(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

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Executive Associate Director, Mitigation Directorate.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD99

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service), in cooperation with the Bureau of Land Management (Bureau), the Colorado Division of Wildlife (Colorado Division), and the Utah Division of Wildlife Resources (Utah Division) proposes to introduce black-footed ferrets (*Mustela nigripes*) into northwestern Colorado and northeastern Utah. The purposes of this reintroduction are to implement the recovery action of the species and to evaluate release techniques. Surplus captive-raised black-footed ferrets will be released in 1997, or later and additional animals will be released annually for several years thereafter or until a self-sustaining population is established. If the northwestern Colorado/northeastern Utah program is successful, a wild population could be established within about 5 years. The northwestern Colorado/northeastern Utah population would be established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). This population would be managed under the provisions of an accompanying special rule.

DATES: Comments from all interested parties must be received by June 30, 1997.

ADDRESSES: Comments and materials concerning this proposal in northwestern Colorado or Wyoming should be sent to Mr. LeRoy Carlson, U.S. Fish and Wildlife Service, Ecological Services Office, 730 Simms Street, Room 290, Golden, Colorado, 80401. Comments and materials concerning this proposal in northeastern Utah should be sent to Mr. Robert Williams, U.S. Fish and Wildlife Service, Utah Field Office, 145 East 1300 South, Suite 404, Salt Lake City, Utah, 84115. All comments and materials received will be available for public inspection, by appointment, during normal business hours at each of the above addresses, as well as at the Service's Ecological Service's office at 764 Horizon Drive, South Annex A, Grand Junction, Colorado, 81506–3946.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Leachman at the Grand Junction address above, telephone: 970/243–2778; or Ms. Marilet A. Zablan at the Salt Lake City address above, telephone: 801/524–5001.

SUPPLEMENTARY INFORMATION:

Background

1. Legislative

The Endangered Species Act of 1973, as amended (Act) was changed significantly when subsection 10(j) was added to allow for the designation of specific populations of listed species as ''experimental populations.'' Previously, the U.S. Fish and Wildlife Service (Service) was authorized to reintroduce populations into unoccupied portions of a listed species' historical range when it would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about restrictions and prohibitions being placed on Federal and private activities. Under section 10(j), the Service can designate reintroduced populations established outside the species' current range but within its historical range as ''experimental.'' This designation allows the Service flexibility in managing reintroduced populations of endangered species. Experimental populations are treated as threatened species under the Act, affording the Service greater discretion in devising management programs and special regulations for listed species. Section 4(d) of the Act allows the Service to adopt whatever regulations are necessary to provide for the conservation of a threatened species. These regulations are usually less restrictive than those for endangered species and are more compatible with routine human activities in the reintroduction area.

The Service can designate experimental populations to be either essential or nonessential and based on the best available information, determine whether such populations are essential to the continued existence of the species. Nonessential experimental populations located outside of the National Wildlife Refuge System or National Park System are treated, under section 7 of the Act, as if they were species proposed for listing. Thus, only two provisions of section 7 apply to experimental populations found outside the above two systems: 1) section 7(a)(1)—which requires all Federal agencies to use their authority to conserve listed species; and 2) section 7(a)(4)—which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species throughout its range. Activities undertaken on private lands are not affected by section 7 of the Act unless they are authorized, funded, or carried out by a Federal agency.

However, pursuant to section 7(a)(2), specimens used to establish an experimental population may be removed from a donor population, provided their removal is not likely to jeopardize the continued existence of the species and that appropriate permits have been issued in accordance with 50 CFR 17.22.

2. Biological

The black-footed ferret has a black facemask, black legs, and a black-tipped tail; is nearly 60 centimeters (2 feet) in length and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret species native to North America. The historical range of the species, based on specimen collections, 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. Prehistoric evidence indicates that ferrets once occurred from the Yukon Territory in Canada to New Mexico and Texas (Anderson *et al.* 1986).

Black-footed ferrets depend almost exclusively on prairie dog colonies for food, shelter, and denning (Henderson *et al.* 1969, Forrest *et al.* 1985). The range of the ferret coincides with that of prairie dogs (Anderson *et al.* 1986), and ferrets with young have never been sighted outside of prairie dog colonies. Black-footed ferrets have been reported from black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) towns (Anderson *et al.* 1986).

