reopened. All interested parties are invited to submit comments on this proposal.

DATES: Comments must be submitted on or before January 16, 1996.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas Striegler, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, Department of Interior, Washington, D.C. 20240, Telephone number (703) 358–1949 or Maggie Tieger, Chief, Branch of Permits, Office of the Management Authority, Telephone Number (703) 358–2104.

SUPPLEMENTARY INFORMATION: The comment period is being extended to allow interested parties time for consideration and review of the proposed rule. Supplementary information and the full text of the proposed rule appears in the Federal Register of September 5, 1995, (60 FR 46087).

George T. Frampton Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–28243 Filed 11–14–95; 8:45 am]

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50 CFR Part 17

RIN 1018–AD29

Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in Aubrey Valley, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service), in cooperation with the Arizona Game and Fish Department (Department), proposes to introduce black-footed ferrets (*Mustela nigripes*) into Aubrey Valley, Arizona. This reintroduction is proposed to implement a primary recovery action for this federally listed endangered species and to evaluate release techniques. Provided conditions are acceptable, captive-raised black-footed ferrets that are surplus to the captive population will be released in 1995, or later, and surplus animals will be released annually thereafter for several years or until a self-sustaining population is established. Releases will utilize and refine reintroduction techniques used at other reintroduction areas. If the Aubrey Valley program is successful, it is expected that a wild population will be established within about 5 years. The Aubrey Valley ferret population is proposed to be designated as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). This population will be managed in accordance with the provisions of the accompanying proposed special rule.

DATES: Comments from all interested parties must be received by: January 2, 1996.

A public hearing on this proposal will be held from 7:00 P.M. to 10:00 P.M., on December 12, 1995, at Seligman, Arizona.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: William Austin, at the above address, or telephone 602/640–2720.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative*: Among the significant changes made in the Endangered Species Act (Act) by the Amendments of 1982 (Public Law No. 97–304) was the creation of a new section 10(j), which provides for the designation of specific populations of listed species as ''experimental populations.'' Under previous authorities in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the U.S. Fish and Wildlife Service (Service) was 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, opposition to reintroduction efforts by local citizens, concerned about the restrictions and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of reintroductions as a management tool. Under section 10(j), reintroduced populations established outside the species' current range but within its historical range may be designated, at the discretion of the Service, as ''experimental.'' This designation increases the Service's flexibility to manage reintroduced populations of endangered species because experimental populations are treated as threatened species under the Act, thereby permitting the Service greater discretion in devising management programs and special regulations. Per section 4(d) of the Act, such programs and regulations may be necessary and advisable to provide for the conservation of the species. In addition, per section 4(d) of the Act, these regulations may be less restrictive than those for endangered species, and more compatible with current or planned human activities in the reintroduction area. For example, for the purposes of the proposed Aubrey Valley reintroduction, a person may take a ferret in the wild within the Aubrey Valley Experimental Population Area provided such take is incidental as defined under the Act, and if any resulting injury or mortality was unintentional, and not due to negligent conduct. 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 conduct will not be considered ''intentional take'' and the Service will not take legal action for such conduct. However, the knowing take of a black-footed ferret will result in the referral of the incident to the appropriate authorities for prosecution.

Experimental populations can be determined to be ''essential'' or ''nonessential.'' Nonessential populations are not essential to the continued existence of the species. The proposed Aubrey Valley population of black-footed ferrets, if reintroduction is undertaken, will be designated as a nonessential experimental population according to the provisions of section 10(j) of the Act.

Nonessential experimental populations located outside of the National Wildlife Refuge System or National Park System lands are treated, under section 7 of the Act, as if they were species proposed for listing. Thus, only two provisions of section 7 would apply to an experimental population outside of National Wildlife Refuge System and National Park System lands: Section 7(a)(1), which requires all Federal agencies to use their authority to conserve listed species; and 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 (a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Activities undertaken on private lands are not affected by section 7 of the Act unless they are authorized, funded or carried out by a Federal agency.

However, pursuant to section 7(a)(2), the individual animals comprising the designated experimental population may be removed from an existing source or donor population only after it has been determined that such removal is not likely to jeopardize the continued existence of the species. Moreover, removal must be conducted in accordance with the permitting requirements of 50 CFR 17.22.

