



Endangered Species Act Experimental Populations

Pacific Region Fact Sheet

November 2016

What is an experimental population?

An experimental population is a special designation under the Endangered Species Act (ESA) that the U.S. Fish and Wildlife Service (we) can apply to a population of a threatened or endangered species prior to reestablishing it in an unoccupied portion of its former range. In rare instances, when a species' former range is no longer suitable (e.g., due to climate change or invasive species), this designation can also be applied when introducing a species outside of its historical range.

There are two types of experimental populations: (1) essential and (2) nonessential. Essential experimental populations are defined as those populations whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other experimental populations are classified as nonessential. Congress envisioned that in most cases, experimental populations would be nonessential.

Why do we designate experimental populations?

Designating an experimental population is one tool to facilitate reintroduction and recovery of federally-listed species. Most importantly, an experimental population designation allows us to customize protective regulations under the ESA. The ESA bars designation of critical habitat for non-



California condors were reintroduced to Arizona as a nonessential experimental population. Photo: USFWS.

essential experimental populations (critical habitat *may* be designated for essential populations). This regulatory flexibility and discretion can make a reintroduction more palatable to stakeholders who are concerned about the potential impacts of reintroducing a threatened or endangered species. Despite this increased flexibility, the 10(j) rule for each experimental population must still ensure that the reintroduction is likely to be successful and that it will benefit the conservation of the species.

What is required when designating an experimental population?

We designate experimental populations following the Administrative Procedures Act (APA) and our 1984 ESA section 10(j) regulations (49 FR 33885). Under the APA and our ESA 10(j) regula-

tions, when we designate an experimental population we are required to:

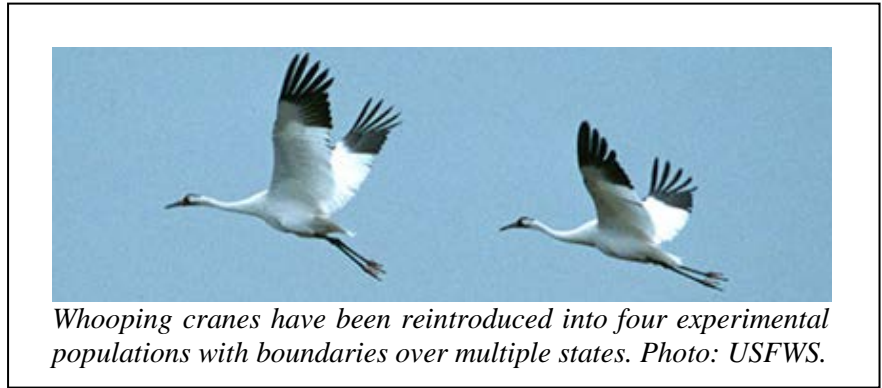
- (1) Develop and publish a proposed and final 10(j) regulation (a.k.a., 10(j) rule) in the *Federal Register*, (where the proposed regulation is subject to peer review and a public comment period of at least 30 days), that provides:
 - A method for identifying the experimental population (e.g., boundaries of the experimental population area);
 - A finding as to whether the population is essential or non-essential;
 - Management restrictions or protective measures, or other special management concerns; and,

- A process for periodic review of the success or failure of the release and the effect of the release on the conservation of the species.
- (2) Use the best scientific and commercial data available to consider:
- Any possible adverse effects on existing populations;
 - The likelihood that the experimental population will become established and survive in the foreseeable future;
 - The relative effects that establishment of an experimental population will have on the recovery of the species; and,
 - The extent to which the population may be affected by actions within or near the experimental population area.
- (3) Comply with section 7 of the ESA, the National Environmental Policy Act (NEPA), and any other applicable regulations.

How do we determine the geographic boundaries of the experimental population?

We draw experimental population boundaries on a case-by-case basis in collaboration with stakeholders while considering the best available information on the movement ecology of the species, the distribution of habitat, and the distribution of existing populations. Generally, we draw boundaries to encompass the area likely to be used by the released individuals and their offspring while avoiding areas where the species currently exists. Boundaries are typically drawn along physical or administrative features (e.g., roads, State or county lines, rivers).

Do ESA section 9 “take” prohibitions apply within an experimental population?



Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Specific “take” prohibitions for each experimental population are customized in close coordination with stakeholders. Only the specific take prohibitions or exemptions listed in the individual 10(j) rule apply to a designated experimental population.

Are all areas within the experimental population boundary subject to the same protections?

If the 10(j) rule does not make a distinction between areas within the experimental population boundary, then the regulatory prohibitions and exemptions against “take” specified in the 10(j) rule are applied uniformly throughout the experimental population (although section 7(a)(2) consultation requirements are required on National Wildlife Refuges and National Park Service lands for non-essential experimental populations and on all lands for essential experimental populations). In some instances, we have designated different management zones within an experimental population boundary where take prohibitions differed depending on where an individual animal was located.

What happens if an individual from the experimental population moves outside the experimental population boundary?

Unless otherwise specified in our 10(j) rule, any individuals that move outside of the experimental population boundary assume the ESA status of their species in the area they occupy (i.e., endangered or threatened). In a few 10(j) rules we have specified that we would capture and return any individuals from the experimental population that move outside the boundary.

Where do you get individuals for a species reintroduction program?

Individuals used to establish an experimental population may come from a wild or captive donor population, provided their removal will further the conservation of the species and appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal.

What species have we reintroduced or introduced as experimental populations?

American burying beetles, bull trout, Guam rails, California condors, whooping cranes, wood bison, and many others. A complete list of currently designated experimental populations can be found at <http://bit.ly/2erZRCK>