpopulations. As a result, 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 is 240 adult ferrets maintained in the captive-breeding population. Animals selected for reintroduction purposes are surplus to the captive population. Hence, any use of animals for reintroduction efforts will not affect the overall genetic diversity of the species.

(c) Captive breeding can replace any ferrets lost during this reintroduction attempt. Juvenile ferrets produced in excess of the numbers needed to maintain the captive-breeding population are available for reintroduction.

This proposed reintroduction would be the ninth release of ferrets back into the wild. The other experimental populations occur in Wyoming, southwestern South Dakota, north-central Montana (with two separate reintroduction efforts), Arizona, Colorado/Utah (a single reintroduction area that overlays both States), and northcentral South Dakota. A nonessential population of ferrets has been established in Mexico. Reintroductions are necessary to further the recovery of this species. The NEP designation alleviates landowner concerns about possible land use restrictions. This nonessential designation provides a flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners are unaffected.

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 the mid-1980s, black-footed ferret surveys have been conducted in the Experimental Population Area or close by, and no wild ferrets have been located. Over 121,457 ha (300,000 ac) of prairie dog colonies were surveyed for black-footed ferrets in the mid-1980s during a prairie dog control effort on the Oglala Sioux Tribe's Pine Ridge Indian Reservation (Superintendent Memorandum 1989). No ferrets were located. In addition to these surveys, the Tribe and others have spent many hours surveying prairie dog colonies at the primary reintroduction site. No ferrets or signs of ferrets (e.g., skulls, feces, trenches) were located. Therefore, we conclude that wild ferrets are no longer present in the Experimental Population Area, and that this reintroduction will not overlap with any wild population.

All released ferrets and their offspring should remain in the Experimental Population Area due to the presence of prime habitat (lands occupied by prairie dog colonies) and surrounding geographic barriers. In an attempt to identify its origin, we will capture any ferret that leaves the Experimental Population Area and will either return it to the release site, translocate it to another site, or place it in captivity. If a ferret leaves the primary reintroduction area, but remains within the Experimental Population Area, and occupies private property, the landowner can request its removal. Ferrets will remain on private lands only when the landowner does not object to their presence there.

We will mark all released ferrets and will attempt to determine the source of any unmarked animals found. We will undertake efforts to confirm whether any ferret found outside the Experimental Population Area originated from captive stock. If the animal is unrelated to members of this or other experimental populations (i.e., it is from non-captive stock), we will place it in captivity as part of the breeding population to improve the overall genetic diversity of the captive population. Existing contingency plans allow for the capture and retention of up to nine ferrets shown not to be from any captive stock. In the highly unlikely event that a ferret from captive stock is found outside the Experimental Population Area and if landowner permission is granted, we will move the ferret back to habitats that would support the primary population(s) of ferrets.

8. *Management:* This reintroduction will be undertaken in cooperation with the Rosebud Sioux Tribe, the Bureau of Indian Affairs, and the Forest Service in accordance with the ''Cooperative Management Plan for Black-footed Ferrets, Rosebud Sioux Reservation''. Copies of the Cooperative Management Plan may be obtained from the Rosebud Sioux Tribe, Game, Fish and Parks Department, P.O. Box 430, Rosebud, South Dakota 57570. In the future, we will evaluate whether other black-footed ferret reintroductions are feasible within the Experimental Population Area. Cooperating Tribes, agencies, and private landowners would be involved in the selection of any additional sites. Management considerations of the proposed reintroduction project include:

(a) *Monitoring:* Several monitoring efforts will occur during the first 5 years of the program. We will annually monitor prairie dog distribution and numbers, and the occurrence of sylvatic plague. Testing resident carnivores (e.g., coyotes) for canine distemper will begin prior to the first ferret release and continue each year. We will monitor released ferrets and their offspring annually using spotlight surveys, snowtracking, other visual survey techniques, and possibly radio-telemetry of some individuals. The surveys will incorporate methods to monitor breeding success and long-term survival rates.

