

Summary of Public Comments and Responses

This appendix summarizes and responds to the comments received on the proposed statewide nonessential experimental population designation for the black-footed ferret (ferret) in Wyoming under the 10(j) provision of the Act and the draft Environmental Assessment (EA). The 60-day public comment period for the EA and proposed rule occurred from April 10, 2015, through June 09, 2015.

Number and Type of Comments Received

The U.S. Fish and Wildlife Service (Service) received a total of 31 individual written comments during the public comment period. The Service's response to these comments, in summarized form, is addressed below. New information was not offered. The majority of comments requested clarification on the reintroduction process and potential land use restrictions.

All substantive information provided during comment period has either been incorporated directly into this final determination or addressed below. Substantive comments received from the public during the comment period have either been addressed in the FONSI or incorporated directly into the EA and/or draft final rule as appropriate.

Comments simply in favor of or against the preferred alternative or other alternatives, or those that only agree or disagree with policies without supporting information, are not considered substantive.

Comment #1: The Service and/or Wyoming Game and Fish Department (WGFD) should be required to remove any black-footed ferret when requested by landowners.

Our Response: Under 50 CFR 17.84(g)(12), the following will apply to any reintroduced ferret populations under this 10(j) rule:

“We will not include a reevaluation of the “nonessential experimental” designation for these populations during our review of the initial five year reintroduction program. We do not foresee any likely situation justifying alteration of the nonessential experimental status of these populations. 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 may rescind their consent, and at their request, we will relocate the ferrets pursuant to paragraph (g)(4)(iii) of this section.”

Comment #2: The Service proposes a prairie dog population nearly three and a half times larger than that at the reintroduction site in Conata Basin, South Dakota (p. 26 of draft EA). That introduction has not been without massive environmental impact.

Our Response: The 494,000 ac (200,000 ha) of prairie dog occupied habitat referred to in the draft EA (p.26) is the estimated acreage needed to support ferret recovery rangewide. This 494,000 ac (200,000 ha) of prairie dog occupied habitat is not exclusive to Wyoming but will be managed at multiple reintroduction sites located in at least 9 of 12 States within the historical

range of the species (USFWS 2013a, pp. 61–62). States are encouraged to contribute to recovery goals in proportion to the amount of historical ferret habitat (i.e., prairie dog colonies) that once occurred on these lands. As stated in the Recovery Plan, Wyoming’s portion of the rangewide habitat goal for delisting is 70,000 ac (28,000 ha) (USFWS 2013a, p. 77). We reworded the language in the EA to make it clear that Wyoming’s contribution to ferret recovery will be only a small portion of the rangewide recovery goal.

Comment #3: The EA overestimates the amount of prairie dog habitat in Wyoming. Specifically the Service claims there to be nearly 3.1 million acres of prairie dog occupied habitat in Wyoming, but previously (in USFWS 2009) has stated that the prairie dog occupies 2.4 million acres across its entire range.

Our Response: The 2.4 million acres of occupied habitat estimated in USFWS 2009 is a rangewide estimate for black-tailed prairie dogs only (one of four species of prairie dog). Our estimate in the EA of the amount of prairie dog occupied habitat in Wyoming includes estimates for both species of prairie dog that occur in Wyoming. We cite recent estimates of prairie dog occupied habitat in Wyoming at 2,893,487 ac (1,171,862 ha) in the white-tailed prairie dog range and 229,607 ac (92,991 ha) in the black-tailed prairie dog range (Van Pelt 2013, pp. 8, 14). Black-tailed prairie dogs have a much smaller estimated range in the State of Wyoming while the estimated white-tailed prairie dog habitat in Wyoming is much larger. The combined estimate for both species of prairie dog in Wyoming is based on the best available scientific information.

Comment #4: Research has shown that aerial surveys overestimate occupied prairie dog habitat by as much as 94 percent (Sidle *et al.* 2012). If the estimate of prairie dog habitat is inaccurate then the area to which black-footed ferrets may be introduced is exaggerated. Thus, the Service has used inaccurate data to formulate population goals of both the black-footed ferret and black tailed prairie dogs.

