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List of Subjects in 47 CFR Part 80

Marine safety, Radio.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB98

Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in Southwestern South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service, in cooperation with the U.S. Forest Service and the National Park Service, proposes to release black-footed ferrets (*Mustela nigripes*) into the Conata Basin/Badlands Reintroduction Area in southwestern South Dakota. 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, excess captive-raised black-footed ferrets will be released in 1993, and excess black-footed ferrets will be released annually thereafter for several years. Releases will utilize and refine reintroduction techniques used at other reintroduction areas and, if fully successful, will establish a wild population within about 5 years. The Conata Basin/Badlands population is proposed to be designated a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. This population would be managed in accordance with the provisions of the accompanying special rule. The U.S. Fish and Wildlife Service solicits comments on this proposed designation and special rulemaking.

DATES: Comments from all interested parties must be received by July 19, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Mr. Stan Zschomler, State Supervisor, Ecological Services, 420 South Garfield

Avenue, suite 400, Pierre, South Dakota 57501-5408. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Ecological Services Office in Pierre, South Dakota, (605) 224-8693, and at the U.S. Fish and Wildlife Service's Regional Office, Division of Endangered Species and Environmental Contaminants, 134 Union Boulevard, Lakewood, Colorado 80228, (303) 236-7398.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Searls in the South Dakota Office (see ADDRESSES section).

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) will hold public hearings on this proposed rule in Rapid City and Pierre, South Dakota. The dates and specific locations for these hearings will be published in the Federal Register at least 15 days prior to the first hearing.

Background

1. Legislative

Among the significant changes made in the Endangered Species Act (Act) Amendments of 1982, Public Law No. 97-304, was the creation of a new section 10(j) that provides for the designation of specific populations of listed species as "experimental populations." Under previous authorities in the Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Service was permitted to reintroduce populations into unoccupied portions of a listed species historical range when it would foster the conservation and recovery of the species. However, local opposition to reintroduction efforts, stemming from concerns about the restrictions and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool.

Under section 10(j), reintroduced populations established outside the current range but within the species 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 may be treated as threatened species. The Service has more discretion in devising management programs for threatened species than for endangered species.

Additional management flexibility is possible if the experimental population is found to be "nonessential" to the continued existence of the species in question. Nonessential experimental

populations located outside national wildlife refuge or National Park Service (NPS) lands are treated for purposes of section 7 of the Act as if they were only proposed for listing. Only two provisions of section 7 would apply outside of the national wildlife refuge and NPS lands: Section 7(a)(1), which requires all Federal Agencies to establish conservation programs; and section 7(a)(4), which requires Federal Agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. Section 7(a)(2) of the Act, which requires Federal Agencies to insure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply outside of national wildlife refuge and NPS lands. For experimental populations on national wildlife refuge and NPS lands, the designation would still be "nonessential," but section 7(a)(2) would apply because the population would be treated as threatened.

Note: Activities undertaken on private lands are not affected by section 7 of the Act unless they are funded, authorized, or carried out by a Federal Agency.

Individual animals comprising the designated experimental population can be removed from an existing source or donor population only after it has been determined that their removal is not likely to jeopardize the continued existence of the species. Moreover, removal must be done under a permit issued in accordance with the requirements in 50 CFR 17.22.

2. Biological

The species addressed by this proposed rulemaking is the black-footed ferret (*Mustela nigripes*), an endangered carnivore with a black face mask, black legs, and a black-tipped tail. It is nearly 60 centimeters (2 feet) long and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret native to North America.

Though the black-footed ferret was found over a wide area historically, it is difficult to make a conclusive statement on its historical abundance due to its nocturnal and secretive habits. The black-footed ferret's historical range, based on specimens collected since its identification, 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 the black-footed ferret from the Yukon Territory, Canada, to New Mexico and Texas (Anderson et al. 1986). Although

there are no specimen records for black-footed ferrets from Mexico, prairie dogs (*Cynomys* spp.) are established in Chihuahua (Anderson 1972) and were present as far back as the late Pleistocene-Holocene Age (Messing 1986). Because black-footed ferrets depend almost exclusively on prairie dogs for food and shelter (Henderson et al. 1969; Forrest et al. 1985) and black-footed 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, black-footed ferrets may have been historically endemic to northern Mexico.

Black-footed ferrets prey on prairie dogs primarily and use their burrows for shelter and denning. There are specimen records of black-footed ferrets from ranges of three species of prairie dogs: black-tailed prairie dogs (*Cynomys ludovicianus*), white-tailed prairie dogs (*Cynomys leucurus*), and Gunnison's prairie dogs (*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 dogs, particularly in the southern portions of their range. The severe decline of prairie dogs resulted in a concomitant and near-fatal decline in black-footed ferrets, though the latter's decline may be partially attributable to other factors, such as secondary poisoning from prairie dog toxicants or high susceptibility to canine distemper. The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population was discovered in South Dakota and studied intensively, but this population disappeared in the wild by 1974 with its last member dying in captivity in 1979. Afterwards, some believed that the species was probably extinct until another wild population was discovered near Meeteetse, Wyoming, in 1981. The Meeteetse population underwent a severe decline in 1985-1986 due to canine distemper, which is fatal to infected black-footed ferrets. Eighteen survivors were taken into captivity in 1986-1987 to prevent extinction and to serve as founder animals in a captive propagation program aimed at eventually reintroducing the species into the wild.

