

efforts in order to resolve or mitigate any potential interference problem with the Arcicibo Observatory. If the Commission determines that an operator has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, the unit may be allowed to operate.

§ 95.1305 Station identification.

A MURS station is not required to transmit a station identification announcement.

§ 95.1307 Permissible communications.

(a) MURS stations may transmit voice, data or image signals as permitted in this subpart.

(b) A MURS station may transmit any emission type, subject to the limitations contained in § 90.207 of this chapter.

(c) MURS frequencies may be used for remote control and telemetering functions. Emission types A1D, A2D, F1D, F2D are authorized and stations used to control remote objects or devices may be operated on the continuous carrier transmit mode, except on frequency 154.600 MHz.

§ 95.1309 Channel use policy.

(a) The channels authorized to MURS systems by this part are available on a shared basis only and will not be assigned for the exclusive use of any entity.

(b) Those using MURS transmitters must cooperate in the selection and use of channels in order to reduce interference and make the most effective use of authorized facilities. Channels must be selected in an effort to avoid interference to other MURS transmissions.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG26

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in North-Central South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), in cooperation with the Cheyenne River Sioux Tribe, the Forest Service, and the Bureau of Indian

Affairs (BIA), will reintroduce black-footed ferrets (*Mustela nigripes*) into north-central South Dakota on the Cheyenne River Sioux Reservation. The purposes of this reintroduction are to implement actions required for recovery of the species and to evaluate and improve reintroduction techniques and management applications. We will release surplus captive-raised black-footed ferrets in October 2000, and release additional animals annually for several years thereafter until we establish a self-sustaining population. If this reintroduction program is successful, a wild population could be established in 5 years or less. The Cheyenne River Sioux Reservation population is established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. We will manage this population under provisions of this final special rule.

DATES: The effective date of this rule is October 13, 2000.

ADDRESSES: You may inspect the complete file for this rule during normal business hours at the U.S. Fish and Wildlife Service, Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501 or telephone 605/224-8693. You must make an appointment in advance if you wish to inspect the file.

FOR FURTHER INFORMATION CONTACT: Mike Lockhart at 307/721-8805.

SUPPLEMENTARY INFORMATION:

Background

1. Legislative

Congress made significant changes to the Endangered Species Act of 1973 (Act), as amended, with the addition of section 10(j) to allow for the designation of specific 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 the 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, the Secretary will determine whether such populations are "essential," or "nonessential," to the continued

existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

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 a listed species. "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. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and 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 the 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. Threatened designation allows us greater discretion in devising management programs and allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special rule contains the prohibitions and exceptions necessary and appropriate to conserve that species. Regulations for NEP's are usually more compatible with human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEP's as if the population is proposed for listing, but we treat NEP's as threatened species when they are located within a National Wildlife Refuge or National Park. When NEP's occur outside of such refuges or parks, Federal agencies are required to confer with the Service, in accordance with section 7(a)(4) of the Act, on their actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature, and agencies are not restricted from committing resources to projects regardless of conference findings and recommendations.

Individuals used to establish an experimental population may come from a donor population, provided their removal is not likely to jeopardize the continued existence of the species, and 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 reestablishing wild populations to achieve recovery goals. In addition, wild progeny from other NEP areas (and also which originated from captive sources) may be directly translocated to the 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 dogs for food, shelter, and denning (Henderson *et al.* 1969, Forrest *et al.* 1985). The range of the ferret coincides with that of three prairie dog species (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 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, which have little or no immunity to it. Black-footed ferrets also are highly susceptible to sylvatic plague. This

severe reduction in the availability of the ferret's principal prey, 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 1980.