2. *Biological*: The species addressed by this rulemaking is the black-footed ferret (*Mustela nigripes*), an endangered carnivore with a black face mask, black legs, and a black-tipped tail. Black-footed ferrets are nearly 60 centimeters (2 feet) in length and weigh up to 1.1 kilogram (2.5 pounds). It is the only ferret species native to North America.

Historically, the black-footed ferret was found over a wide area, but it is difficult to make a conclusive statement on its historical abundance due to its nocturnal and secretive habits. The historical range of the species, based on specimen collections, includes 12 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. There is prehistoric evidence of this ferret occurring from the Yukon Territory in Canada to New Mexico and Texas (Anderson *et al.* 1986).

Black-footed ferrets primarily prey on prairie dogs and use their burrows for shelter and denning and depend almost exclusively on prairie dogs for food and shelter (Henderson *et al.* 1969, Forrest *et al.* 1985). Ferret range is coincident with that of prairie dogs (Anderson *et al.* 1986), with no documentation of black-footed ferrets breeding outside of prairie dog colonies. There are specimen records of black-footed ferrets from ranges of three species of prairie dogs: The black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) (Anderson *et al.* 1986).

Widespread poisoning of prairie dogs and agricultural cultivation of their habitat drastically reduced prairie dog abundance and distribution in the last century. Sylvatic plague, which may have been introduced to North America around the turn of the century, also decimated prairie dog numbers, particularly in the southern portions of their range. The severe decline of prairie dogs nearly resulted in the extinction of black-footed ferrets. The ferret's decline may be partially attributable to other factors such as secondary poisoning from prairie dog toxicants and canine distemper. The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population of ferrets was discovered in South Dakota and studied intensively. This population disappeared from the wild in 1974, and its last member died in captivity in 1979. The species was then thought to be extinct until a small population was discovered in 1981, near Meeteetse, Wyoming. The Meeteetse population underwent a severe decline in 1985–1986 due to canine distemper. Eighteen survivors were taken into captivity in 1986–1987 to prevent the species' extinction and to serve as founder animals for a captive propagation program for reintroducing the species back into the wild. Today, the captive population numbers 400 animals in 7 separately maintained locations.

3. *Recovery Efforts*: The national recovery objective in the recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) is to ensure immediate 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.

When this national objective is achieved, the black-footed ferret will be downlisted to a threatened status, assuming that the extinction rate of established populations remains at or below the rate at which new populations are established for at least 5 years. Cooperative efforts to rear black-footed ferrets in captivity have been successful. In 5 years, the captive population has increased from 18 to over 400 animals. In 1988, this single captive population was divided into five separate captive subpopulations to prevent the possibility of a single catastrophic event eliminating the entire captive population. In 1991 and 1992, two additional captive subpopulations were established. Since a captive population of 240 breeding adults has been achieved, recovery efforts have advanced to the reintroduction phase of establishing animals back into the wild.

4. Reintroduction Sites

a. *Site Selection Process*: The Service, in cooperation with 11 western State wildlife agencies has identified potential ferret reintroduction sites within the historical range of the species. To date, reintroductions have occurred in Wyoming, Montana, and South Dakota. Utah and Colorado are currently identifying potential reintroduction sites while other western States are in the process of evaluating additional potential reintroduction sites. Sites are selected for reintroduction by the Service in coordination with the Black Footed Ferret Interstate Coordinating Committee.

b. *Northwest Arizona/Aubrey Valley Site:* The area selected for reintroduction of the nonessential experimental population of black-footed ferrets in Arizona is designated as the Aubrey Valley Experimental Population Area (AVEPA). The AVEPA is located in Coconino and Yavapai counties in northwestern Arizona. The AVEPA includes the Aubrey Valley west of the Aubrey Cliffs, from Chino Point, north along the crest of the Aubrey Cliffs to the southeast boundary of the Hualapai Indian Reservation. The area's boundary continues southwest along the Reservation boundary to U.S. Highway Route 66; then southeast along Route 66 for approximately 5.2 km (3.5 miles) to mile post 116; then along the 5,300-foot elevation contour east and north of the Juniper Mountains and then back to the point of origin at Chino Point. This area encompasses 25,598 hectares (ha) (63,253 acres) of deeded land and 18,536 ha (45,802 acres) of State trust land for a total of 44,134 ha (109,055 acres). A detailed map showing the location and delineating the boundaries of the AVEPA accompanies this special rule.