Our Response: We acknowledge that aerial surveys can overestimate the extent of active or occupied prairie dog habitat and there is some degree of error attached to any such estimate. Overestimates of prairie dog colonies result because observers may have difficulty distinguishing active, occupied burrows from unoccupied burrows from the air. Researchers continue working to refine methods for accurately assessing active prairie dog populations from the air.

It is important to note, however, that in the case of black-footed ferret reintroductions, aerial surveys are used only as a rough guide for identifying potential black-footed ferret habitat for reintroductions. Measurable fluctuations in prairie dog occupancy are a part of the natural dynamics of prairie dog populations, but fluctuations can be especially pronounced in areas experiencing plague or subjected to poisoning. The presence of unoccupied burrows conclusively indicates that prairie dogs occupied the area sometime in the recent past. Thus, while we may use aerial surveys as rough estimate of prairie dog habitat, we do not rely on aerial surveys to identify areas with the highest biological potential for black-footed ferret reintroductions. Reintroduction sites are chosen instead based on a number of other factors including the size, density, health, and overall stability of the prairie dog occupied habitat:

information that is gathered from ground surveys and local knowledge of prairie dog colonies in a given area.

States are encouraged to contribute to recovery goals in proportion to the amount of historical ferret habitat (i.e., prairie dog colonies) that once occurred on these lands. The Black-footed Ferret Recovery Plan estimates that 35,000 ac (14,000 ha) of purposefully managed prairie dog occupied habitat will be needed to meet Wyoming's portion of the rangewide habitat goal for downlisting and 70,000 ac (28,000 ha) to meet their portion of the rangewide habitat goal for delisting (USFWS 2013a, p. 77). For the State of Wyoming, this equates to purposeful management of approximately 2 percent of the estimated prairie dog habitat in Wyoming to meet their portion of the rangewide habitat goals for delisting. The best available science supports our estimates of occupied prairie dog habitat and potentially suitable habitat for black-footed ferret reintroductions.

Comment #5: Impacts to rangeland and grazing due to prairie dogs were underestimated under Alternative B.

Our Response: Although the entire state of Wyoming would be designated as a nonessential experimental population (NEP) area under Alternative B, future reintroductions of the ferret will be implemented in a very small fraction of this area. Areas identified as having potential for black-footed ferret reintroductions are limited and relatively small in relation to the estimated prairie dog distribution in Wyoming. Only lands that have suitable prairie dog habitat adequate to support a minimum of 30 adult breeding black-footed ferrets would be eligible for

any future reintroduction. Additionally, as mentioned in Comment #4 and in the EA itself, recovery goals in Wyoming include the purposeful management of 70,000 ac (28,000 ha) or approximately 2 percent of the estimated prairie dog habitat in Wyoming to meet their portion of the rangewide habitat goals for delisting. Wyoming already manages approximately 20,000 acres (approximately 8,000 hectares) of occupied prairie dog habitat for the black-footed ferret in the Shirley Basin. The remaining contribution of the State of Wyoming could comprise approximately 50,000 acres of occupied black- or white-tailed prairie dog colonies that may serve as future reintroduction sites for the black-footed ferret.

Participation in ferret recovery actions is also entirely voluntary on the part of a landowner. Thus, the implementation of the Proposed Action is not expected to result in changes to farm and ranch lands beyond what might be voluntarily agreed to by a participating landowner or land manager. By extending the action area to encompass the entire State of Wyoming, the regulatory flexibility of the 10(j) is extended to adjacent non-participating landowners so as to alleviate concerns related to dispersal of ferrets outside of a reintroduction area. Additionally, lethal control of prairie dogs by non-participating landowners is in no way restricted under the Proposed Action.

Comment #6: The EA fails to address conflicts with Rangeland Health Standards. 43 C.F.R. Part 4180. Increasing prairie dog number will have negative impacts for native species that depend on native vegetation and cover like the sage-grouse.

Our Response: The goal of this 10(j) rule is the facilitation of the recovery of the endangered black-footed ferret. This recovery goal is consistent with Fundamentals of Rangeland Health, 43 CFR 4180.1(d), which states: Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal proposed or candidate threatened and endangered species, and other special status species.