Through public outreach programs, we will inform the public and other appropriate State and Federal agencies about the presence of ferrets in the Experimental Population Area and the handling of any sick or injured ferrets. To meet our responsibilities to treat the Tribe on a Government-to-Government basis, we will request that the Tribe inform Tribal members of the presence of ferrets on Reservation lands, and the proper handling of any sick or injured ferrets that are found. The Tribe will serve as the primary point of contact to report any injured or dead ferrets. Reports of injured or dead ferrets also must be provided to the Service Field Supervisor (*see* **ADDRESSES** section). It is important that we determine the cause of death for any ferret carcass found. Therefore, we request that discovered ferret carcasses not be disturbed, but reported as soon as possible to appropriate Tribal and Service offices.

(b) *Disease:* The presence of canine distemper in any mammal on or near the reintroduction site will cause us to reevaluate the reintroduction program. Prior to releasing ferrets, we will establish the presence or absence of canine distemper in the release area by collecting at least 20 coyotes (and possibly other carnivores). Sampled predators will be tested for canine distemper and other diseases.

We will attempt to limit the spread of distemper by discouraging people from bringing unvaccinated pets into core ferret release areas. Any dead mammal or any unusual behavior observed in animals found within the area should be reported to us. Efforts are under way to

develop an effective canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague in prairie dog towns will take place before and during the reintroduction effort, and annually thereafter.

(c) *Genetics:* Ferrets selected for reintroduction are excess to the needs of the captive population. Experimental populations of ferrets are usually less genetically diverse than 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 that is possible from the founder ferrets. The eventual interchange of ferrets between established populations found elsewhere in the western United States will ensure that genetic diversity is maintained to the extent possible.

(d) *Prairie Dog Management:* We will work with the Tribe, affected landowners, and other Federal and State agencies to resolve any management conflicts in order to—(1) Maintain sufficient prairie dog acreage and density to support no less than 30 adult black-footed ferrets; and (2) maintain suitable prairie dog habitat on core release areas at or above 2002 survey levels.

(e) *Mortality:* We will only reintroduce ferrets that are surplus to the captive-breeding program. Predator control, prairie dog management, vaccination, ferret preconditioning, and improved release methods should reduce mortality. Public education will help reduce potential sources of human-caused 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 such as recreation, livestock grazing, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. A person may take a ferret within the Experimental Population Area provided that the take is unintentional and was not due to negligent conduct. Such conduct will not constitute ''knowing take,'' and we will not pursue legal action. However, when we have evidence of knowing (i.e., intentional) take of a ferret, we will refer matters to the appropriate authorities for prosecution. Any take of a black-footed ferret, whether incidental or not, must be reported to the local Service Field Supervisor (*see* **ADDRESSES** section). We expect levels of incidental take to be low since the reintroduction is compatible with existing land use practices for the area.

Based on studies of wild black-footed ferrets at Meeteetse, Wyoming, and other places, black-footed ferrets can be killed by motor vehicles and dogs. We expect a rate of mortality similar to what was documented at Meeteetse and, therefore, we estimate a human-related annual mortality rate of about 12 percent or less of all reintroduced ferrets and their offspring. If this level is exceeded in any given year, we will develop and implement measures to reduce the level of mortality.

(f) *Special Handling:* Service employees and authorized agents acting on their behalf may handle black-footed ferrets for scientific purposes; to relocate ferrets to avoid conflict with human activities; for recovery purposes; to relocate ferrets to other reintroduction sites; to aid sick, injured, and orphaned ferrets; and salvage dead ferrets. We will return to captivity any ferret we determine to be unfit to remain in the wild. We also will determine the disposition of all sick, injured, orphaned, and dead ferrets.

(g) *Coordination with Landowners and Land Managers:* The Service and cooperators identified issues and concerns associated with the proposed ferret reintroduction before preparing this proposed rule. The proposed reintroduction also has been discussed with potentially affected State agencies and landowners within the proposed release area. Affected State agencies, landowners, and land managers have indicated support for the reintroduction, if ferrets released in the proposed Experimental Population Area are established as an NEP and if land use activities in the proposed Experimental Population Area are not constrained without the consent of affected landowners.