Surveys conducted in 1992 indicate that approximately 6,969 ha (17,196 acres) of prairie dog towns exist within the AVEPA. Using an index outlined in Biggins *et al.* (1989), this area has a current black-footed ferret family rating of 35, which means that about 35 black-footed ferrets could potentially be supported at the AVEPA site. The ferret family rating is a numerical value derived from the acreage and density of prairie dogs and is used to estimate ferret carrying capacity of a prairie dog complex. Since 1990, 10 surveys have been conducted in the Aubrey Valley by Federal agencies for activities authorized, funded, or carried out by the

Federal agency that may affect prairie dog colonies deemed capable of supporting black-footed ferrets. These surveys did not discover any evidence of extant black-footed ferrets and it is unlikely that any wild ferrets exist within the AVEPA. Consequently, the Service concludes that the reintroduction of ferrets into the site will be separate and distinct from other existing populations.

Current plans call for releasing ferrets into a subportion of the AVEPA (within the area considered best for the release). If this reintroduction is successful, black-footed ferrets will probably disperse into other areas of the AVEPA. Other individuals will be released into selected portions of the AVEPA at a later date. Black-footed ferrets will be released only if biological conditions are suitable and meet the management framework that has been developed. The Service will reevaluate the reintroduction efforts in the AVEPA should any of the following conditions occur:

(1) Failure to maintain black-footed ferret habitat sufficient to support ≥30 breeding adults after five years.

(2) Failure to maintain at least 90 percent of prairie dog acreage known in 1992.

(3) A wild black-footed ferret population is found within the AVEPA prior to the first breeding season following the initial reintroduction.

(4) Any active case of canine distemper or other disease is found in any animal in or near the reintroduction area within six months prior to the scheduled release.

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

(6) Funding is not available to implement the reintroduction plan in Arizona.

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

5. *Reintroduction Protocol:* The reintroduction protocol involves releasing approximately 20 or more captive-raised black-footed ferrets in the first year of the program, and up to 50 or more animals annually for the next 2 to 4 years. Released animals should be excess to the needs of the captive breeding program. Hence, the loss of released animals would unlikely have any impact on the genetic diversity of the species. Since captive breeding of ferrets will continue, any animal loss in the reintroduction effort can be replaced. It may be necessary to release ferrets from other sources, including established reintroduced populations, to enhance the genetic diversity of the population.

The Service has implemented several protocols for releasing captive-reared ferrets back into the wild. There are many factors that must be considered when determining which reintroduction methodology to use. A ''hard'' release is when animals are released shortly after arrival at the release site. A ''soft'' release is when the animals are supplied with food, shelter, and protection from predators for a period of time before being released. In either method, ferrets are released from above ground cages with access to nest boxes underground. Reintroduction also may be accomplished by releasing preconditioned or nonconditioned young or adult animals into the wild. ''Preconditioning'' is where captive-bred ferrets are exposed to living within prairie dog towns which mimic natural conditions. In addition, it may be necessary to surround each above-ground cage with an electric fence to prevent damage by livestock or large mammals. The Service will determine and use the reintroduction method best suited for the proposed ferret release at the AVEPA.

Released animals will be vaccinated against diseases, including canine distemper, when a vaccine for distemper is developed for black-footed ferret use. Measures to reduce predation by coyotes, badgers, raptors, and other predators will be taken during the initial reintroduction stage. Habitat conditions will also be monitored during the reintroduction phase. All released ferrets will be marked and monitored. Radiotelemetry, spotlight and snow surveys, and visual sighting techniques will be employed to locate and track released ferrets.

High mortality (up to 90 percent) is expected among animals during the first year of release. Captive-bred animals are more susceptible to predation, starvation, and environmental conditions than wild born individuals. Mortality is highest during the first month of release. In the first year of the program, a realistic goal is to have some ferrets survive the first month in the wild with at least 10 percent of the animals surviving winter.

From 1982 to 1986, intensive studies were conducted on the Meeteetse population to establish baseline data to aid future reintroduction efforts. This baseline data has been supplemented with biological and behavioral data observed from the South Dakota population in the 1960's and 1970's. The Wyoming, South Dakota, and Montana reintroduction programs will also provide additional data for future releases.

The goal of the Arizona reintroduction effort is the establishment of a free-ranging population of at least 30 adult animals within the AVEPA by the year 2000. The Service will monitor the progress of the project on an annual basis, including all determinable sources of mortality. The status of the population and the information gained at this site will be evaluated annually for the first 5 years to determine future ferret management needs. This 5-year evaluation will not include an evaluation on whether the ''nonessential experimental'' designation for the Aubrey Valley population should be changed. The nonessential designation for this experimental population will remain unchanged unless the experiment is deemed by the Service to be a failure and the designation and the animals are withdrawn.