For reason stated in the EA, we determined that the only endangered, threatened, candidate, or species of concern that may be adversely affected by reintroduction projects for the ferret in the Wyoming NEP, other than the ferret, is the greater sage-grouse. At the time of the proposed 10(j) rule, the greater sage-grouse was a candidate species. Recently, the Service determined that the greater sage-grouse is no longer warranted for listing under the Act (80 FR 59858; October 2, 2015). There are, however, approximately 43,000,000 acres of estimated greater sage-grouse habitat in Wyoming. To meet delisting guidelines in the Black-footed ferret Recovery Plan, there must be 70,000 acres of managed prairie dog habitat. Thus, most greater sage-grouse habitat in Wyoming would not be impacted by the proposed action.

Additionally, prairie dogs are the primary food source for many native prairie species, such as the ferruginous hawk which is designated as a sensitive species by BLM and the Forest Service and a Species of Greatest Conservation Need by the WGFD (EA, Table 4). Furthermore, up to 200 different native prairie species, including the black-footed ferret and the burrowing owl, depend on prairie dog burrows for shelter to rest, hibernate, or raise their young. When prairie dogs dig their burrows, they also influence the structure and chemistry of dry, flat prairie soils, and may improve the condition of forage for other herbivores and livestock.

Comment #7: Local governments, landowners, permittees, and other interested parties play an essential role in the management decisions that will impact black-footed ferret recovery. The Service should work with local governments to identify areas that may suit black-footed ferrets.

Our Response: The Service and the WGFD recognize that local involvement is important to the success of recovery efforts and the long-term conservation of the black-footed ferret in Wyoming. Current and future land management, principal land uses and potential for change or land management conflicts are serious considerations for all potential reintroduction sites. Reintroduction allocation decisions are made based on a potential reintroduction site's probability for long term success. We have little interest in allocating ferrets, an exceptionally limited resource, to areas where land management conflicts will be an obvious problem, either currently or in the future. Consequently, the Service and the WGFD will coordinate to ensure local communities, including potentially affected landowners, stakeholder groups, and local governments, are fully engaged in any future black-footed ferret reintroduction efforts

This cooperative approach is consistent with our 2013 memorandum of understanding (MOU), which committed the Service, the State of Wyoming, and other federal partners ("Parties") to work collaboratively to develop and implement the NEP designation (WGFD and USFWS 2013). This MOU includes the following guiding principles, among others: (1) The Parties agree that they will collaboratively identify, and prioritize, prospective ferret reintroduction sites in Wyoming outside of the current 10(j) areas (i.e., Shirley Basin and Wolf

Creek); and (2) the Parties agree that future reintroductions of the ferret will be based on mutually affirmed prioritization of prospective reintroduction sites (WGFD and USFWS 2013, pp. 5–6).

Comment #8: Management plans should be developed with public input and in consultation with affected stakeholders.

Our Response: Although there will be no formal public comment period for future reintroductions or management plans, there will still be opportunities for public involvement. All reintroductions efforts under this 10(j) rule will be conducted in close coordination with the WGFD, landowners and affected stakeholders. This includes stakeholder input on reintroduction sites and the development of site-specific management plans. This coordination will take place under provisions in the 2013 MOU and as part of the ferret allocation process.

We expect the steps taken for the development of site-specific management plans under the Proposed Action will have many similarities to the steps taken for the development of plans at other reintroduction sites. Therefore, public involvement in the development of management plans could include, but is not limited to, any of the following:

- Public meetings to outreach to all interested parties on determining potential reintroduction sites.
- Coordination with all interested parties after a reintroduction site is determined.

- Potential direct involvement of management plan development by state and federal agencies, County Commissioners, landowners, companies, academia, and other stakeholders, and tribes.
- Allowing landowners and land managers the opportunity to cooperatively decide the number and distribution of prairie dogs (and correspondingly black-footed ferrets) that may occur on privately owned and leased lands.
- Biannual review of the progress of ongoing activities by all concerned parties.

Comment #9: The EA's analysis of the socioeconomic impacts of the Proposed Rule underestimate the cost of section 7 conferencing on land use activities including oil and gas development.