(h) *Potential for Conflict With Grazing and Recreational Activities:* We do not expect conflicts between livestock grazing and ferret management. Grazing and prairie dog management on private lands within the proposed Experimental Population Area will continue without additional restriction during implementation of the ferret recovery activities. With proper management, we do not expect adverse impacts to ferrets from hunting, prairie dog shooting, prairie dog control, and trapping of furbearers or predators in the proposed Experimental Population Area. If proposed prairie dog shooting or control locally may affect the ferret's prey base within the proposed primary release area, State, Tribal, and Federal biologists will determine whether ferrets could be impacted and, if necessary, take steps to avoid such impacts. If private activities impede the establishment of ferrets, we will work closely with the Tribe and landowners to suggest alternative procedures to minimize conflicts.

(i) *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 management of prairie dog populations should help reduce natural mortality. Releasing ferrets in areas with little human activity and development will minimize human-related sources of mortality. We will work with the Tribe and landowners to help avoid certain activities that could impair ferret recovery.

(j) *Public Awareness and Cooperation:* We will inform the general public of the importance of this reintroduction project in the overall recovery of the black-footed ferret. The designation of the NEP for the Reservation and adjacent areas would provide greater flexibility in the management of the reintroduced ferrets. The NEP designation is necessary to secure needed cooperation of the Tribe, landowners, agencies, and other interests in the affected area. Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing black-footed ferrets into the Experimental Population Area will further the conservation of the species.

Public Comments Solicited

The opportunity to release ferrets on Rosebud Tribal Trust lands in the fall of 2002 is dependent upon sufficient numbers of captive-bred or wild-born ferrets being available, the timing of the releases when those ferrets are available, and the completion of the nonessential experimental population rulemaking process. It is imperative that ferret kits born in captivity are preconditioned and released at proper developmental ages to enhance their survival in the wild. In order to maximize the window of opportunity and ensure success for the Reservation ferret reintroduction effort, it will be important to have the site ready to accept ferrets by October 1, 2002. It has become urgent to expedite this nonessential experimental population rulemaking process in order to ensure that an adequate number of ferrets can be released at proper ages and with adequate preconditioning experience. Consequently, we are proposing a 30-day public comment period for the proposed rule instead of the standard 60 days.

The Service wishes to ensure that this proposed rulemaking to designate the Reservation black-footed ferret population as an NEP and the draft environmental assessment on the proposed action effectively evaluate all potential issues associated with this action. Therefore, we request comments or recommendations concerning any aspect of this proposed rule and the draft environmental assessment from the public, as well as Tribal, local, State, and Federal government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible. To promulgate a final rule to implement this proposed action and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information received. Such information may lead to a final rule that differs from this proposal.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, available for public inspection in their entirety.

Public Hearing

A public hearing has been scheduled for September 26, 2002, from 4 p.m. until 6 p.m. in the Commons Area at the Multi-Cultural Center in Mission, South Dakota. An informational meeting/open house will be held prior to this meeting from 10 a.m. to 4 p.m. at the same location. All interested parties are encouraged to attend and learn more about the proposed Rosebud black-footed ferret reintroduction effort.

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will provide copies of this proposed rule to three specialists in order to solicit comments on the scientific data and assumptions relating to the supportive biological and ecological information for this NEP rule. The purpose of such review is to ensure that the NEP designation decision is based on the best scientific information available.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, the proposed rule to designate NEP status for the black-footed ferret reintroduction into south-central South Dakota is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million or more and will not have an adverse effect upon any economic sector, productivity, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required.