In the last century, widespread poisoning of prairie dogs, the conversion of native prairie to farmlands, and sylvatic plague have drastically reduced prairie dog numbers;

particularly in the southern portions of their range. This severe reduction in prairie dog numbers could have caused the near extinction of the black-footed ferret, although other factors such as secondary poisoning from prairie dog toxicants and canine distemper could also have caused this decline.

In 1964, a population of ferrets was discovered in South Dakota, but disappeared from the wild in 1974. The species was then thought to be extinct until in 1981 when a small population was discovered near Meeteetse, Wyoming. In 1985–1986, the Meeteetse population was drastically reduced in numbers due to an outbreak of canine distemper. In 1986–87, 18 animals were taken into captivity to serve as founders for a captive propagation program. Today, the captive population exists of approximately 400 animals held at 7 separate facilities.

3. Recovery Efforts

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

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

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

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

When this national objective is achieved, the black-footed ferret will then be downlisted to threatened status, assuming that the extinction rate of established populations remains at or below the rate at which new populations are established. Cooperative efforts to rear black-footed ferrets in captivity have been successful and in 8 years, the captive population has increased from 18 to over 400 animals. In 1988, the single captive population was divided into three subpopulations to avoid the possibility of a catastrophic event eliminating the entire captive population. Presently, there are 7 separate subpopulations in captivity. Recovery efforts are now focusing on the reintroduction of animals back into the wild since a captive population of 240 breeding adults has been achieved.

4. Reintroduction Sites

The Service, in cooperation with 11 western State wildlife agencies, identified potential ferret reintroduction sites within the historical range of the species. The Service selects these reintroduction sites in coordination with the Black Footed Ferret Interstate Coordinating Committee. The Northwestern Colorado/Northeastern Utah Black-footed Ferret Experimental Population Area (ExPA), the site selected for the fifth release of ferrets, is located in portions of Rio Blanco and Moffat counties, Colorado; Sweetwater County, Wyoming; and Uintah and Duchesne counties, Utah.

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

The ExPA is made up of a complex of white-tailed prairie dog colonies that extend from southwestern Wyoming, south to Elk Springs, Colorado, and west to Vernal, Utah. The dispersal of ferrets outside the proposed experimental area is highly unlikely due to its large size (3,218,907 hectares or 7,953,920 acres), the absence of suitable surrounding habitat (lack of prairie dog towns), and the presence of vegetative and topographical barriers. There are approximately 69,834 hectares (172,560 acres) of white-tailed prairie dog colonies in the ExPA that could potentially support at least 139 families of ferrets.

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

a. Northwestern Colorado Experimental Population Sub-Area

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

The Northwestern Colorado Experimental Population Sub-Area includes lands in northwestern Colorado and southwestern Wyoming and this sub-area was historically occupied by black-footed ferrets. Recently, numerous surveys have been conducted in this area without locating ferrets. The Wyoming Black-footed Ferret Advisory Team endorses the experimental population area as defined in this rule (Bob Luce, Wyoming Game and Fish Department, *in litt.* 1993). The Colorado sub-area is about 12,186 kilometers (4,705 square miles) in size, and consists of approximately 49.5 percent Bureau lands, 38 percent private lands, 6 percent State school lands, 5 percent National Park Service lands, 1 percent Colorado Division of Wildlife lands, and 0.5 percent National Wildlife Refuge lands. Prairie dog towns cover approximately 65,620 hectares (162,146 acres) of this sub-area and they occur primarily on Bureau lands that are administered by the Little Snake Resource Area (Little Snake), the White River Resource Area (White River), and the Green River Resource Area (Green River).

b. Northeastern Utah Experimental Population Sub-Area

The Northeastern Utah Experimental Population Sub-Area, containing 2,001,101 hectares (4,942,720 acres) of habitat, includes all of Uintah and Duchesne counties in Utah. This sub-area lies within the historic range of the species. The Utah Black-footed Ferret Working Group selected Coyote Basin as the preferred reintroduction site because of its prairie dog numbers and their distribution. The Bureau and the Utah School and Institutional Trust Lands Administration (Utah Trust) manage most of the lands in Coyote Basin.