In 1974, a remnant wild population of ferrets in South Dakota, originally discovered in 1964, abruptly disappeared. Afterwards, we believed the species to be extinct; however, in 1981 a small population of ferrets was discovered near Meeteetse, Wyoming. In 1985–1986, the Meeteetse population declined to only 18 animals due to outbreaks 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 in several areas of formerly occupied range. Today, the captive population of juveniles and adults fluctuates annually between 300 and 600 animals depending on the time of year and on annual reproductive success and mortality. The captive ferret population is currently divided among six captive-breeding facilities throughout the United States and Canada, with a small number of live animals on display for educational purposes at several zoos and other facilities. Also, 65 to 90 ferrets are located at field-based captive-breeding sites in Arizona, Colorado, New Mexico, and Montana.

3. Recovery Efforts

The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) contains the following recovery objectives for reclassification:

(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 (not achieved); and

(c) Encouraging the widest possible distribution of reintroduced animals throughout their historical range. 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 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 presently there are six separate subpopulations in captive-breeding facilities. Current recovery priorities emphasize the reintroduction of animals back into the wild from the captive source stock. Surplus individuals produced in captivity are now available for release into 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 black-footed ferret. The first reintroduction project occurred in Wyoming in 1991, and subsequent efforts have taken place in South Dakota and Montana in 1994, in Arizona in 1996, a second effort in Montana in 1997, and in Colorado/Utah in 1999. The Service and the Black-Footed Ferret Recovery Implementation Team (composed of 27 State and Federal agencies, Indian Tribes, and conservation organizations) have identified the Cheyenne River Sioux Reservation as a priority black-footed ferret reintroduction site due to its extensive black-tailed prairie dog habitat and the absence of sylvatic plague.

(a) Cheyenne River Sioux Reservation Experimental Population Reintroduction Area

The area designated as the Cheyenne River Sioux Reservation Black-Footed Ferret Experimental Population Area (Experimental Population Area) overlays all of Dewey and Ziebach Counties in South Dakota. The boundaries of these Counties also are the boundaries of the Cheyenne River Sioux Reservation. Within the Experimental Population Area, the primary reintroduction area will be in large black-tailed prairie dog complexes located along the Moreau River. The approximate center of the Experimental Population Area is the town of Eagle Butte, the location of Cheyenne River Sioux Tribal offices. Eagle Butte is

approximately 160 kilometers (100 miles) northwest of Pierre, the capital of South Dakota.

The Experimental Population Area supports two large complexes of black-tailed prairie dog colonies located within the two-county area. These two counties encompass approximately 1,141,558 hectares (2,820,751 acres). Approximately half or 574,752 hectares (1,420,193 acres) of the Experimental Population Area is Tribal Trust and Allotted lands. The majority of this Tribal Trust and Allotted land, approximately 90 percent or 505,875 hectares (1,250,000 acres), is native rangeland used for grazing.

Some lands within the Experimental Population Area are owned by private landowners (approximately 50 percent, although much less in the primary reintroduction area). No ferrets will be released on private lands. The Tribe and other Cooperators have agreed that if any ferrets disperse onto private lands they will capture and translocate them to Tribal lands if requested by the landowner or if necessary for protection of the ferrets.

Black-footed ferret dispersal into areas outside of the Experimental Population Area is unlikely due to the large size of the Experimental Population Area, the absence of suitable nearby habitat (few if any prairie dogs can be found to the south and west), cropland barriers (*e.g.*, expansive cultivation over the northern portion of the Experimental Population Area), and physical barriers (*e.g.*, the Missouri River to the east). The Tribe estimates a total of approximately 8,408 hectares (20,777 acres) of black-tailed prairie dog colonies are potentially available to black-footed ferrets in the Experimental Population Area and could support over 200 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 along the Moreau River (the primary ferret release area) should facilitate ferret distribution throughout the Moreau River Reintroduction Area.

(b) Primary Reintroduction Areas

In the early 1990s, the Tribe began development of a Prairie Management Plan as a framework for managing the natural resources of 574,752 hectares (1,420,193 acres) of Tribal Trust lands within the Cheyenne River Sioux Reservation boundaries (Cheyenne River Sioux Tribe 1992). The Prairie Management Plan included development of prairie dog and black-footed ferret management strategies.