Status of Reintroduced Population

The Aubrey Valley proposed reintroduction is ''nonessential'' to the continued existence of the black-footed ferret for the following reasons:

1. The captive breeding population is the primary population and it has been protected against the threat of extinction from a single catastrophic event by dividing the population into seven widely separated subpopulations. Hence, any loss of an experimental population will not threaten the survival of the species as a whole.

2. Presently, the primary repository of genetic diversity for the species is the 240 breeding adults in the captive breeding population. Animals selected for reintroduction purposes should be excess to the needs of the captive population. Hence, any loss of animals for an experimental population will not impact the overall genetic diversity of the species.

3. All animals lost during this reintroduction attempt will be replaced through captive breeding. Based on current population dynamics, juvenile ferrets are being produced in excess of the numbers needed to maintain 240 breeding adults in captivity.

This will be the fourth experimental population of black-footed ferrets released back into the wild. The other reintroduction efforts are in Wyoming, southwestern South Dakota, and north-central Montana. Reintroduction of ferrets is important to help ensure the survival of the species in the wild. Ferrets held in captivity are at risk of losing behaviorial aspects critical to their survival in the wild. Consequently, it is important to reintroduce captive-held ferrets as soon as possible to

increase the likelihood of successful reintroductions.

Approximately 58 percent of the land in the AVEPA is deeded land and State trust lands make up the other 42 percent. The nonessential experimental population designation will facilitate reestablishment of the species in the wild by alleviating landowner concerns about possibly restrictive measures that could be taken under the Act. The nonessential experimental designation is intended to relax regulations that protect reintroduced populations of endangered species, while promoting the conservation of this population. The nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets so that private landowners can continue their current daily activities.

Attempts to reintroduce ferrets into the wild (in Wyoming, South Dakota, and Montana) have placed emphasis on developing and improving reintroduction techniques. This research will lay the groundwork for ferret reintroduction and management protocol at future release sites. Thus, failure to establish an Arizona population in the first few years of the program will not reduce the likelihood of the survival of the species in the wild. The data obtained from this reintroduction effort will be used to improve ferret reintroduction techniques in Gunnison's prairie dog towns. All previous releases have occurred in black-tailed or white-tailed prairie dog towns.

Location of Reintroduced Population

Under section 10(j) of the Act, an experimental population must be geographically separate from other nonexperimental populations of the same species. Since 1987, when the last members of the Meeteetse population were captured for inclusion in the captive population, no ferrets have been reported from the wild. There is still the possibility that ferrets exist in the wild today. Extensive surveys for black-footed ferrets in the AVEPA were conducted. In addition to these surveys, many hours were spent surveying prairie dog colonies at the proposed relocation site; no ferrets or sign have been observed. Therefore, the Service believes that the reintroduced population will not overlap with any wild ferrets.

The AVEPA is located in northwestern Arizona and includes the Aubrey Valley west of the Aubrey Cliffs. The area has geographic features that may hinder, but not prevent black-footed ferrets from moving outside of the AVEPA. However, it is unlikely that ferrets would migrate outside the designated area.

The AVEPA will serve as one of the core recovery areas described in the Black-footed Ferret Recovery Plan. Following the first release and prior to the first breeding season, all marked ferrets in the reintroduction site, but still within the designated experimental population area, will be considered as the nonessential experimental population. During and following the first breeding season, all ferrets located in the AVEPA, including offspring of released ferrets, will be considered as the nonessential experimental population. It is expected that all animals will remain in the AVEPA because of prime prairie dog habitat, their limited home range, and surrounding geographic barriers. Should any animal leave the AVEPA, the Service and its cooperators may capture the stray and either return it to the management area, translocate it to another reintroduction site, or place it in captivity. If a ferret is found on private lands outside the reintroduction area (but still within the experimental population site), the landowner will be contacted and the animal will be removed at the request of the landowner. If the landowner has no objection to the ferret remaining on his/her property, the animal will not be removed. Black-footed ferrets dispersing into areas outside of the experimental area will receive full protection under the Act.

