



Endangered Species Act *Experimental Populations*

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The Endangered Species Act recognizes that fish, wildlife and plant species have aesthetic, ecological, educational, historical, recreational and scientific value and provides a means to conserve the ecosystems upon which endangered or threatened species depend. Section 10 of the Act, entitled "Exceptions," offers an avenue to authorize activities that would otherwise be prohibited. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental."

The following are frequently asked questions and answers on our use of experimental populations to help recover species:

How do you determine if a species is "essential or "non-essential"?

Section 10(j) provides for the designation of specific reintroduced populations of listed species as "experimental populations." On the basis of the best available information, the Service determines whether an experimental population is "essential" or "nonessential" to the continued existence of the species. A "nonessential" designation for a 10(j) experimental population means that, on the basis of the best available information, the experimental population is not essential for the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

How do you acquire species for the reintroduction program?

Individuals used to establish an experimental population may come from a donor population, provided their removal will not jeopardize that population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In many cases, captively bred species obtained from a donor population are propagated with the intention of re-establishing a wild population within the species' historic range to achieve recovery goals.

How does a Nonessential Experimental Population (NEP) designation affect consultations?

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, permitted, or carried out by a Federal agency.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge (NWR) or National Park (NP), and therefore section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply in NWRs and NPs. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies consult with the Service before authorizing, funding, or carrying out any activity that would likely jeopardize the continued existence of a listed species or adversely modify its critical habitat.

When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 would apply: section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

For purposes of section 9 of the Act, individual species within a NEP area are treated as threatened regardless of the species' designation elsewhere in its range.

Under section 4(d) of the Act, we have greater discretion in developing management programs and special regulations for threatened species than we have for endangered species. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. The special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Because of the flexibility, regulations issued under a 4(d) rule are generally compatible with routine human activities in the reintroduction area.

What is the process for making a decision on reintroducing species?

Any process to reintroduce a threatened or endangered species as “experimental” will require that we: (1) compile and analyze all new biological information on the species; (2) review and update the administrative record; (3) review the overall approach to the conservation and recovery of the falcon in the United States; (4) review available information that pertains to the habitat requirements of this species, including material received during the public comment period; (5) review actions identified in the recovery plan; (6) determine what areas, if any, might require special management or areas that should be excluded from the experimental population area; (7) write a draft environmental assessment and present alternatives to the public for review and comment; (8) incorporate public input; (9) present this proposal in a proposed rule for publication in the Federal Register and solicit comments from the public; and (10) finalize the environmental assessment and the rule designating an experimental population and identifying an experimental population area; thereby either authorizing the release of a species as experimental or adopting the no action alternative (not permitting the release).

What are the benefits of reintroducing species?

Reintroductions aid in the recovery of threatened or endangered species. When a species or a significant population has been extirpated, the only remaining recovery option is often reintroduction.

Under a 4(d) rule, we have much more leeway to take local concerns into account when preparing the management strategies and thus can avert restrictions on current and future land uses and activities. This flexibility can make a reintroduction process more palatable to apprehensive stakeholders. The reintroduction process, by its nature, is very inclusive. We have seen stronger support for conservation efforts when stakeholders are involved and have a voice in the process.

Where have you reintroduced species?

In the Southwest, we have used Section 10(j) to reintroduce Mexican gray wolves into Arizona and New Mexico. In Texas, Aplomado falcons have been reintroduced in the south. In Arizona and California, the California condor has been reintroduced into the Grand Canyon country.