Phase I of the Prairie Management Plan accomplished initial prairie dog surveys along the Moreau River in areas believed to be well-suited for ferret reintroduction. Phase II surveys confirmed that prairie dog colonies along the Moreau River are highly suitable for ferret releases due to the number and size of prairie dog colonies, the spatial relationships of prairie dog towns to each other, their location on Tribal Trust and Allotted lands, their remoteness, and their distance from human settlements (Cheyenne River Sioux Tribe 1999).

Recent surveys revealed 5,739 hectares (14,156 acres) of prairie dog colonies within the Moreau River complex. In addition to the Moreau River prairie dog complex, a secondary black-footed ferret release area was identified to the south in the Southeast Parade Management Area, an area that supports 2,280 hectares (6,621 acres) of black-tailed prairie dog towns. This area requires further evaluation to ensure appropriate conditions exist for future reintroductions of black-footed ferrets. The Tribe selected the Moreau River prairie dog complex as the primary ferret reintroduction area because of its location within the historical range of the black-footed ferret, our determination that ferrets are no longer present, the abundance of suitable ferret habitat (lands containing active prairie dog colonies), the extensive amount of land managed by the Tribe, and the area's isolation from human activities.

The primary reintroduction area within the Experimental Population Area generally includes lands along the Moreau River in Dewey and Ziebach Counties in north-central South Dakota. Extensive ferret surveys were conducted in this area in the 1980s and 1990s, but no evidence of ferrets was found. There are no confirmed records of ferrets occurring within the boundaries of the Experimental Population Area since the early 1960s.

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 BIA, the Service, private landowners, and Federal and State land managers. The Service will reevaluate 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 suitable prairie dog habitat available within specific reintroduction areas.

(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 Wyoming, Montana, Arizona, Utah/Colorado, and elsewhere in South Dakota over 100 miles from the reintroduction site on Cheyenne River Tribal lands. Consequently, the discovery of a black-footed ferret on the experimental population area prior to the reintroduction would confirm the presence of a new population and prevent designation of an experimental population in the area.

(iv) Discovery of an active case of canine distemper or other disease contagious to black-footed ferrets on or near the reintroduction area prior to the scheduled release.

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

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

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

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

5. Reintroduction Procedures

The standard reintroduction protocol calls for the release of 20 or more captive-raised, or wild-translocated black-footed ferrets in the Experimental Population Area in the first year of the program, and 20 or more animals released annually for the next 2 to 4 years. Biologists expect to release 50 or more ferrets in the first year and believe a self-sustaining wild population could be established on the Cheyenne River Sioux 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. The Forest Service will participate in the reestablishment of ferrets on the Cheyenne River Sioux Reservation by preconditioning captive-raised ferrets in large open-air pens on the Conata Basin District of the Buffalo Gap National Grasslands in southwestern South Dakota. In these pens, young ferrets are exposed to live prairie dogs, burrows, and other natural stimuli. In addition, biologists may translocate up to 25 ferrets born in the wild on the Buffalo Gap National Grasslands to the Cheyenne River Sioux Reservation (if annual production levels of wild ferrets on Conata Basin are sufficient to allow translocation of excess young).

The Tribe will develop specific reintroduction plans and submit them 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 (especially canine distemper) and take appropriate measures to reduce predation from coyotes, badgers, and raptors, where warranted. All ferrets we release will be marked with individually coded passive integrated transponder tags, and we may promote use of radio-telemetry studies to document ferret behavior and movements. Other monitoring will include spotlight surveys, snow tracking surveys, and visual surveillance.