Our Response: Section 7(a)(4) requires federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, because the NEP is, by definition, not essential to the survival of the species, conferring likely will never be required for the black-footed ferret populations within the NEP area. All reintroductions efforts under this 10(j) rule will be conducted in close coordination with the WGFD, landowners and affected stakeholders. Thus, should reintroductions occur on BLM or Forest Service managed lands, the Service will coordinate closely with those agencies, further reducing the likelihood either agency would request conference with the Service in spite of the NEP designation.

Comment #10: A timeline for reintroductions should be included.

Our Response: Stakeholders in Wyoming considered the implementation of a Statewide 10(j) rule as a prerequisite to participation in any ferret recovery actions in the State of Wyoming. Thus, implementation of the Statewide 10(j) rule, Alternative B in the EA, is only a first step in advancing black-footed ferret recovery in Wyoming. Under the 2013 MOU guiding principles, the WGFD and the Service will collaboratively identify and prioritize prospective reintroduction sites in Wyoming outside of the current 10(j) areas. The steps that must be taken before a site can receive ferrets are substantial and calculated with the goal of selecting sites with the best potential of success. Steps include, but are not limited to: (1) Identification of interested and willing landowners; (2) biological evaluation of each site's potential to support at least 30 ferrets; and (3) creation of site-specific management plans. At this time we do not have precise information on locations of all suitable habitat, nor have any prospective reintroduction sites been approved yet for allocation of captive-bred ferrets. Therefore, we believe reporting a specific timeline would be arbitrary and premature.

Comment #11: Factors that would change the status of the 10(j) population should be disclosed. A change in status would have socioeconomic impacts.

Our Response: We do not foresee the need to change the NEP designation for any reintroduced black-footed ferret population. All determinations on essentiality are made prior to any reintroduction action being taken. It is instructive that Congress did not put requirements in section 10(j) to reevaluate the classification after a reintroduction has occurred. While our

regulations require a “periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species” (50 CFR 17.81(c)(4)), this has not been interpreted as requiring reevaluation and reconsideration of sites’ nonessential experimental status (USFWS 1991, 1994, and 1996). We believe Congressional intent was to ensure that our partners could rely upon the original rules promulgated for the reintroduction effort. We also contend that retracting the nonessential experimental designation following implementation of this 10(j) rule would be extremely detrimental to ferrets in Wyoming and the partnerships that sustain them. Furthermore, such an alteration of the regulatory framework post-reintroduction would undermine future reintroduction efforts.

Comment #12: If ferrets under this 10(j) integrate with other populations – Shirley Basin, Colorado, Utah, or otherwise, the NEP under this Proposed Rule would no longer be “wholly separate geographically from nonexperimental populations” and would no longer be managed as an experimental population. A statewide nonexperimental population would drastically impact the State of Wyoming and the myriad uses on both public and private lands.

Our Response: Under this 10(j) rule, the Service is classifying any reestablished black-footed ferret population in the State of Wyoming as an experimental population. The commenter is correct that, as is required under the Act, any experimental population must be wholly separate geographically from any nonexperimental populations at the time the population is designated as experimental. As mentioned above in Comment #11, all determinations on essentiality are made prior to any reintroduction action being taken. The Service has determined based on the best available information that this NEP designation meets the requirements of the Act, the

population is wholly geographically separate from other nonexperimental populations. The “other” populations the commenter noted are also designated as experimental, thus, were not considered in our determination of wholly geographically separate from other nonexperimental populations

Comment #13: Will more predator control be needed should ferrets be reintroduced in Wyoming? Should more control be needed, who will bear the cost of this control?

Our Response: Predation was a concern at early black-footed ferret reintroduction sites. We do not consider predation a threat to black-footed ferret recovery at the present time because of the positive effects of preconditioning on survival of ferrets released into the wild (USFWS 2013a, p. 35). Ferret populations appear to be able to cope with characteristic rates of predation, as evidenced by stable or increasing ferret populations without predator removal. Predation no longer appreciably reduces ferret survival or reproduction. We do not anticipate costs for predator control to be an issue at reintroduction sites.

Comment #14: The defined terms set forth in the Glossary of the Environmental Assessment (EA) should be revised. Many of the terms are not used in the EA, these terms should be deleted to avoid confusion.

Our Response: We revised the Glossary to include only terms used in the EA.