All ferrets released in the AVEPA will be marked. If any unmarked animals are found following the first release and prior to the first breeding season, a concerted effort will be made to determine the source of such ferrets. A search will be undertaken to determine whether a wild population exists in the area. Any ferret occurring outside the AVEPA would be considered as endangered, but it could be captured for genetic testing. If the animal is determined to be from the experimental population, it will either be returned to the AVEPA, held in captivity, or released at another reintroduction site. If the captured animal is determined to be genetically unrelated to ferrets from the experimental population (possibly a wild animal), it can be captured for use in the captive breeding program. Under the existing contingency plan, up to nine such ferrets can be captured for the captive population. If a landowner outside the experimental population area wishes to retain the black-footed ferret(s) on his or her property, a conservation agreement or easement will be arranged.

Management

The AVEPA reintroduction will be undertaken by the Service in cooperation with the Arizona Game and Fish Department, the Navajo Nation, and the Arizona State Land Department (in accordance with the Cooperative Reintroduction Plan For Black-footed Ferrets—Aubrey Valley, Arizona (Belitsky et al. 1994)). Additional considerations pertinent to reintroduction are discussed below.

1. *Monitoring*: Various monitoring efforts are planned during the first 5 years of the program. Prairie dog numbers and their distribution and monitoring for sylvatic plague will be conducted on an annual basis. Monitoring for canine distemper will be conducted before and during the reintroduction. Reintroduced ferrets and their offspring will be monitored each year, using spotlight surveys and/or snowtracking surveys. Assuming a few ferrets survive the first winter, surveys will be conducted to monitor breeding success and the recruitment of surviving animals . All behaviorial aspects will also be investigated during the reintroduction phase.

The Service has requested that the Arizona Game and Fish Department serve as the primary contact for governmental agencies, private landowners, and the public within the area affected by the black-footed ferret reintroduction. The Department will also serve as the primary contact for any reports on injured or dead ferrets. All reports of any injured or dead animals should be referred to the State Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Phoenix, Arizona, telephone (602) 640–2720. The State Supervisor also will notify the Service's Division of Law Enforcement concerning any dead or injured ferret.

Ferret populations and their habitat will be monitored annually by the Service and/or its authorized cooperators to document any hazards or ongoing activities which would impact black-footed ferrets. When appropriate, strategies and contingencies to minimize harm to ferrets will be included in the management plan and implemented by the Service.

The Service and its cooperators will keep other agencies and the public informed about the presence of black-footed ferrets in the AVEPA through public outreach programs. Such educational programs will address the handling of sick or injured ferrets. When dead black-footed ferrets are found, the carcass should be preserved. The Service requests that any individual finding a dead ferret not disturb

potential evidence that may be used to determine cause of death.

Any person locating a dead, injured, or sick black-footed ferret, or witnessing anyone causing harm or death to a ferret, should immediately notify the State Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Phoenix, Arizona, telephone (602) 640–2720.

2. *Disease Considerations:* If an active case of canine distemper is documented in any wild mammal found in proximity to or within the reintroduction site (within 6 months prior to the reintroduction), the reintroduction program will be reevaluated. At least 10 coyotes, and possibly badgers, will be tested for canine distemper before ferrets are released at the AVEPA. All persons will be discouraged from bringing dogs into the AVEPA. Residents and hunters will be encouraged to vaccinate pets and to report any unusual behavior witnessed in wild animals or any dead animals that are 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 occur before and during the release.

3. *Genetic Considerations:* Ferrets selected for the initial reintroduction will be animals excess to the needs of the captive populations in order to preserve the genetic diversity of the captive populations. The genetic diversity found within experimental ferret reintroductions is usually less than that of the captive populations. This disparity can be corrected by selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases. The ultimate goal is to establish wild ferret populations that represent the maximum level of genetic diversity.

4. *Prairie Dog Management:* The Service will work cooperatively with landowners and land management agencies in the AVEPA to maintain sufficient prairie dog habitat to support ≥30 breeding adult black-footed ferrets, as well as to maintain at least 90 percent of the prairie dog habitat known in 1992. In areas where prairie dogs are a nuisance, control programs compatible with ferret recovery objectives will be implemented. The Service will work cooperatively with the affected landowners and land management agencies to resolve any prairie dog management conflicts.