3. Recovery Efforts

The national recovery objective in the recovery plan for this species (U.S. Fish and Wildlife Service 1988) is to ensure

immediate survival of the black-footed ferret by:

(1) Increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991;

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

(3) Encourage the widest possible distribution of reintroduced black-footed ferret populations.

When this objective is achieved, the black-footed ferret will be proposed for downlisting to threatened, assuming the extinction rate of the established populations remains at or below the rate new populations are established for at least 5 years.

Led by the Wyoming Game and Fish Department, cooperative efforts to breed and raise black-footed ferrets in captivity have been encouraging and successful. In 5 years, the captive population has increased from 18 to over 400 black-footed ferrets. In 1988, the single captive population was split into three separate captive subpopulations to avoid the possibility that a single catastrophic event could wipe out the entire known population. These subpopulations are located at the Wyoming Game and Fish Department's Sybille Facility in Wyoming, the Henry Doorly Zoo in Omaha, Nebraska, and the U.S. National Zoo's Conservation and Research Center in Front Royal, Virginia. Two additional captive subpopulations were established in 1990 (Louisville Zoological Garden in Louisville, Kentucky, and Cheyenne Mountain Zoo in Colorado Springs, Colorado). Two more captive subpopulations were established, one at the Phoenix Zoo in Phoenix, Arizona, and the other at the Toronto Zoo in Toronto, Canada, in 1991 and 1992, respectively, making a total of seven captive subpopulations.

Because a secure population of 200 breeding adults has been achieved, black-footed ferret recovery efforts are now moving into the next phase—reintroduction into the wild.

4. Reintroduction Sites

(a) Site Selection Process

The Service and State wildlife agencies in 11 Western States are identifying potential black-footed ferret reintroduction sites within its historical range. As of this writing, an introduction has occurred in Wyoming, Montana and South Dakota are developing potential reintroduction sites. Other Western States are still in

the process of identifying and evaluating additional potential reintroduction sites. Sites are compared quantitatively and recommended for reintroduction scheduling by an interdisciplinary group assisting the Service known as the Black-Footed Ferret Interstate Coordinating Committee.

The Conata Basin/Badlands site was ranked as the third site to reintroduce black-footed ferrets.

(b) Conata Basin/Badlands Site

The Conata Basin/Badlands site was historically occupied by black-footed ferrets. The latest physical evidence that black-footed ferrets occupied southwestern South Dakota was in 1974. The Conata Basin/Badlands reintroduction sites encompass approximately 17,000 hectares (42,000 acres) of primarily Federal land. Mapping conducted in 1990 indicates that approximately 3,200 hectares (8,000 acres) of prairie dog towns exist at the Conata Basin/Badlands site. Using the method outlined in Biggins et al. (1991), this acreage has a present black-footed ferret family index of about 160.

As noted previously, the only known populations of black-footed ferrets are the reintroduced population in Shirley Basin, Wyoming, and the captive population. The Service has not concluded that the species is extirpated in the wild and requires black-footed ferret surveys to be performed if any action authorized, funded, or carried out by a Federal Agency may affect prairie dog colonies deemed capable of supporting black-footed ferrets. There have been over 500 black-footed ferret surveys involving more than 1,400 person-hours conducted in the Conata Basin/Badlands Reintroduction Area. These surveys have not turned up any evidence of black-footed ferrets. Based on these surveys, it is highly improbable that wild black-footed ferrets exist at the reintroduction site. To the best of the Service's knowledge, any reintroduced population of black-footed ferrets at the Conata Basin/Badlands site will be wholly separate and distinct from other populations of this species.

Reintroduction and black-footed ferret management will occur in a specifically delineated area designated the "Conata Basin/Badlands Reintroduction Area." Specifics on the location and boundaries of the Conata Basin/Badlands Reintroduction Area are provided in the map accompanying the special rule. Current plans are to begin releasing black-footed ferrets into a subportion of the Conata Basin/Badlands Reintroduction Area considered best for release and initial

management. If reintroduction is successful, black-footed ferrets eventually will disperse from the initial reintroduction area. Ferrets may be released into other portions of the Conata Basin/Badlands Reintroduction Area at a later date.

Black-footed ferrets will be released only if biological conditions are suitable and an acceptable management framework has been developed. Reintroduction in the Conata Basin/Badlands Reintroduction Area will be reevaluated if one or more of the following conditions specified in the draft "Cooperative Black-Footed Ferret Management Plan For The Conata Basin/Badlands Area In South Dakota" occur:

(1) Failure to maintain a black-footed ferret habitat rating index of at least 26 (i.e., carrying capacity for 40 adult black-footed ferrets) or a strong indication that such will be the case within 5 years.