Black-footed ferrets will be released in the management areas only if certain

biological conditions are suitable, and meet the management framework that has been developed with the Colorado Division of Wildlife, the Utah Division of Wildlife Resources, the Service, and private landowners. The Service will reevaluate this reintroduction effort should any of the following conditions occur:

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

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

(c) A wild ferret population is found within the ExPA following the initial reintroduction and prior to the first breeding season.

(d) An active case of canine distemper or any other contagious disease is discovered in any animal on or near the reintroduction area six months prior to the scheduled release.

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

(f) Funding is not available to implement the reintroduction phase of the project in northwestern Colorado/northeastern Utah.

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

5. Reintroduction Protocol

The reintroduction protocol calls for the release of 20 or more captive ferrets in the first year of the program, and up to 50 or more animals annually for the following 2 to 4 years. Released animals must be excess to the needs for the continuation of the captive breeding program and any loss of animals will not affect the overall genetic diversity of the captive population. Since captive breeding of ferrets will continue, any animal lost in the reintroduction effort can be replaced. In future releases, it may be necessary to obtain ferrets from established reintroduced populations in order to enhance the genetic diversity of future released animals.

Two methods (hard and soft release) have been successfully employed for releasing captive ferrets into the wild. A hard release is when animals which are not conditioned are released into the wild a short time after arrival. A soft release is when the animals are supplied food, shelter, and protection from predators for an extended period of time before their release. In both methods, ferrets are released from cages above ground with access to underground nest boxes. Captive-bred ferrets are preconditioned by placing them in large pens that enclose a portion of a prairie-dog colony. It may also be necessary to surround each above-ground cage with an electric fence to prevent damage from livestock or access by predators. The Service, along with its cooperators (collectively referred to as the Service), will decide which reintroduction method is best suited for the release. The Service is currently developing a specific release protocol that will become a condition of the endangered species permit authorizing the northwestern Colorado/northeastern Utah release. To enhance reintroduction success, pregnant females will be allowed to whelp on site and after acclimation, the family groups will then be released into the wild.

Released animals will be vaccinated against certain diseases (including canine distemper) and measures will be taken to reduce predation from coyotes, badgers, and raptors. All released ferrets will be marked (with passive integrated transponder tags (PIT tags)) and several animals will be radio-collared to monitor their behavior and movements. Other monitoring will include spotlight surveys, snow tracking surveys, and visual surveillance.

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

The goal of the Colorado/Utah reintroduction is to establish a free-ranging population of at least 30 adults within the ExPA after five years of release. At the release site, the Service will monitor population demographics and all sources of mortality on an annual basis (for up to five years). The Service does not expect to change the nonessential designation for this experimental population unless it deems this reintroduction a failure or the black-footed ferret is fully recovered in the wild.

6. Status of Reintroduced Population

This reintroduction is determined to be nonessential to the continued existence of the species for the following reasons:

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

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

(c) Any animals lost during this reintroduction attempt will be replaced through captive breeding. Juvenile ferrets are being produced in excess of the numbers needed to maintain the breeding population in captivity.

This will be the fifth release of ferrets back into the wild. The other reintroductions were in Wyoming, southwestern South Dakota, north-central Montana, and Arizona. These reintroductions are necessary for the recovery of the species so it can eventually be downlisted. The nonessential experimental population designation alleviates landowner concerns about possible land use restrictions that would otherwise apply under the provisions of the Act. This nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners can continue.

7. Location of Reintroduced Population

Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. Since 1991, extensive surveys have been conducted for black-footed ferrets at the proposed relocation sites. No ferrets or their sign (skulls, feces, trenches) were located. Therefore, the Service has concluded that wild ferrets are no longer present in the ExPA, and that this reintroduction will not overlap with any wild population.

Before the first breeding season, the nonessential experimental population will include all marked ferrets in the ExPA. After the first breeding season, the nonessential experimental population will include all ferrets located in the ExPA, including any unmarked offspring. All released ferrets and their offspring should remain in the ExPA because of prime prairie dog colonies and the surrounding geographic barriers. The Service will capture any ferret that leaves the ExPA and will either return it to the release site, translocate it to another site, place it in captivity, or leave it. If a ferret leaves the reintroduction area (but remains within the ExPA) and takes up residence on private property, the landowner can request its removal. If the landowner has no objection to its presence on his/her property, the animal will not be removed.