Since captive-born ferrets are more susceptible to predation, starvation, and environmental conditions than wild animals, up to 90 percent of the 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 Cheyenne River Sioux 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 reintroduction will be the seventh release of ferrets back into the wild in six experimental population areas. The other experimental populations occur in Wyoming, southwestern South Dakota, north-central Montana (with two separate reintroduction efforts), Arizona, and Colorado/Utah (a single reintroduction area that overlaps both States). 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, the BIA and the Tribe conducted black-footed ferret surveys in the Experimental Population Area. In addition to these surveys, they spent many hours surveying prairie dog colonies at the reintroduction site. No ferrets or ferret sign (skulls, feces, trenches) were located. Therefore, we conclude that wild ferrets are no longer present on the Experimental Population Area and that this reintroduction will not overlap with any wild population.

All released ferrets and their offspring are expected to remain in the Experimental Population Area due to the presence of prime habitat (lands occupied by prairie dog colonies) and surrounding geographic barriers. We will attempt to capture any ferret that leaves the Experimental Population Area (in an attempt to identify its origin) and will either return it to the release site, translocate it to another site, or place it in captivity. If a ferret leaves the 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.

We will mark all released ferrets and will attempt to determine the source of any unmarked animals found. Any ferret found outside the Experimental Population Area is considered endangered, as provided under the Act. 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 noncaptive 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 that are not from captive stock. In the highly unlikely event that a ferret from captive stock is found outside the Experimental Population Area, 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 Cheyenne River Sioux Tribe, the BIA, and the Forest Service in accordance with the "Cooperative Management Plan

for Black-Footed Ferrets, Moreau River or Southeast Parade Reintroduction Areas“Cheyenne River Sioux Reservation. Copies of the Cooperative Management Plan may be obtained from the Prairie Management Program Coordinator, P.O. Box 590, Eagle Butte, South Dakota 57625. In the future, we will evaluate whether additional black-footed ferret reintroductions are feasible within the Experimental Population Area (over 45,000 total acres of occupied prairie dog habitat exist within the Experimental Population Area). Cooperating agencies and private landowners would be involved in the selection of any additional sites. Management considerations of the 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 test for 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 on 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 animals. 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 Cheyenne River Sioux 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 or 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 possible from 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 maximum 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 maintain suitable prairie dog habitat on core release areas at or above 90 percent of the habitat levels as determined by the 1999 survey.

(e) Mortality

We will reintroduce only 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. A person may take a ferret within the Experimental Population Area provided that the take is unavoidable, 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 a low level of incidental take since the reintroduction is compatible with existing land use practices for the area.

Based on studies of wild black-footed ferrets at Meeteetse, Wyoming, 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 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 ferret reintroduction before preparing this rule. The reintroduction also has been discussed with potentially affected State agencies and landowners within the release area. Affected State agencies, landowners, and land managers have indicated support for the reintroduction of ferrets in the Experimental Population Area as a NEP, if land use activities in the 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 Experimental Population Area will continue without additional restriction

from implementation of 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 within the Experimental Population Area. If proposed prairie dog shooting or control will locally affect ferret prey base within a specific area, project 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 develop appropriate 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 on the Cheyenne River Sioux Reservation will provide greater flexibility in the management of reintroduced ferrets. The NEP designation is necessary to secure needed cooperation of the Tribe, landowners, agencies, and recreational 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.

Summary of Comments

In the July 18, 2000, proposed rule and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, Tribes, county governments, environmental and agricultural organizations, and other interested parties were contacted and requested to comment. Articles providing information about the

proposed rule and the opportunity for public comment were published in South Dakota in the "Midwest News," the "Capitol Journal," the "Timberlake Topic," the "Eagle Butte News," the "West River Progress," and the "Rapid City Journal." Information regarding the publication of the proposed rule as well as the text of the rule itself was made available on the Region 6 website >www.r6.fws.gov< during the public comment period. A news interview with South Dakota Public Radio was conducted by a representative of the Cheyenne River Sioux Tribe.