(2) Failure to acquire "nonessential experimental population" designation for the site.

(3) A wild black-footed ferret population is discovered within the experimental population area.

(4) A significant number of cases of canine distemper or other diseases determined to be detrimental to black-footed ferrets is documented in any wild mammal in or near the reintroduction area within 6 months of the scheduled reintroduction.

5. Reintroduction Protocol

In general, the reintroduction protocol will involve releasing 20 or more captive-raised black-footed ferrets in the first year of reintroduction, and 50 or more captive-raised black-footed ferrets annually thereafter for 2-4 years. Captive animals selected for release will be as genetically redundant as possible with the gene pool in the captive-breeding population; hence, any loss of released animals is unlikely to have appreciable impacts on existing genetic diversity in the species. Moreover, because breeding black-footed ferrets in captivity is not a problem, any animals lost in the reintroduction effort could be replaced. Once the experimental population becomes established, it may be necessary to release ferrets from other established, reintroduced populations to enhance the genetic diversity of the population.

Initial reintroduction in the Conata Basin/Badlands complex will be used to test and evaluate various release techniques. Present protocol on black-footed ferret releases considers three types: Soft, hard, and preconditioned-hard.

The soft release technique is similar to that used in the initial releases in Wyoming. Release cages are situated at the release site, and black-footed ferrets are maintained in the cages for a few days to acclimate to the surroundings. After a few days, a tunnel (tube) to the ground is opened to allow the ferrets free egress and ingress. Food is supplied even after departure in case the ferrets need to return to a known food supply. Experience with the Wyoming reintroduction in Shirley Basin indicates that once black-footed ferrets were free to leave their cages, there were few returns. In the initial releases cages were above ground, but 1992 releases tested some cages with below-ground chambers.

The preconditioned-hard release refers to releasing black-footed ferrets that have had some acclimation to the wild where they were raised. This technique uses black-footed ferrets whose parents were released into enclosed prairie dog towns and allowed to mate and rear offspring. These offspring, raised in an environment where they had to kill their own food, are released directly into the wild.

The hard release refers to animals from the present captive-reared method being released directly into the wild without an acclimation period or a release cage.

Because of the wilderness designation on the Badlands National Park prohibiting motor vehicles, this area may lend itself to an evaluation of the hard and preconditioned-hard release techniques because the use of cages in this area would present logistical problems.

Black-footed ferrets will be released sequentially over a period of 3-8 weeks, because all animals will not reach the proper age for release at once, and because it will be impossible to intensively monitor all radio-tagged animals if they are released simultaneously. All black-footed ferrets in the experimental reintroduction will be young-of-the-year. Most releases will occur in September and October, when the black-footed ferrets are about 18 weeks of age. Once independent of artificial support, all black-footed ferrets will be managed in a similar manner.

Released animals will be vaccinated against diseases, as appropriate, including canine distemper, if an effective vaccine can be developed for black-footed ferret use. In areas other than within the Badlands National Park, preventative and, where necessary, corrective measures to reduce predation by coyotes (*Canis latrans*), badgers (*Taxidea taxus*), raptors, or other predators will be taken over the short

term without intent to continue over the long term. Habitat conditions will be monitored continually during the reintroduction effort.

All black-footed ferrets released will be marked. A sample of the released black-footed ferrets may be radio-tagged, and their behavior monitored.

Realistically, the Service expects high natural mortality (up to 90 percent) among the released black-footed ferrets in the first year of release. Despite pre-release conditioning, captive-bred animals will be relatively naive in terms of avoiding predators, securing prey, and withstanding environmental rigors. Mortality is expected to be highest within the first month of release. A realistic goal for the first year would be to work toward enabling a few black-footed ferrets to survive at least 1 month after release with perhaps 10 percent of the released animals surviving the winter.

The intensive studies conducted on the wild Meeteetse population during the 1982-1986 period will provide a natural baseline against which the reintroduction effort can be compared to determine how well the reintroduction experiments are proceeding. These baseline data will be supplemented with baseline biological and behavioral data taken from the South Dakota population in the 1960's and 1970's.

If successful, this effort is expected to result in the establishment of a free-ranging population of at least 40 black-footed ferret adults within the Conata Basin/Badlands Reintroduction Area by a target date of 1997 or 1998. The Service will evaluate project progress annually, including sources of mortality. The biological status of the population at this site will be reevaluated within the first 5 years to determine future management needs. This 5-year evaluation will not include an evaluation to determine whether the nonessential experimental designation for the Conata Basin/Badlands population should be changed. It is envisioned that the nonessential experimental designation for this population will not be changed unless the experiment is determined to be a failure (and this rulemaking is terminated) or until the species is determined to be recovered and the species delisted. Once recovery goals for delisting are met, a rule will be prepared to propose delisting.