5. *Mortality:* Only animals surplus to the needs of the captive breeding program will be used in this reintroduction attempt. Significant mortality is expected to occur since captive-reared animals must adapt to the wild. Natural mortality, resulting from predation, a fluctuating food supply, disease, and the lack of any hunting experience on the part of the released animals, will be compensated for through predator and prairie dog management, vaccination, supplemental feeding, and improved release methods. Human-related mortality may be reduced through public education efforts. A low level of mortality from incidental take is expected as a result of designing the reintroduction program to coincide with traditional land use practices in the reintroduction site. 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 in the wild within the AVEPA provided such take is incidental as defined under the Act, and if any resulting injury or mortality was unintentional, and not due to negligent conduct. Such conduct will not be considered ''intentional take'' and the Service will not take legal action for such conduct. However, the knowing take of a black-footed ferret will result in the referral of the incident to the appropriate authorities for prosecution. Any take of black-footed ferrets must be reported immediately to the Service's State Supervisor (see **ADDRESSES** section).

The draft biological opinion prepared for the reintroduction anticipates an incidental take level of about 12 percent of all reintroduced ferrets and their offspring. If this level of incidental take is reached at any time within a given year, the Service in cooperation with landowners and land managing agencies will conduct an evaluation of the incidental take and will implement the necessary measures to reduce the level of incidental take.

6. *Special Handling:* Under the proposed special rule, Service employees and their acting agents will be authorized to handle black-footed ferrets for various reasons: scientific purposes, relocation to avoid conflict with human activities, recovery efforts, relocation to future reintroduction sites, aiding sick, injured, or orphaned animals, and salvaging of dead animals. If a ferret is deemed not fit to remain in the wild, it will be placed in captivity. The Service will also determine the placement of all sick, injured, orphaned, and dead animals.

7. *Coordination with Landowners and Land Management:* An effort to identify issues and concerns associated with this proposed ferret reintroduction was conducted prior to the development of the proposed rule. The proposed reintroduction has also been discussed with those potentially affected State agencies and landowners located within the proposed release site. These affected State agencies and landowners/managers indicate that they will support the reintroduction if the released animals are considered to be a nonessential experimental population.

8. *Potential for Conflict with Grazing and Recreational Activities:* Under the current management scheme developed for the AVEPA, conflicts between grazing and black-footed ferret management are not anticipated. There will be no additional grazing restrictions other than those contained in the ''Cooperative Reintroduction Plan for Black-footed Ferrets in Aubrey Valley, Arizona'' placed on landowners. The reintroduction plan states that all lands in the management area are subject to livestock grazing and, to date, no grazing practices have been observed that will adversely affect ferret habitat. However, the reintroduction plan does call for working cooperatively with landowners in the experimental area to maintain at least 90 percent of the prairie dog habitat known to exist in 1992. No restrictions will be placed on landowners regarding prairie dog control on private lands within the experimental population area. In the event that prairie dog control efforts proposed for private or State trust lands might eliminate the prey base for established black-footed ferrets in a specific problem area, State and Federal biologists will determine whether black-footed ferrets are negatively impacted. Any agent of the Service or the appropriate State wildlife agency may translocate animals from a problem area to other areas with less conflict. Big game hunting, prairie dog shooting, and trapping of furbearers or predators in the AVEPA are not likely to impact ferrets.

9. *Protection of Black-footed Ferrets:* Released black-footed ferrets will need to be protected from natural mortality (predators, disease, lack of prey base) and from human-related sources of mortality. Natural mortality will be reduced through improved release methods, vaccination, predator control, and the management of prairie dog populations. Human causes of mortality will be minimized by releasing ferrets in areas with low human population densities and with little development.

A draft biological opinion was prepared on this proposal for the reintroduction of black-footed ferrets into the AVEPA. It concluded that this action is not likely to jeopardize the continued existence of the species. A final biological opinion will be prepared for the final rulemaking.

10. *Public Awareness and Cooperation*: An extensive educational effort will be undertaken to inform the public in the region and nationally about the importance of this reintroduction in the recovery of the black-footed ferret. This should enhance public awareness of the significance of the project and gain its support.

11. *Overall*: The designation of the AVEPA population as a nonessential experimental population will encourage local cooperation since this designation will allow for greater flexibility while conducting normal activities within the release site. The Service considers the nonessential experimental population designation to be necessary in order to receive full cooperation from landowners, agencies, and recreational interests in the affected area. Based on the above information, and utilizing the best scientific and commercial data available, (in accordance with 50 CFR 17.81), the Service finds that releasing black-footed ferrets into the AVEPA will further the conservation and recovery of the species.