We informed the Cheyenne River Sioux Tribe of the publication of the proposal and the opportunity for public comment. Throughout development of the proposal we maintained regular coordination with the Cheyenne River Sioux Tribe and have received their full support in this reintroduction. Public meetings were held by the Cheyenne River Sioux Tribe on June 19 and 22, 2000, in Eagle Butte, South Dakota. Contacts were made with the South Dakota Department of Game, Fish, and Parks regarding the publication of the reintroduction proposal and the public comment period. On July 15, 2000, a presentation about the proposal, including the public comment period, was given to the South Dakota Prairie Dog Working Group, a consortium of Federal and State agencies, environmental organizations, and local agricultural groups interested in black-tailed prairie dog and black-footed ferret conservation issues. No requests for public hearings were made and no public comments were received on this proposal.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the rule to designate NEP status for the black-footed ferret reintroduction into north-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 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.

All the lands within the NEP area are within the Cheyenne River Sioux Reservation, and the specific lands where ferrets will actually be released are Tribal Trust and Allotted lands. Other public areas in the NEP include South Dakota school lands, South Dakota Department of Game, Fish, and

Parks lands, and U.S. Army Corps of Engineers lands. Most of the prairie dogs within the NEP area occur on Tribal Trust and Allotted lands, and those occurring on other lands are not needed for a successful ferret release. Land uses on private, Tribal, and State school lands will not be hindered by the reintroduction, 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 other Department of the Interior bureaus (*i.e.*, Bureau of Land Management and BIA) and the Department of Agriculture (Forest Service). The action allowed 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 five 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 Dewey and Ziebach Counties, South Dakota. A majority of the area affected by this rule is within the Cheyenne River Sioux Reservation, which is administered by the Tribe.

Reintroduction of ferrets allowed by this rule will not have any significant effect on recreational activities in the experimental 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 participation in ferret reintroduction by private landowners is voluntary, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of a NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of ferrets on the Cheyenne River Sioux Reservation, will not create inconsistencies with other agency actions, and will not conflict with existing or proposed human activity, or Tribal and public uses 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 nonessential experimental population designation will not place any additional requirements on any city, county, or other local municipalities. The site designated for release of the experimental population is predominantly Cheyenne River Sioux Tribal Trust and Allotted land administered by the Cheyenne River Sioux Tribe, who support this project. Some South Dakota State school lands may also be affected.

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.

Because 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. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities (*i.e.*, it is not a "significant regulatory action" under the Act).

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications.

Designating reintroduced populations of federally listed species as NEP's significantly reduces the Act's regulatory requirements with respect to the reintroduced listed species within the NEP. Regulatory relief can be provided regarding take of reintroduced species within NEP areas, and a special rule has been developed stipulating that unavoidable and unintentional take (including killing or injuring) of the reintroduced black-footed ferrets would not be a violation of the Act, when such take is nonnegligent and incidental to a legal activity (*e.g.*, livestock management, mineral development) and the activity is in accordance with State laws and regulations.

Most of the lands within the Experimental Population Area are administered by the Cheyenne River 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 onto private lands.

Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of ferrets would conflict with existing human activities or hinder public use of the area. A takings implication assessment is not required.

Federalism

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 Experimental Population Area are Tribal Trust and Allotted 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

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not

unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation contains collection of information requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This information collection has been approved by OMB and has been assigned OMB control number 1018-0095. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

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

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have closely coordinated this rule with the Cheyenne River Sioux. Throughout development of this rule, we maintained regular contact with the Cheyenne River Sioux Tribe and have received their full support in this reintroduction.

Effective Date

We have waived the 30-day delay between publication of this final rule and its effective date as provided in the Administrative Procedure Act (5 U.S.C. 533(d)(3)). This is necessary to ensure that ferret kits are released on the Cheyenne River Sioux Reservation at the most biologically favorable time possible. Previous ferret releases and scientific study have demonstrated that ferret survival is markedly enhanced by adequate preconditioning of kits in outdoor pens between 60-90 days of age and subsequent release into the wild from about 120-140 days of age.