Status of Reintroduced Population

The Conata Basin/Badlands population of black-footed ferrets is proposed to be designated a nonessential experimental population according to the provisions of section

10(j) of the Act. The basis for this designation is explained below. The term "experimental population" will be discussed first, followed by an explanation of why this experimental population qualifies as "nonessential."

"Experimental population" means the reintroduced population will be treated as a threatened species rather than an endangered species. This designation enables the Service to develop special regulations for management of the population that are less restrictive than the mandatory prohibitions covering endangered species if more management flexibility is needed to make reintroduction compatible with current or planned human activities in the reintroduction area. Per section 4(d) of the Act, these special regulations must be "necessary and advisable" to provide for the conservation of the black-footed ferret. Experimental populations can be determined "essential" or "nonessential."

"Nonessential" experimental populations are not essential to the continued existence of the species. For purposes of section 7(a)(2) of the Act, they are treated as though they were only proposed for listing, except on a national wildlife refuge or NPS land, where they are treated as if they were listed as threatened. This experimental population qualifies as being nonessential to the continued existence of the black-footed ferret because:

1. For the time being, the captive population will be the primary species population. This population has been protected against the threat of extinction from a single catastrophic event through the splitting of the captive population into seven widely separated subpopulations. Hence, loss of the experimental population will not threaten the species survival.

2. For the time being, the primary repository of genetic diversity for the species will be the 200 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population; hence, any loss of reintroduced animals in this experiment will not significantly impact the goal of preserving maximum genetic diversity in the species.

3. All animals lost during the reintroduction attempt can be replaced readily through captive breeding, as demonstrated by the rapid increase in the captive population over the past 4 years. Based on current population dynamics, 100 to 200 juvenile black-footed ferrets will eventually be produced each year in excess of numbers needed to maintain 200 breeding adults in captivity.

The Service intends for this to be the third experimental population of black-footed ferrets, the first being the ongoing effort in Wyoming and the second proposed for north-central Montana. It is important that these populations be developed to help stabilize the species. Prolonged captivity increases the risk of losing important wild survival instincts and reduces the likelihood of successful reintroduction and recovery of the species. Furthermore, the continued breeding success of the captive population will create problems in finding and funding adequate housing for captive black-footed ferrets unless some animals are used for reintroduction efforts.

Virtually all of the habitat in the Conata Basin/Badlands Reintroduction Area is federally owned. The nonessential experimental population designation will facilitate reestablishment of the species in the wild by easing adjacent landowner concerns about possible overly restrictive protective measures that might be taken. This designation will relax the restrictiveness of the regulations that protect each individual of a reintroduced population of endangered species while promoting the conservation of the reintroduced population as a whole. The nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets, such that private landowners may continue their current lifestyles and maintain income.

As successful wild populations are established, they will provide wild-raised black-footed ferrets that can be used to supplement captive releases at other sites. As additional wild populations become established, the captive population will diminish in relative importance, and wild populations will increase in relative importance in the overall species recovery effort.

The Service believes that at least 10 or more wild populations are needed to ensure the immediate survival and downlisting of this species to threatened status (U.S. Fish and Wildlife Service 1988).

Location of Reintroduced Population

Under section 10(j) of the Act, an experimental population must be wholly separate geographically from nonexperimental populations of the same species. Since the last known member of the original Meeteetse black-footed ferret population was captured for inclusion in the captive population in 1987, no other black-footed ferrets have been confirmed anywhere in the

wild. There is a remote chance that black-footed ferrets may still exist in the wild. Survey work for black-footed ferrets in the proposed experimental population area has been extensive because of the interspersed of Federal and tribal lands. Since 1982, the U.S. Forest Service (USFS) has conducted over 760 surveys for black-footed ferrets on more than 20,200 hectares (50,000 acres) of prairie dog colonies in the experimental population area. This included prairie dog complexes on both Federal and neighboring private lands when the complex covered both landownerships.

The NPS has conducted 24 black-footed ferret surveys on over 800 hectares (2,000 acres) of prairie dog colonies since 1988. During the period 1985-1989, the Pine Ridge Indian Reservation undertook a \$6.2 million prairie dog control program and treated over 121,000 hectares (300,000 acres) of prairie dogs on the reservation. All treated acres were surveyed prior to treatment and part of this acreage lies within the experimental population area.

In addition to the actual black-footed ferret surveys, a number of man-hours have been spent on prairie dog colonies in the experimental population area conducting a variety of research and land-management practices. No black-footed ferrets or black-footed ferret signs were observed during these activities. Based on these data, the Service does not believe that the reintroduced population will overlap with any wild population of the species.

Conata Basin/Badlands Population

The Conata Basin/Badlands Reintroduction Area lies on USFS and NPS land in three irregularly shaped areas. The Conata Basin/Badlands Reintroduction Area lies entirely in eastern Pennington County. The experimental population area extends southward into Shannon County and eastward into Jackson County.