All released ferrets will be marked and the Service will attempt to determine the source of any unmarked animals found at the release site. Any ferret found outside the ExPA will be considered endangered, and may be captured for genetic testing. If the animal is genetically unrelated to members of the experimental population (possibly a wild animal), it will be retained for use in the captive breeding program. Under existing contingency plans, up to nine such ferrets can be captured for the captive population. If a landowner outside the experimental population area wishes black footed ferrets to remain on his/her property, the Service will develop a conservation agreement in cooperation with the landowner.

8. Management

This reintroduction will be undertaken in cooperation with the Bureau, the Colorado Division of Wildlife, and the Utah Division of Wildlife Resources and in accordance with the Cooperative Management Plan for Black-footed Ferrets-Little Snake Management Area and the Cooperative Plan for the Reintroduction and Management of Black-footed Ferrets in Coyote Basin, Uintah County, Utah. Copies of the respective plans can be obtained from the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado, 81625, and the Regional Manager, Utah Division of Wildlife Resources, Northern Region, 152 East 100 North, Vernal, Utah 84078.

Additional considerations pertinent to the reintroduction are discussed below:

a. Monitoring

Several monitoring efforts are planned during the first 5 years of the program. The Service will monitor prairie dog distribution and numbers, and the occurrence of sylvatic plague annually. Testing for canine distemper will be conducted on an annual basis starting prior to the release. Reintroduced ferrets and their offspring will be surveyed annually by use of spotlight surveys, snowtracking, and other visual surveys. Several ferrets will be radio-collared for more intensive tracking. Surveys will be conducted to monitor breeding success and juvenile survival rates.

Through public outreach programs, the Service will inform the public and other State and Federal agencies about the presence of ferrets in the ExPA and the handling of any sick or injured animals. The Service has requested that the Colorado Division of Wildlife and the Utah Division of Wildlife Resources serve as the primary contacts for governmental agencies and private landowners whose jurisdictions are within the reintroduction area. These agencies will also serve as the primary contacts to report any injured or dead ferrets. All reports of any injured or dead animals should be referred to the appropriate Service Field Supervisor in each respective State (see **ADDRESSES** section). The Field Supervisor will also notify the Service's Division of Law Enforcement concerning any dead or injured ferret. Any ferret carcass found should not be disturbed so the cause of death may be determined.

b. Disease Considerations

Should canine distemper be reported in any mammal on or near the reintroduction site, the Service will reevaluate the reintroduction program. At least 10 coyotes (and possibly a few badgers) from the release site will be tested for canine distemper before ferrets are released. The Service will attempt to limit the spread of distemper by discouraging people from bringing unvaccinated pets into the ExPA. People will be requested to report any dead mammal or any unusual behavior observed in animals found within the area. Efforts are underway to develop an effective canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague within prairie dog towns will take place before and during the reintroduction efforts.

c. Genetic Considerations

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

d. Prairie Dog Management

The Service will work with landowners and Federal and State agencies in the ExPA to resolve any management conflicts in order to: (1) maintain sufficient prairie dog colonies to support up to 30 adult black-footed ferrets and (2) to maintain at least 90 percent of the prairie dog habitat that was available in 1993.

e. Mortality

Only animals which are not needed for the captive breeding program will be used for this reintroduction. Predator control, prairie dog management, vaccination, supplemental feeding, and/or improved release methods should partially offset any natural mortality. Public education will help reduce potential sources of human-related mortality.

The Act defines ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. A person may take a ferret within the ExPA provided that any resulting injury or mortality to a ferret is unintentional, and was not due to negligence or malicious conduct. Such conduct will not be considered ''knowingly taking'' and the Service will not pursue any legal recourse. However, knowingly taking a ferret will be referred to the appropriate authorities for prosecution. The Service requests that any take, whether incidental or not, of a black-footed ferret be reported immediately to the Service's Field Supervisor (see **ADDRESSES** section). The Service expects a low level of incidental take since the reintroduction is compatible with traditional land use practices in the area.