The bulk of the annual production of captive-reared ferrets for the year 2000 was completed between mid-May to mid-June. To facilitate the reintroduction of ferrets on the

Cheyenne River Sioux Reservation site in 2000, we have allocated ferrets from later litters. However, in order to ensure that ferrets are reintroduced as close to optimal age as possible, it will be necessary to release allocated ferrets by October 2000.

A substantial delay of releasing ferrets at optimal ages would necessitate the transfer of allocated ferrets to other reintroduction sites and would postpone reintroduction efforts on the Cheyenne River Sioux Reservation until 2001. Such an action would substantially impact our ferret reintroduction efforts for the year 2000 and would retard overall species recovery. Good cause exists under 5 U.S.C. 553(d) for the rule to be effective immediately upon publication.

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 U.S. Fish and Wildlife Service. 1988. Black-footed ferret recovery plan. Denver, Colorado. 154 pages.
 Vargas, A., M. Lockhart, P. Marinari, and P. Gober. 1998. Preparing captive-raised black-footed ferrets (*Mustela nigripes*) for survival after release. Jersey Wildlife Preservation Trust 34:76-83.

Authors

The primary authors of this rule are Mike Lockhart at telephone 307/721-8805 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.

Special Regulations Promulgation

Accordingly, we 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 section 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		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
* Ferret, black-footed ...	* <i>Mustela nigripes</i>	* 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.....dodo	U.S.A. (specified 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 section 17.84 as follows: Revise the text of paragraph (g)(1) and add paragraphs (g)(6)(vi), (g)(9)(vi), and a new map to follow the five existing maps at the end of paragraph (g):

§ 17.84 Special rules—vertebrates.

* * * * *

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

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

* * * * *

(6) * * *

(vi) Report such taking in the Cheyenne River Sioux Tribe Experimental Population Area to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Pierre, South Dakota (telephone 605/224-8693).

* * * * *

(9) * * *

(vi) The Cheyenne River Sioux Tribe Reintroduction Area is shown on the map of north-central South Dakota at the end of paragraph (g) of this section. The boundaries of the nonessential experimental population area are the exterior boundaries of the Cheyenne River Sioux Reservation which includes

all of Dewey and Ziebach Counties, South Dakota. Any black-footed ferret found in the wild within these 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 the Experimental Population Area in north-central South Dakota would initially be considered as endangered but may be captured for genetic testing. When a ferret is found outside the Experimental Population Area, the following may occur:

(A) If an animal is genetically determined to have originated from the experimental population, we may return

it to the reintroduction area or to a captive-breeding facility.