The Conata Basin/Badlands experimental population area is that area bounded on the north by Interstate Highway 90 (I-90) beginning where it crosses the Cheyenne River; then east following I-90 to State Highway 73; then south along Highway 73 to Highway 44; then west along Highway 44 to where it meets Bureau of Indian Affairs (BIA) Highway 2 and continues west along BIA Highway 2 to BIA Highway 41; then north along BIA Highway 41 to the Cheyenne River; and then northeast along the Cheyenne River to the point of origin at I-90. While none of these features absolutely preclude black-footed ferret movement,

their deterrent, coupled with the distance from the reintroduction site, makes it highly unlikely that a black-footed ferret would migrate outside the experimental population area. Sufficient black-footed ferret surveys have been conducted in the experimental area over the last 10 years to indicate that no wild black-footed ferret population exists in the area.

A final administrative determination regarding the presence or absence of wild black-footed ferrets in this area will be made by the Service when the final rulemaking is published in the *Federal Register*.

The Conata Basin/Badlands Reintroduction Area will serve as the core recovery area. Prior to the first breeding season following the first releases, all marked black-footed ferrets in the wild in the experimental population area will comprise the nonessential experimental population. During and after the first breeding season, all black-footed ferrets in the wild located east of the Cheyenne River and BIA Highway 41, south of I-90, west of State Highway 73, and north of State Highway 44 and BIA Highway 2 in Pennington, Shannon, and Jackson Counties, South Dakota, will comprise the nonessential experimental population. Reintroduced black-footed ferrets are expected to remain in the Conata Basin/Badlands Reintroduction Area because of the prime prairie dog populations and the limited home range of black-footed ferrets. In the unlikely event that a black-footed ferret leaves the Conata Basin/Badlands Reintroduction Area but stays within the boundaries of the experimental population area, the Service will have the authority to capture the emigrant and place it back into the reintroduction area, translocate it to another reintroduction site, or place it in captivity. However, as a general rule, black-footed ferrets on Federal lands in the experimental zone will not be removed. If a black-footed ferret is found on private land outside the reintroduction area but within the experimental population area, the landowner will be consulted and the black-footed ferret removed if the landowner requests removal.

All black-footed ferrets released in the reintroduction area will be marked. In the unlikely event that unmarked black-footed ferrets are found in the experimental population area before the first breeding season following the first fall release, a concerted effort will be initiated to determine the location of the source population. This search will ascertain whether a wild population exists and determine the need for

appropriate cooperative conservation actions.

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. If an animal is genetically determined to be from the experimental population, it may be returned to the Conata Basin/Badlands Reintroduction Area, held in captivity, or released at another reintroduction site.

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.

Management

The Conata Basin/Badlands reintroduction will be undertaken by the Service, the USFS, and the NPS in accordance with "A Cooperative Management Plan For Black-Footed Ferrets—Conata Basin/Badlands, South Dakota." General reintroduction protocol was discussed under "Background." Additional considerations pertinent to reintroduction are discussed here.

1. Monitoring

Various monitoring efforts are planned over the first 5 years. Prairie dog numbers and distribution will be monitored annually. Monitoring for sylvatic plague will be conducted. There will be monitoring for canine distemper prior to and during reintroduction. Reintroduced black-footed ferrets and their offspring will be monitored every year using spotlight surveys and/or snow tracking surveys done on foot. Some black-footed ferrets may be radio collared, and all will be marked. Assuming some ferrets survive the winter and enter the courtship and breeding season the next year, monitoring of breeding success and recruitment will take priority. Black-footed ferret behavior will be monitored throughout the duration of the effort.

The Service will request that the USFS's and the NPS's reintroduction area supervisor/manager assign a primary black-footed ferret program contact for agencies, private landowners, and public users in the affected area and follow up reports of injured or killed black-footed ferrets and immediately notify the State Supervisor, Ecological Services, Pierre, South

Dakota, (605) 224-8693. The State Supervisor will notify the Service's Law Enforcement Division. Discussions and actions to follow up these notifications and collection and determination of the disposition of any live or dead specimens will follow as soon as possible.

The Service will ensure that the black-footed ferret population and its habitat are monitored annually by cooperating agencies, and any potential of ongoing activities or circumstances, which may present unanticipated hazards to black-footed ferrets, be documented. When appropriate, strategies and contingencies to minimize unnecessary harm to black-footed ferrets should be cooperatively added to the reintroduction and management plan and implemented by the Service and its cooperators.

The Service will assist in ensuring that the agencies and public are reasonably informed about the presence of black-footed ferrets in the affected area via public information, education programs, and media. This information program will address the precautions and care that should be taken in handling sick and injured black-footed ferrets. This will enhance effective treatment and care in handling specimens and, when dead black-footed ferrets are located, will ensure proper preservation of black-footed ferret remains. The finder or investigator will be requested to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

The Service will require that persons locating dead, injured, or sick black-footed ferrets or causing harm or mortality to a black-footed ferret immediately notify the State Supervisor, Fish and Wildlife Service, Ecological Services, Pierre, South Dakota.

2. Disease Considerations

Reintroduction will be reevaluated if a significant number of cases of canine distemper are documented in any wild mammal within 6 months prior to the scheduled reintroduction. Samples from coyotes and badgers will be obtained prior to reintroduction to determine if canine distemper exists in the reintroduction area. Visitors and biologists in the reintroduction area will be discouraged from bringing dogs. Residents and hunters will be encouraged to report sick wildlife. Efforts are continuing to develop an effective canine distemper vaccine for black-footed ferrets.

Although there is no history of sylvatic plague, sampling for sylvatic plague will occur on a regular basis

prior to and during the reintroduction effort.

3. Genetic Considerations

While the ultimate genetic goal of the reintroduction program should be to establish wild reintroduced populations that embody the maximum level of genetic diversity available from the captive population, individuals used for reintroduction will be chosen so that the level of genetic diversity and demographic stability (e.g., stable age and sex structure) of the captive population is not compromised (reduced) by their removal. Therefore, early experimental reintroductions will likely consist of a biased sample of the genetic diversity of the captive gene pool. This bias will be corrected at a later date by selecting and reestablishing breeding black-footed ferrets that theoretically compensate for any genetic biases in earlier releases.

4. Prairie Dog Management

Prairie dog management in the reintroduction area will be in accordance with the USFS's Prairie Dog Management Plan on USFS land and according to the NPS's Resource Management Plan on NPS land. Prairie dog management on private land is at the discretion of the landowners.

5. Mortality

Only animals considered excess to the needs of the captive-breeding goal will be used in this reintroduction attempt. Though efforts will be made to reduce mortality, significant mortality will inevitably occur as captive-raised animals adapt to the wild. Natural mortality from predators, fluctuating food availability, disease, hunting inexperience, etc., will be reduced through predator and prairie dog management, vaccination, supplemental feeding, and prerelease conditioning. Human-caused mortality will be reduced through information and education efforts.

A low level of mortality from incidental take is expected as a result of designing the black-footed ferret reintroduction program to work within the context of traditional land uses in the reintroduction area. Incidental take is any take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity within the experimental population area.

Black-footed ferret injuries or mortalities will be required to be reported immediately to the Service. The Service will investigate each case of injury or mortality. If it is determined that a ferret injury or mortality was unavoidable, unintentional, and did not

result from negligent conduct lacking reasonable due care, then the Service will not seek legal action. Knowing take will be referred to the appropriate authorities for prosecution.

The draft biological opinion prepared on the reintroduction proposal anticipates an incidental take level of 12 percent per year. If this level of incidental take is reached at any time within any year, the Service, in cooperation with USFS and NPS, will conduct an evaluation of incidental take and cooperatively develop and implement with landowners and land users measures to reduce incidental take.

Even if all released animals were to succumb to natural and human-caused mortality factors, this would not threaten the continued existence of the species. As noted earlier, the captive population is the species' primary population and could readily replace any animals lost in the reintroduction effort. This is consistent with the designation of the reintroduced population as a *nonessential* experimental population. The choice for wildlife managers is either to risk excess captive black-footed ferrets in reintroduction efforts in order to reestablish the species in the wild or to keep all black-footed ferrets in relative safety in captivity and forego reestablishing the species in the wild.

6. Special Handling

Under the proposed special regulation promulgated under authority of section 4(d) of the Act that will accompany the experimental population designation, Service employees and agents would be authorized to handle black-footed ferrets for scientific purposes; relocate black-footed ferrets to avoid conflict with human activities; relocate black-footed ferrets within the experimental population area to improve black-footed ferret survival and recovery prospects; relocate black-footed ferrets to future reintroduction sites; aid animals that are sick, injured, or orphaned; and salvage and dispose of dead black-footed ferrets. If a black-footed ferret is deemed to be unfit to remain in the wild, it would be placed in captivity. The Service would determine the disposition of sick, injured, orphaned, or dead black-footed ferrets.

7. Coordination With Landowners and Land-Management Agencies

The proposed action was discussed with potentially affected State and Federal agencies in the proposed reintroduction area. An effort to identify issues and concerns associated with reintroduction into the Conata Basin/

Badlands area was conducted through a Coordinated Resource Management process. A Local Level Committee was selected consisting of Federal Agencies, State agencies, environmental interests, grazing and land-use interests, and the local landowners to discuss concerns with black-footed ferret reintroduction over a period of 16 months.

The Local Level Committee did not reach a consensus on a plan for ferret restoration. However, the issues raised during the six Local Level Committee meetings provided valuable input to the responsible Federal agencies for developing the draft Environmental Impact Statement. The Local Level Committee members provided their individual comments to the Governor of South Dakota who indicated in letters to the Secretaries of Agriculture and Interior his willingness to support a black-footed ferret restoration program provided property rights of private individuals could be protected.

8. Potential for Conflict With Grazing and Recreational Activities

USFS lands in the Conata Basin/Badlands Reintroduction Area are included in grazing allotments. Conflicts between grazing and black-footed ferret management are not anticipated on USFS lands, as current USFS prairie dog management plans have assigned reduced Animal Unit Months to areas that are designated leave areas for prairie dogs. No additional grazing restrictions will be placed on USFS lands with grazing allotments in the Conata Basin/Badlands Reintroduction Area as a result of black-footed ferret reintroduction. No commercial grazing occurs on NPS land.

No additional restrictions will be placed on landowners regarding prairie dog control on private lands in the experimental population area.

Recreational activities currently enjoyed in the Conata Basin/Badlands Reintroduction Area (antelope hunting, prairie dog shooting, rabbit hunting using greyhound dogs, trapping for furbearers or predators, and off-road vehicle recreation) are either unlikely to impact black-footed ferrets or would be managed to avoid or minimize negative impacts to black-footed ferrets.

9. Protection of Black-Footed Ferrets

Recently released black-footed ferrets will need protection from natural sources of mortality (predators, disease, inadequate prey, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through prerelease conditioning, vaccination, predator control, positive management

of prairie dog populations, etc. Human-caused mortality will be minimized by placing black-footed ferrets in an area with low human population density and by working with and educating landowners, Federal land managers, and recreationists to develop means for conducting their existing and planned activities in a manner that is compatible with black-footed ferret recovery and by conferring with developers on proposed actions and providing recommendations that will reduce any likely adverse impacts to black-footed ferrets.

A draft biological opinion was prepared on this action to reintroduce black-footed ferrets into the experimental population area and concluded that this action is not likely to jeopardize listed species. A final biological opinion will be prepared on the final rulemaking.

10. Public Awareness and Cooperation

An extensive sharing of information about the program and the species, via educational efforts targeted toward the public in the region and nationally, will enhance public awareness of this species and its reintroduction.

11. Overall

The designation of the Conata Basin/Badlands population as a nonessential experimental population will encourage local cooperation as a result of the management flexibility allowed under this designation. The Service considers the nonessential experimental population designation and the Conata Basin/Badlands management plan necessary to receive cooperation of adjacent landowners, agencies, citizens, grazing interests, and recreational interests in the area.

Public Comments Solicited

In February 1992, public meetings were held in Wall, South Dakota, and in Sioux Falls, South Dakota, to get public input into a proposal to reintroduce black-footed ferrets into the Conata Basin/Badlands area as a nonessential experimental population. The Service intends that any action resulting from this proposed rulemaking to designate the Conata Basin/Badlands population as a nonessential experimental population be as effective as possible. Therefore, public meetings will be held

following publication of this proposed rule. Comments or recommendations concerning any aspect of this proposed rule are hereby invited to be submitted at these meetings or in writing (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 the comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, has been prepared and is available from the Service offices identified in the ADDRESSES section.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Service has determined that this is not a major rule as determined by Executive Order 12291 and that it would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96-354). The rule, as proposed, does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

References Cited

- Anderson, E., S.C. Forrest, T.W. Clark, and L. Richardson. 1986. Paleobiology, biogeography, and systematics of the black-footed ferret (*Mustela nigripes*) (Audubon and Bachman), 1851. Great Basin Nat. Mem. 8:11-62.
- Anderson, S. 1972. Mammals of Chihuahua—taxonomy and distribution. Bull. Amer. Mus. Nat. Hist. 148(2):280-281.
- Biggins, D., B. Miller, L. Hanebury, B. Oakleaf, A. Farmer, R. Crete, and A. Dood. 1991. A system for evaluating black-footed ferret habitat. Report prepared for the Black-Footed Ferret Interstate Coordinating Committee. U.S. Fish and Wildlife Service, 1300 Blue Spruce Drive, Fort Collins, Colorado. 58 pp.

- Forrest, S.C., T.W. Clark, L. Richardson, and T.M. Campbell III. 1985. Black-footed ferret habitat: Some management and reintroduction considerations. Wyoming Bureau of Land Management, Wildl. Tech. Bull., No. 2. 49 pp.
- Henderson, F.R., P.F. Springer, and R. Adrian. 1969. The black-footed ferret in South Dakota. South Dakota Department of Game, Fish and Parks, Tech. Bull. 4:1-36.
- Messing, H.J. 1986. A late Pleistocene-Holocene fauna of Chihuahua, Mexico. The Southwestern Naturalist. 31(3):277-288.
- U.S. Fish and Wildlife Service. 1988. Black-footed ferret recovery plan. U.S. Fish and Wildlife Service, Denver, Colorado. 154 pp.
- U.S. Fish and Wildlife Service, U.S. Forest Service, and National Park Service. 1993. Draft cooperative management plan for black-footed ferrets, Conata Basin/Badlands complex, South Dakota. U.S. Fish and Wildlife Service, Pierre, South Dakota. 46 pp.

Authors

The principal authors of this rule are Douglas Searls (see FOR FURTHER INFORMATION CONTACT section) and Stephen C. Torbit, Lakewood, Colorado (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

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:

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. It is proposed that § 17.11(h) be amended by revising the existing two entries for the "Ferret, black-footed" under "MAMMALS" to read as shown below:

§ 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 below.	E	1, 3, 443, —	NA	NA
Dododo	U.S.A. (specific portions of WY and SD—see § 17.84(g)(9)).	XN	433, —	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 paragraph (g)(9)(i) and (g)(9)(ii) 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 area 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)(12) 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 that may be useful for scientific study.

(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. 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 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 State 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 State Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224-8693).

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

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to 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 map of Wyoming). 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 Bureau of Indian Affairs (BIA) Highway 2, east of the Cheyenne River and BIA Highway 41, south of Interstate 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 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 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, 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 diseases 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 shall 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.

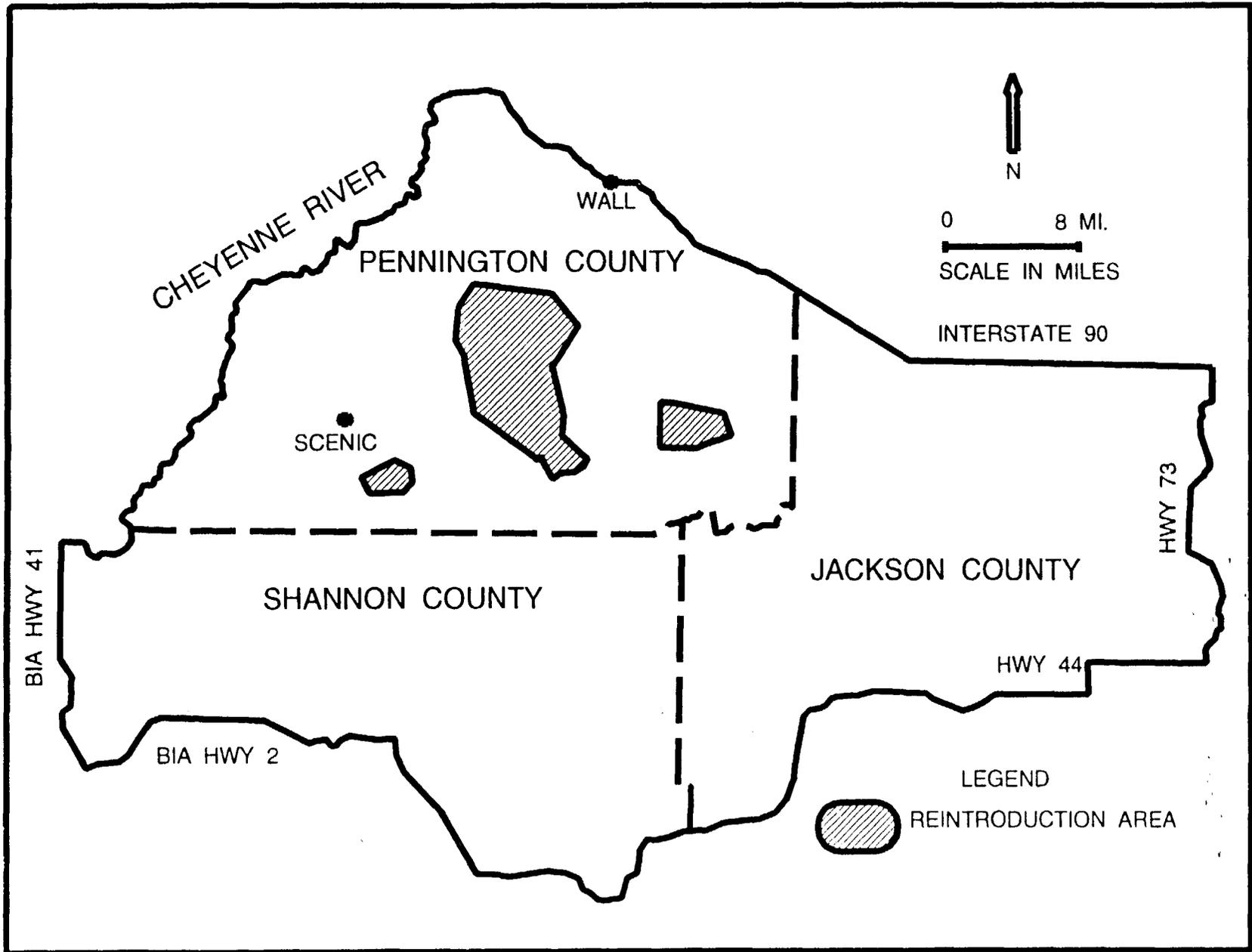
(11) The status of each experimental population will be reevaluated within the first 5 years after the first year of releases of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released on the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described area. 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 that 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 his lands will be permitted to terminate his consent, and the ferrets will be at his request relocated pursuant to paragraph (g)(4)(iii) of this section.

* * * * *

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



Dated: April 8, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife
Service.

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