Public Comments Solicited

The Service intends that any action resulting from this proposed rulemaking to designate the AVEPA population as a nonessential experimental population be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited (see **ADDRESSES** section) from State, public, and government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible. Final promulgation of a rule to implement this proposed action will take into consideration all comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

Public Hearings

The Act provides for at least one public hearing on this proposal, if requested within 45 days from date of publication of the proposal. The Service has arranged for a public hearing to be held on December 12, 1995, from 7:00 P.M. to 10:00 P.M. with registration beginning at 6:00 P.M. at the Cafetorium, Seligman High School, 500 N. Main Street, Seligman, Arizona.

National Environmental Policy Act

A draft environmental assessment as defined under the authority of the National Environmental Policy Act of 1969 has been prepared and is available from the Service office identified in the **ADDRESSES** section.

Required Determinations

This proposed rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that this rule 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.*). Based on the information discussed in this rule concerning public projects and private activities within the experimental population area, significant economic impacts will not result from this action. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this action, and the rule contains no recordkeeping requirements as defined under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

References Cited

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Author

The primary author of this rule is Lorena L.L. Wada (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend 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. It is proposed that § 17.11(h) be amended by revising the existing entries 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 below.	E	1, 3, 433, 545, 546, _____.	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	U.S.A. (specified portions of WY, MT, SD, and AZ).	XN	433, 545, 546, _____.	NA	17.84(g)
*	*	*	*	*	*	*	

3. It is proposed that 50 CFR 17.84 be amended by revising the text of 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), (g)(9)(ii), (g)(9)(iii), and (g)(9)(iv) of this section are nonessential experimental populations. 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 areas 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 § 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, who is designated for such purposes, when 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 Reintroduction Area 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)(13) of this section;

(iv) To relocate ferrets within the experimental population areas 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 will not be considered ''knowing take'' for the purposes of this regulation, and the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

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

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

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

(iii) Such taking in the north-central Montana experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Helena, Montana (telephone: 406/449–5225).

(iv) Such taking in the Aubrey Valley experimental population area must be reported to the State Supervisor, Ecological Services, Fish and Wildlife Service, Phoenix, Arizona (telephone: 602/640–2730).

(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 population 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 be committed, 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) The Shirley Basin/Medicine Bow Management Area is shown on the attached map of Wyoming and will be considered the core recovery area for this species in southeastern Wyoming. The boundaries of the nonessential experimental population will be 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 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 will comprise the nonessential experimental population thereafter.

(ii) The Conata Basin/Badlands Reintroduction Area is shown on the attached map for South Dakota and will be considered the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area will be 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 will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferrets in the Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following actions if necessary:

(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 facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(iii) The North-central Montana Reintroduction Area is shown on the attached map for Montana and will be considered the core recovery area for this species in north-central Montana. The boundaries of the nonessential experimental population will be 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 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 will thereafter comprise the nonessential experimental population. A black-footed ferret occurring outside the experimental area in Montana would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may be done in the following manner if necessary.

(A) If an animal is genetically determined to have originated from the experimental population, it would be returned to the Reintroduction Area or to a captive facility.

(B) If an animal is determined not to be genetically related to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive breeding program.

(iv) The Aubrey Valley Experimental Population Area (see Arizona map) will be considered the core recovery area for this species in northwestern Arizona. The boundary of the nonessential experimental population area will be those parts of Coconino 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 southeast boundary of the Hualapai Indian Reservation. The area's boundary continues southwest along the Reservation boundary to U.S. Highway Route 66; then southeast along Route 66 for approximately 5.2 km (3.5 miles) to mile post 116; then along the 5,300-foot elevation contour east and north of the Juniper Mountains and then back to the point of origin at Chino Point. Any black-footed ferrets found in the wild within these boundaries will be considered 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 would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(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 facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(10) The reintroduced populations will be continually monitored during the life of the project, including the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against disease prevalent in mustelids, as appropriate, prior to release. 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 the 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) The status of each experimental population will be reevaluated within the first 5 years after the first year of releases 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. Once recovery goals are met for delisting the species, a rule will be proposed to address delisting.

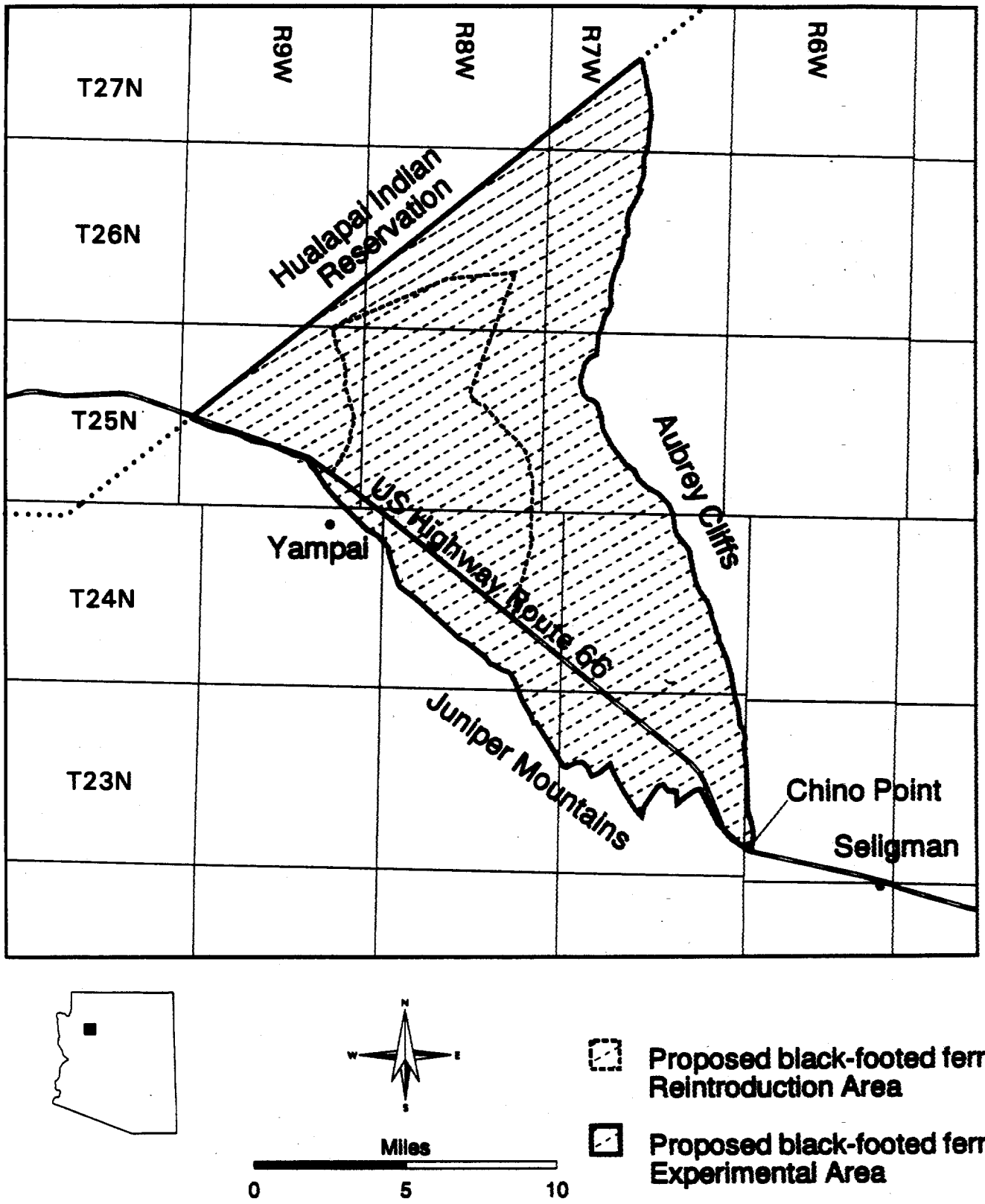
(12) This 5-year evaluation will not include a reevaluation of the ''nonessential experimental'' designation for these populations. The Service does not foresee any likely situation which would call for altering the nonessential experimental status of any population. Should any such alteration prove 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 will be permitted to terminate their consent, and at their request, the ferrets will be relocated pursuant to paragraph (g)(4)(iii) of this section.

* * * * *

§ 17.84 [Amended]

4. It is proposed to amend § 17.84 by adding a map to follow the existing map at the end of paragraph (g).

BILLING CODE 4310–55–P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Proposed black-footed ferret Reintroduction Area
Proposed black-footed ferret Experimental Area

Dated: October 20, 1995.
George T. Frampton, Jr.,
Assistant Secretary, Fish, Wildlife and Parks.
[FR Doc. 95–28078 Filed 11–14–95; 8:45 am]
BILLING CODE 4310–55–C