(B) If an animal is determined to be genetically unrelated to the

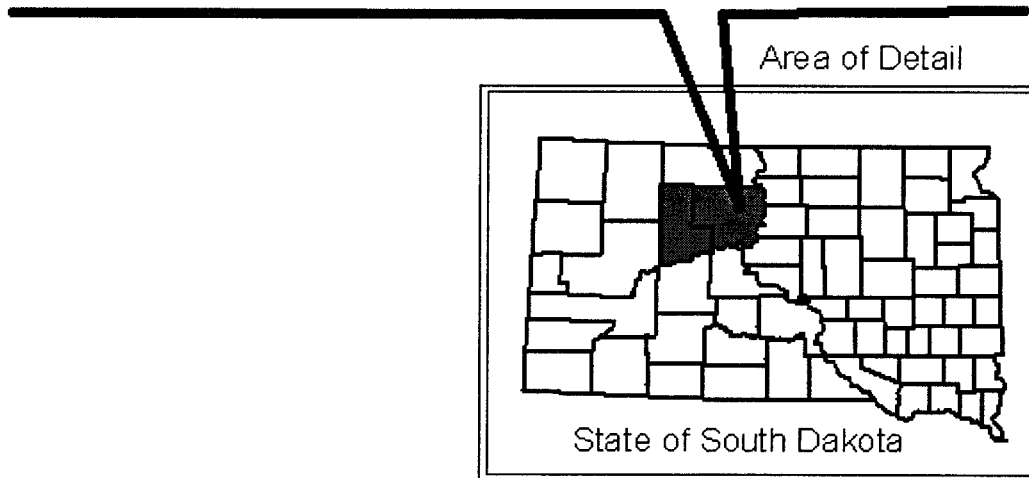
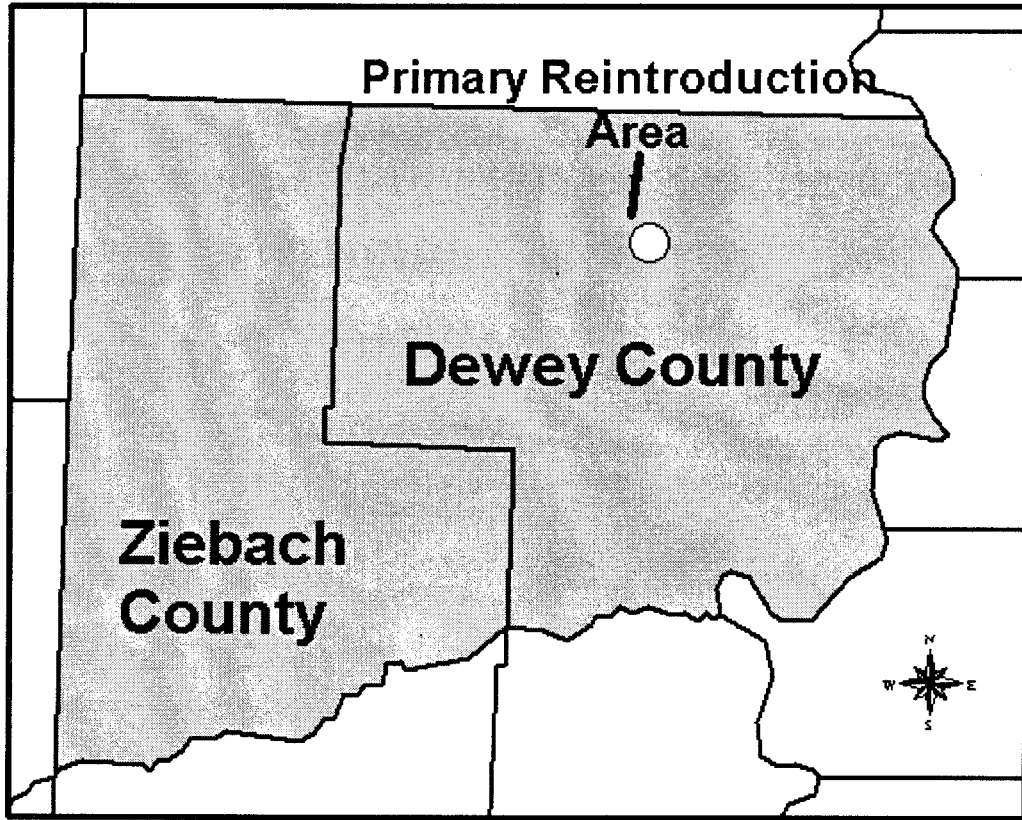
experimental population, we will place it in captivity under an existing contingency plan. Up to nine black-

footed ferrets may be taken for use in the captive-breeding program.

* * * * *

BILLING CODE 4310-55-P

Cheyenne River Sioux Tribe Black-footed Ferret Experimental Population Area South Dakota



* * * * *

Dated: September 28, 2000.

Kenneth L. Smith,*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00-26349 Filed 10-12-00; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 000928277-0277-01; I.D. 091100A]

RIN 0648-AO67

Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS issues emergency regulations to implement a time and area closure for pelagic longline fishing, within the Northeast Distant Statistical Sampling (NED) Area. Additionally, this rule requires all pelagic longline vessels that have been issued Federal highly migratory species (HMS) fishing permits and that fish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, to carry on board dipnets and line clippers meeting NMFS design and performance standards. These regulations are necessary to reduce the bycatch and bycatch mortality of loggerhead and leatherback sea turtles by the Atlantic pelagic longline fishery.