Lands within the NEP area affected by this rule include Gregory, Mellette, Todd, and Tripp Counties in South Dakota. The primary reintroduction area where ferrets will be released is Rosebud Tribal Trust lands in Todd County, and most of the prairie dog colonies within the primary release area are on these lands. Prairie dog colonies off the Rosebud Tribal Trust lands but within the primary reintroduction area and those colonies within the Experimental Population Area but outside the primary reintroduction area are not needed for the Reservation reintroduction effort to be successful. Land uses on private, Tribal, and State school lands will not be hindered by the proposal, and only voluntary participation by private landowners will occur.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily another Department of the Interior bureau (i.e., Bureau of Indian Affairs) and the Department of Agriculture (Forest Service). The action proposed by this rulemaking is consistent with the policies and guidelines of the other Interior bureaus. 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. This rule will not raise novel legal or policy issues. The Service has previously designated experimental populations of black-footed ferrets at seven other locations (in Colorado/Utah, Montana, South Dakota, Arizona, and Wyoming) and for other species at numerous locations throughout the nation.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The area affected by this rule consists of the Rosebud Indian Reservation and private, Federal, and State lands that fall within the south-central tier of counties in South Dakota (Mellette, Todd, Tripp, and Gregory counties). Reintroduction of ferrets allowed by this rule will not have any significant effect on recreational activities in the Experimental Population Area. We do not expect any closures of roads, trails, or other recreational areas. Suspension of prairie dog shooting for ferret management purposes will be localized and prescribed by the Tribe. We do not expect ferret reintroduction activities to affect grazing operations, resource development actions, or the status of any other plant or animal species within the release area. 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. The designation of an NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of these ferrets, will not create inconsistencies with other agency actions, and will not conflict with existing or proposed human activity, or Tribal and public use of the land.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more for reasons outlined above. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The NEP designation will not place any additional requirements on any city, county, or other local municipalities. The proposed specific site designated for release of the experimental population of ferrets is predominantly Rosebud Sioux Tribal Trust land administered by the Rosebud Sioux Tribe, who support this project. The State of South Dakota has expressed support 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. Since this rulemaking does not require any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *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 this law).

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements with respect to the reintroduced listed species within the NEP. Under NEP designations, the Act requires a Federal agency to confer with the Service if the agency determines its action within the NEP is likely to jeopardize the continued existence of the reintroduced species. However, we do not foresee any activity that may jeopardize the species' continued existence. Furthermore, the results of a conference are advisory and do not restrict agencies from carrying out, funding, or authorizing activities. Additionally, regulatory relief can be provided regarding take of reintroduced species within NEP areas, and a special rule has been developed stipulating that unintentional take (including killing or injuring) of the reintroduced black-footed ferrets would not be a violation of the Act, when such take is incidental to an otherwise legal activity (*e.g.*, livestock management, mineral development) that is in accordance with Federal, Tribal, State, and local laws and regulations.

Most of the lands within the primary reintroduction area are administered by the Rosebud Sioux Tribe. Multiple-use management of these lands by industry and recreation interests will not change as a result of the experimental designation. Private landowners within the Experimental Population Area will still be allowed to conduct lawful control of prairie dogs, and may elect to have black-footed ferrets removed from their land should ferrets move to private lands. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of ferrets will conflict with existing human activities or hinder public use of the area. The South Dakota Department of Game, Fish and Parks has previously endorsed the ferret reintroductions under NEP designations and are supportive of this effort. The NEP designation will not require the South Dakota Department of Game, Fish and Parks to specifically manage for reintroduced ferrets. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. As stated above, most of the lands within the primary reintroduction area are Tribal Trust 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 State of South Dakota. The Service has coordinated extensively with the Tribe and State of South Dakota, and they endorse the NEP designation as the only feasible way to pursue ferret recovery in the area. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the order.

Paperwork Reduction Act

This regulation contains information collection requirements under the Paperwork Reduction Act (and approval by the Office of Management and Budget) under 44 U.S.C. 3501 *et seq.* The collected information covers general take or removal, depredation-related take, and specimen collection. Authorization for this information collection has been approved by OMB and has been assigned OMB control number 1018–0095 (Expires 10/21/2004). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

National Environmental Policy Act

The Service has prepared a draft environmental assessment as defined under authority of the National Environmental Policy Act of 1969. It is available from Service offices identified in the **ADDRESSES** section.

Government-to-Government Relationship with Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have closely coordinated this rule with the affected tribe, the Rosebud Sioux Tribe. Throughout development of this rule, we have maintained regular contact with the Rosebud Sioux Tribe and have received their full support for this reintroduction and NEP designation. We intend to fully consider all of their comments on the proposed NEP designation and ferret reintroduction submitted during the public comment period.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of This Regulation (E.O. 12866)

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping or order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to

Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may e-mail the comments to *Execsec@ios.doi.gov.*

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Authors

The primary authors of this rule are Mike Lockhart and Scott Larson (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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 ''Ferret, black-footed'' under ''MAMMALS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species			Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name	Historic range					
MAMMALS							
*	*	*	*	*	*		*
Ferrett, 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, 703.	NA	NA
Do	.....do	.....do	U.S.A. [specific portions of AZ, CO, MT, SD, Ut, and WY, see 17.84(g)(9)].	XN	433, 545, 546, 582, 646, 703.	NA	17.84(g)
*	*	*	*	*	*		*

3. Amend § 17.84 by revising paragraph (g)(1) and adding paragraphs (g)(6)(vii) and (g)(9)(vii) and adding a map to follow the existing maps at the end of this paragraph (g) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

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

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) through (vii) of this section are nonessential experimental populations. We will manage each of these populations in accordance with their respective management plans.

* * * * *

(6) * * *

(vii) Report such taking in the Rosebud Sioux Reservation Experimental Population Area to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Pierre, South Dakota (telephone 605–224–8693).

* * * * *

(9) * * *

(vii) The Rosebud Sioux Reservation Experimental Population Area is shown on the map of south-central South Dakota at the end of paragraph (g) of this section. The boundaries of the nonessential experimental population area include all of Gregory, Mellette, Todd, and Tripp Counties in South Dakota. Any black-footed ferret found within these four counties will be considered part of the nonessential experimental population after the first breeding season following the first year

of black-footed ferret release. A black-footed ferret occurring outside of the Rosebud Sioux Reservation Experimental Population Area would initially be considered as endangered but may be captured for genetic testing. If necessary, disposition of the captured animal may occur in the following ways:

(A) If an animal is genetically determined to have originated from the experimental population, it may be returned to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan. Up to nine black-footed ferrets may be taken for use in the captive-breeding program.

* * * * *

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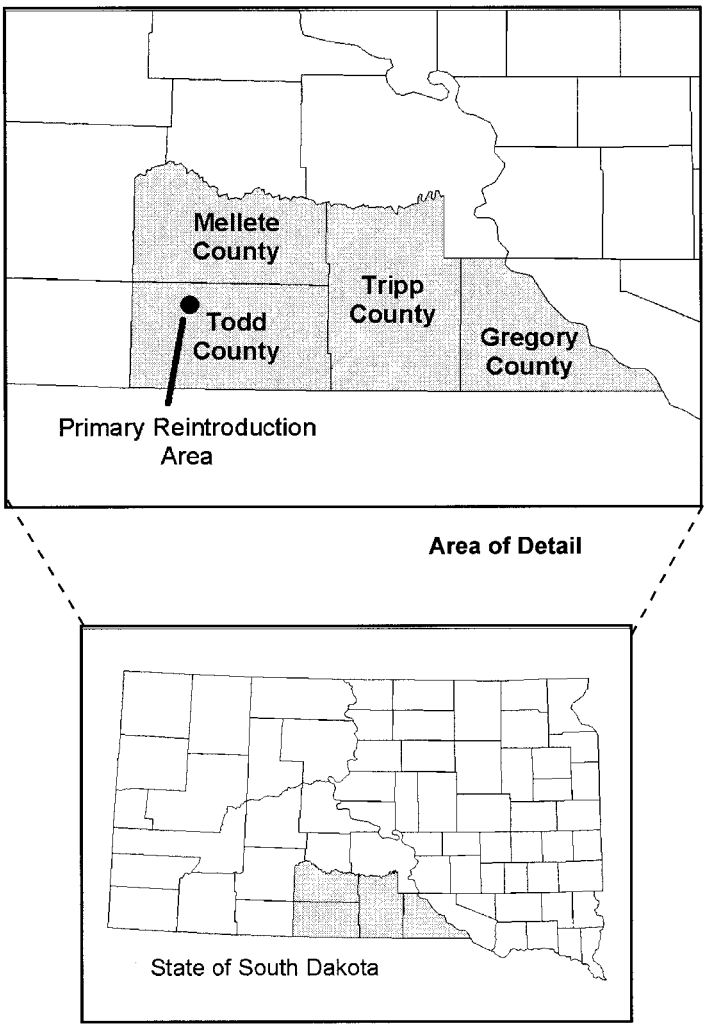

Rosebud Sioux Tribe ITOPA SAPA KIN (Black-footed Ferret) Experimental Population Area - South Dakota

Dated: August 22, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–23068 Filed 9–10–02; 8:45 am]

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