It is anticipated that annual incidental take will be about 12 percent of all reintroduced ferrets and their offspring. If this level is exceeded in any given year, the Service will develop and implement measures to reduce the level of incidental take.

f. Special Handling

Under special regulations that apply to experimental populations, Service employees and agents acting on their behalf may handle black-footed ferrets for scientific purposes, relocation efforts to avoid conflict with human activities, recovery efforts, relocation to other reintroductions sites, and in aiding sick, injured, and orphaned animals, or salvaging dead animals. Any ferret not fit to remain in the wild will be placed in captivity. The Service will also determine disposition of all sick, injured, orphaned, and dead animals.

g. Coordination With Landowners and Land Managers

The Service and its cooperators tried to identify all major issues associated with this reintroduction before the development of the proposed rule. This proposed reintroduction was discussed with State agencies and landowners within the release site. They indicated their support for the project as long as—(1) the animals released in the ExPA are designated as a nonessential experimental population, and (2) that land use activities in the ExPA are not restrained without the knowledge and consent of the landowners.

h. Potential for Conflict With Oil, Gas and Mineral Development Activities

Development of minerals, oil and gas in the Little Snake Resource Area, could reduce available ferret habitat by approximately 3 percent (890 hectares, or 2,200 acres), if oversight is not provided. Within Coyote Basin in Utah, mineral extraction is the primary land use. However, the development of existing oil, gas, and mineral resources will not jeopardize the establishment of ferrets in the release area. The Service will work with exploration companies to avoid any adverse impacts to ferrets and their habitat, should any new oil or gas fields be developed in the Coyote Basin. The Service encourages land management agencies and landowners within the management area to adopt the Coyote Basin Management Plan mineral extraction guidelines. Additionally, the Service is currently developing new oil and gas guidelines for any future leases that will be issued in existing prairie dog ecosystems now being managed for black-footed ferret recovery.

i. Potential for Conflict With Grazing and Recreational Activities

The Service does not expect conflicts between livestock grazing and ferret management. As a result of this reintroduction, no additional restrictions will be placed on grazing or prairie dog control on private lands within the ExPA . If proposed prairie dog control on private or State trust lands locally affect ferret prey base within a specific area, State and Federal biologists will determine whether ferrets could be impacted. Big game hunting, prairie dog shooting, and trapping of furbearers or predators on the ExPA are not expected to adversely affect ferrets. If private activities impede the establishment of ferrets, the Service will work closely with landowners to develop appropriate procedures to minimize the conflicts.

j. Protection of Black-footed Ferrets

Ferrets will be released in a manner that provides short-term protection from natural (predators, disease, lack of prey base) and human related sources of mortality. Improved release methods, vaccination, predator control, and the management of prairie dog populations should help reduce natural mortality. Human sources of mortality will be minimized by releasing ferrets in areas with little human activity and development. The Service will work with landowners to help avoid certain activities that could impair ferret recovery.

k. Public Awareness and Cooperation

Educational efforts will be undertaken to inform the general public of the importance of this reintroduction project in the overall recovery of the black-footed ferret. This program should increase public awareness of the significance of the ExPA program and the habitats upon which ferrets depend.

l. Overall

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

Public Comments Solicited

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

Public Hearings

The Act provides for at least one public hearing, if requested, within 45 days from the date of publication of the proposal. Such requests for a hearing must be made in writing and addressed to the appropriate Field Supervisor for each State (see **ADDRESSES** section).

National Environmental Policy Act

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

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

Reintroduction of ferrets as proposed in this rulemaking would not have any significant effect on recreational activities in the experimental area. No closures of roads, trails or other recreational areas are expected, and only voluntary reductions in prairie dog shooting activities are expected. Because present regulations require that oil, gas and other mineral operations within the effected area comply with restrictions associated with wildlife, special status plant species, and livestock lambing grounds, ferret reintroduction is not expected to cause any significant change in these activities. Current mining projects would proceed as planned and any conflicts with future projects would be worked out in the early planning stages. No changes in current BLM grazing allotments are expected as a result of ferret reintroduction, and only temporary grazing restrictions within one quarter mile of release cages or other equipment are expected. Because only voluntary participation in ferret reintroduction by private landowners is proposed, this rulemaking is not expected to have any significant impact on private activities in the affected area. Due to the minimal effects anticipated, this rulemaking is not subject to review by the Office of Management and Budget under Executive Order 12866. Similarly, review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions, because no substantial changes in economic activity are expected. Because this rulemaking does not require that any action be taken by local or state governments or private entities, the Service has determined and certifies pursuant to the Unfunded Mandates 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.

References Cited

Anderson E., S.C. Forrest, T.W. Clark, and L. Richardson. 1986. Paleobiology, biogeography, and systematics of the black-footed ferret *Mustela nigripes* (Audubon and Bachman), 1851. Great Basin Naturalist Memoirs 8:11–62.

Forrest, S.C., T.W. Clark, L. Richardson, and T.M. Campbell III. 1985. Black-footed ferret habitat: some management and reintroduction considerations. Wyoming Bureau of Land Management, Wildlife Technical Bulletin, No. 2. 49 pages.

Henderson, F.R., P.F. Springer, and R. Adrian. 1969. The black-footed ferret in South Dakota. South Dakota Department of Game, Fish and Parks, Technical Bulletin 4:1–36.

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

Authors

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

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

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

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

2. Section 17.11(h) is amended by revising the existing entry for the ''Ferret, black-footed'' under **Mammals** to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
MAMMALS							
*	*	*	*	*	*		*
Ferret, black-footed	*Mustela nigripes*	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population.	E	1, 3, 343,_____	NA	NA
Do	.....do	.....do	U.S.A. [specific portions of WY, SD, MT, AZ, CO, and UT, see 17.84(g)(9)].	XN	433,_____	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 population identified in paragraph (g)(9)(i), (g)(9)(ii), and (g)(9)(iii), and (g)(9)(iv) of this section are nonessential experimental populations. Each of these populations will be managed in accordance with their respective management plans.

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

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

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

(i) For scientific purposes;

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

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

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

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

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

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

(5) A person may take a ferret in the wild within the experimental population areas, provided such take is incidental to and not the purpose of, the carrying out of an otherwise lawful activity and if such ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct. Such conduct will not be considered ''knowing take'' for the purposes of this regulation, and the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

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

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

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

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

(iv) Such taking in the Aubrey Valley experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Phoenix, Arizona (telephone: 602/640–2720).

(v) Such taking in the northwestern Colorado/northeastern Utah experimental population area must be reported to the appropriate Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Golden, Colorado (telephone: 303/231–5280), or Salt Lake City, Utah (telephone: 801/524–5001).

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

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to 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 for Wyoming and will be considered the core recovery area for this species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany counties (see Wyoming map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will comprise the nonessential experimental population, thereafter.

(ii) The Conata Basin/Badlands Reintroduction Area is shown on the attached map for South Dakota and will be considered the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area will be north of State Highway 44 and BIA Highway 2 east of the Cheyenne River and BIA Highway 41, south of I–90, and west of State Highway 73 within Pennington, Shannon, and Jackson counties, South Dakota. Any black-footed ferret found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferret in the Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following actions if necessary:

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

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

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

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

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

(iv) The Aubrey Valley Experimental Population Area is shown on the attached map for Arizona and will be considered the core recovery area for this species in northwestern Arizona. The boundary of the nonessential experimental population area will be those parts of Coconino, Mohave, and Yavapai counties that include the Aubrey Valley west of the Aubrey Cliffs, starting from Chino Point, north along the crest of the Aubrey cliffs to the Supai Road (State Route 18), southwest along the Supai Road to township 26 North, then west to Range 11 west, then south to the Hualapai Indian Reservation boundary, then east and northeast along the Hualapai Indian Reservation boundary to U.S. Highway Route 66; then southeast along Route 66 for approximately 6 km (2.3 miles) to a point intercepting the east boundary of Section 27, Township 25 North, Range 9 West; then south along a line to where the Atchison-Topeka Railroad enters Yampa Divide Canyon; then southeast along the Atchison-Topeka Railroad alignment to the intersection of the Range 9 West/Range 8 West boundary; then south to the SE corner of Section 12, Township 24 North, Range 9 West; then southeast to SE corner Section 20, Township 24 West, Range 8 West; then south to the SE corner Section 29, Township 24 North, Range 8 West; then southeast to the half section point on the east boundary line of Section 33, Township 24 North, Range 8 West; then northeast to the SE corner of Section 27, Township 24 North, Range 8 West; then southeast to the SE corner Section 35, Township 24 North, Range 8 West; then

southeast to the half section point on the east boundary line of Section 12, Township 23 North, Range 8 West; then southeast to the SE corner of Section 8, Township 23 North, Range 7 West; then southeast to the SE corner of Section 16, Township 23 North, Range 7 West; then east to the half section point of the north boundary line of Section 14, Township 23 North, Range 7 West; then south to the half section point on the north boundary line of Section 26, Township 23 North, Range 7 West; then east along section line to route 66; then southeast along route 66 to the point of origin at Chino Point. Any black-footed ferrets found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of ferrets into the reintroduction area. A black-footed ferret occurring outside the experimental area in Arizona would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following action if necessary:

(A) If an animal is determined to have originated from the experimental population, either genetically or through tagging devices, it may be returned to the reintroduction area or to a captive facility. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

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

(v) The Little Snake Black-footed Ferret Management Area in Colorado and the Coyote Basin Black-footed Ferret Primary Management Zone in Utah will be considered the initial recovery sites for this species within the Northwestern Colorado/Northeastern Utah Experimental Population Area (see Colorado/Utah map). The boundaries of the nonessential Experimental Population Area will be all of Moffat and Rio Blanco counties in Colorado west of Colorado State Highway 13; all of Uintah and Duchesne counties in Utah; and in Sweetwater County, Wyoming, the line between Range 96 and 97 West (eastern edge), Range 102 and 103 West (western edge), and Township 14 and 15 North (northern edge). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of release will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases of ferrets into the reintroduction area will comprise the nonessential experimental population thereafter. A black-footed ferret occurring outside the Experimental Population Area 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 would 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 used in the captive breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(10) The reintroduced populations will be continually monitored during the life of the project, including the use of radio telemetry and other remote sensing devices, as appropriate. All released animals will be vaccinated against 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 may be released back to its appropriate reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) The status of the experimental population will be reevaluated within the first 5 years after the first year of release of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released into the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described areas. Once recovery goals are met for delisting the species, a rule will be proposed to address delisting.

(12) This 5-year evaluation will not include a reevaluation of the ''nonessential experimental'' designation for these populations. The Service does not foresee any likely situation which would call for altering the nonessential experimental status of any population. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black-footed ferrets on their lands will be permitted to terminate their consent, and at their request, the ferrets will be relocated pursuant to paragraph (g)(4)(iii) of this section.

* * * * *

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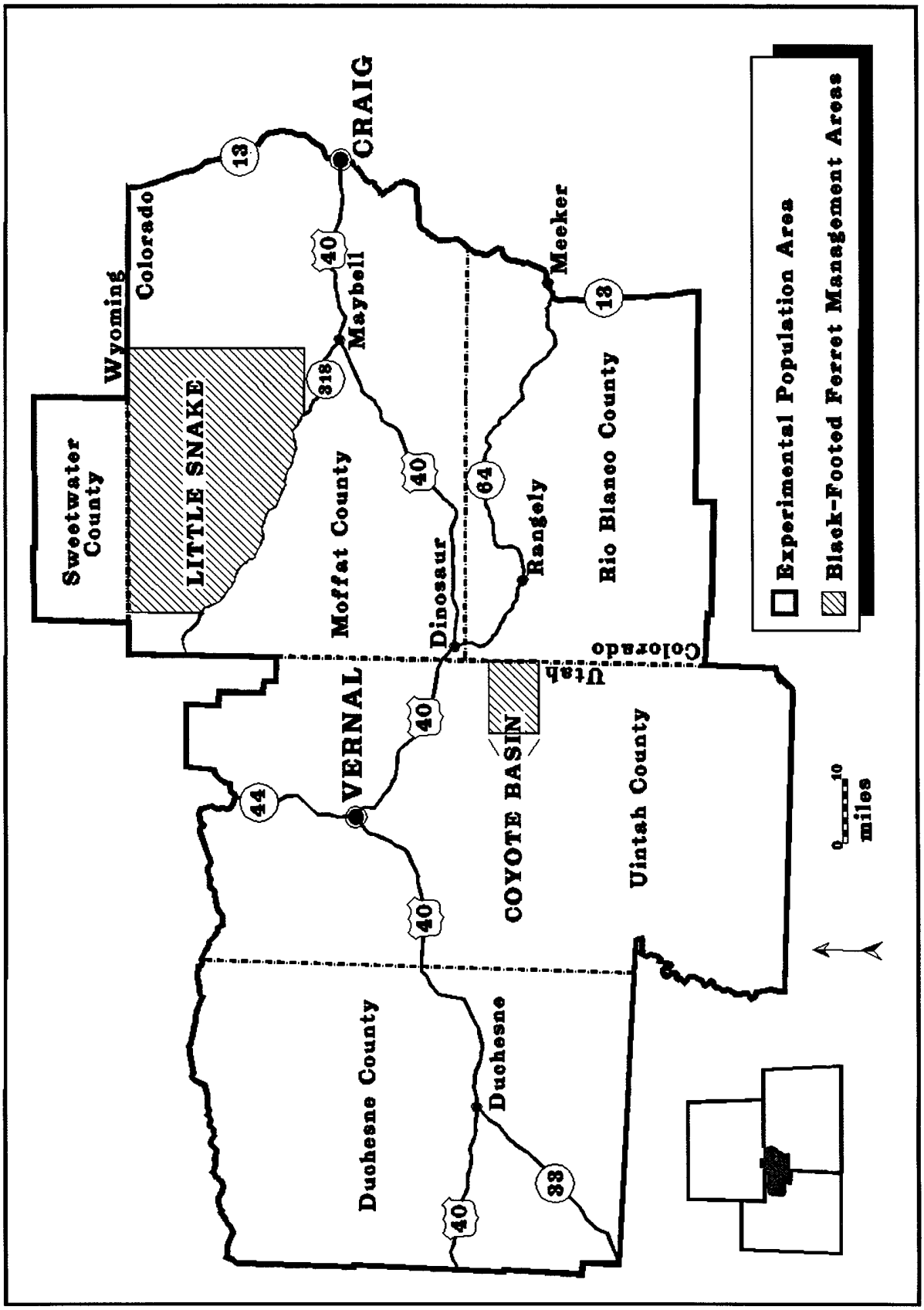
§ 17.84 [Amended]

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



Dated: March 23, 1997.

Don Barry,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 97–10978 Filed 4–28–97; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 041897B]

RIN 0648–AH52

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 9

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before June 30, 1997.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 9, which includes a regulatory impact review, an initial regulatory flexibility analysis, a social impact analysis, and a supplemental final environmental impact statement, and of a minority report submitted by three Council members, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Phone: 813–228–2815; Fax: 813-225–7015.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan or amendment to the Secretary of Commerce for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Amendment 9 would: (1) Require, with limited exceptions, the use of certified bycatch reduction devices (BRDs) in shrimp trawls in the exclusive economic zone of the Gulf of Mexico shoreward of the 100–fathom (183–m) depth contour west of 85°30' W. long.; (2) set the red snapper bycatch mortality reduction criterion for NMFS' certification of BRDs at 44 percent; and (3) establish an FMP framework rulemaking procedure for modifying the bycatch reduction criterion, establishing and modifying the BRD testing protocol, and certifying BRDs and their specifications.

The Council's stated purpose for Amendment 9 is to reduce the unwanted bycatch of juvenile red snapper in the Gulf of Mexico shrimp trawl fishery and, to the extent practicable, not adversely affect this fishery. Amendment 9 indicates that its major goal is to achieve a 50 percent reduction in juvenile red snapper bycatch mortality in shrimp trawls compared to a defined baseline period. The red snapper stock in the Gulf of Mexico is considered overfished and is under a long-term rebuilding program established by the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. A significant reduction in the shrimp fishery bycatch mortality of red snapper is considered necessary to ensure recovery of the red snapper resource consistent with its established stock rebuilding schedule.

Three Council members submitted a minority report opposing Amendment 9. The minority report reads, in part, as follows:

> We believe that the Council's action to approve Amendment 9 did not consider the best available data, and the Council made serious procedural and legal errors in proceeding with the approval of Amendment 9. We also contend that Amendment 9 is not needed for the recovery of the red snapper stocks, the shrimp industry is being unfairly required to bear a regulatory burden, and the economic impacts of requiring bycatch reduction devices in shrimp trawls will be severe to both the industry and the United States.

The contentions of the three Council members are detailed in the minority report, which is available from the Council (see **ADDRESSES**).

A proposed rule to implement Amendment 9 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 9, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish it in the **Federal Register** for public review and comment.

Comments received by June 30, 1997, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 9. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on Amendment 9 or on the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 23, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–10943 Filed 4–28–97; 8:45 am]

BILLING CODE 3510–22–F