DATES: This emergency rule is effective October 10, 2000, through April 9, 2001, except that the amendment to § 635.21(c)(5) is effective November 24, 2000, through April 9, 2001. Comments must be received no later than 5 p.m. on January 8, 2001.

ADDRESSES: Written comments on this action must be mailed to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via email or the Internet. Copies of the environmental assessment and regulatory impact review prepared for this action may be obtained from Christopher Rogers.

FOR FURTHER INFORMATION CONTACT:

Margo Schulze-Haugen, Karyl Brewster-Geisz, or Tyson Kade at 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

Pelagic Longline Fishery

Pelagic longline gear is the dominant commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target preferentially yellowfin tuna, bigeye tuna, or swordfish.

Observer data and vessel logbook data indicate that pelagic longline fishing for Atlantic swordfish and tunas results in catch of such non-target finfish species, as bluefin tuna, billfish, undersized swordfish, and of protected species, including threatened and endangered sea turtles. The bycatch of fish that are hooked but not retained due to economic or regulatory factors contributes to overall fishing mortality. Such bycatch mortality may significantly impair the rebuilding of overfished finfish stocks. Additionally, the bycatch of protected species (sea turtles or marine mammals) may significantly impair the recovery of these species.

Consistent with national standard 9 of the Magnuson-Stevens Act, NMFS has implemented measures to reduce bycatch and bycatch mortality to the extent practicable in the Atlantic pelagic longline fishery. In 1999, NMFS implemented a time and area closure in the Mid-Atlantic bight for the month of June to reduce bycatch of Atlantic bluefin tuna (64 FR 29090, May 28, 1999). Additionally, NMFS implemented a year-round time and area closure in the northeastern Gulf of Mexico (DeSoto Canyon), effective November 1, 2000; a year-round time and area closure along the east coast of Florida, effective February 1, 2001; and a 3-month time and area closure off Georgia, South Carolina, and a portion of North Carolina (Charleston Bump), effective February 1, 2001 (65 FR 47214, August 1, 2000).

Sea Turtle Bycatch Reduction

Under the Endangered Species Act (ESA), NMFS is required to address fishery-related take of sea turtles that are listed as threatened or endangered. Although a high percentage of hooked sea turtles are released alive, NMFS remains concerned about serious injuries of turtles taken by pelagic longline gear. On November 19, 1999, NMFS re-initiated consultation under section 7 of the ESA based on preliminary reports observing that incidental take of loggerhead sea turtles by the Atlantic pelagic longline fishery during 1999 had exceeded levels anticipated in the Incidental Take Statement previously issued for the HMS FMP. Additionally, the consultation considered the impacts of the pelagic longline rulemaking that was in preparation because it was recognized that certain time and area closures, if implemented, could affect the overall interaction rates of the pelagic longline fleet with sea turtles.

National standard 9 of the Magnuson-Stevens Act requires that conservation and management measures, "to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." Sea turtles are defined as bycatch in the Magnuson-Stevens Act because they may not be retained and must be released. In certain times and areas, the Atlantic pelagic longline fishery has relatively high rates of sea turtle bycatch, with associated mortality.

In its most recent Biological Opinion (BO) on management of the Atlantic HMS fisheries, completed June 30, 2000, NMFS concluded that operation of the pelagic longline fishery jeopardized the continued existence of threatened loggerhead and endangered leatherback sea turtles. This conclusion was based on the current status of the loggerhead and leatherback sea turtle populations in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico, the status of the northern subpopulation of loggerhead sea turtles, and the anticipated continuation of current levels of injury and mortality of both species described in the environmental baseline and cumulative effects section of the BO. The future trend of species abundance considers the current rate of bycatch in HMS fisheries and the potential shifts in effort estimated in the Final Supplemental Environmental Impact Statement on the Regulatory Amendment to the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan.