

29-84

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Proposed Determination of Experimental Population Status for an Introduced Population of Delmarva Fox Squirrel****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to introduce Delmarva Peninsula fox squirrels (*Sciurus niger cinereus*) into Sussex County, Delaware and to determine these populations to be "nonessential experimental" populations according to Section 10(j) of the Endangered Species Act of 1973 as amended. Section 10(j) of that Act authorizes "experimental" populations of endangered species to be treated as if they were threatened for purposes of Section 9 and proposed under certain conditions for purposes of Section 7. The Service has much more discretion in devising a management program for threatened species than for endangered species, especially on matters regarding incidental or regulated taking. Accordingly, a special rule to allow take in accordance with State law is proposed for these nonessential experimental populations. In the past, this species was more widespread, being found throughout the Delmarva Peninsula. This action is being taken in an effort to reestablish the Delmarva fox squirrel within its historic range.

DATES: Comments from the State of Delaware and the public must be received by May 7, 1984.

ADDRESSES: Interested persons or organizations are requested to submit comments to the Regional Director, U.S.

Fish and Wildlife Service, Suite 700, One Gateway Center, Newton Corner, Massachusetts 02158. Comments and materials relating to this proposed rule are available for public inspection by appointment during normal business hours at the Service's Regional Office in Newton Corner, Massachusetts.

FOR FURTHER INFORMATION CONTACT: For further information on the proposal, contact Mr. Steve Parry, Assistant Regional Director, U.S. Fish and Wildlife Service, Newton Corner, Massachusetts 02158 (617/965-5100 or FTS 829-9316) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:**Background**

The Endangered Species Act Amendments of 1982, Public Law No. 97-304, became effective on October 13, 1982. Among the significant changes made by the 1982 Amendments was the creation of a new Section 10(j) which established procedures for the designation of specific populations of listed species as "experimental populations." Under authorities in the Endangered Species Act previous to the 1982 Amendments, the Service was permitted to translocate populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to translocation efforts, however, severely handicapped the effectiveness of translocation as a management tool. This opposition stemmed from concerns regarding the restrictions and prohibitions on private and Federal activities affecting endangered species under Sections 7 and 9 of the Act. Under Section 10(j) of the 1982 Amendments, past and future translocated populations established outside the current range, but within the species' historic range, may now be designated at the discretion of the Service as "experimental." Such a designation will increase the Service's flexibility to manage these translocated populations because the Amendments provide that such experimental populations of species which are otherwise listed as endangered may be treated as threatened. The Service has much more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding incidental or regulated takings. Moreover, experimental populations found to be "nonessential" to the continued existence of the species in question would be treated as if they

were only proposed for listing and therefore would not be afforded protection under Section 7(a)(2) of the Act, which requires Federal agencies to refrain from activities that are likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. The individual organisms comprising the designated experimental population will be removed from an existing source or donor population only after it has been determined that their removal itself will not violate Section 7(a)(2) of the ESA and complies with the permit requirements in Section 10 (a)(1)(A) and (d). The species included in this proposal is the Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*) which is currently listed as endangered.

The Delmarva fox squirrel was found in southeastern Pennsylvania, Delaware, south-central New Jersey, eastern Maryland, and the Virginia portion of the Delmarva Peninsula. It is believed that the fox squirrel was never as abundant as the gray squirrel. Although little is known about its former distribution, it is likely that it was scattered and discontinuous throughout its range with more specific habitat requirements than those of the gray squirrel.

The fox squirrel was confined to savannah or park-like areas, forests bordering rivers and streams, and small open woodlots with little or no understory. As the forests were cut for agricultural purposes and forest products, they became unsuitable for fox squirrels. As the forest regrew, dense undergrowth developed, at least during the pole and early saw timber stages. Before second-growth forests were old enough to develop the open park-like conditions of mature forests, they were cut again. Thus, environments suitable to Delmarva fox squirrels were not recreated in the cutting cycle, and Delmarva fox squirrels declined and disappeared in many areas. By the turn of the century this animal had disappeared from southern New Jersey, Pennsylvania, and Virginia, but it is thought that it remained in Delaware until possibly the 1930's. It is currently found in eastern Maryland and was reintroduced into eastern Virginia in the 1970's.

Throughout their range, fox squirrels are currently adapted to these park-like conditions. They are often found in savannah areas, oak openings, and in narrow belts of trees along streams and rivers.

Good fox squirrel habitat contains mature trees that produce a dependable annual mast crop with a variety of tree

species providing insurance against a food shortage brought about by failure of one or more of the species present. Good habitat for this species is currently located in Sussex County, Delaware. The establishment of an experimental population in this area will greatly enhance the recovery potential of this species by reestablishing a population in its former range. It is proposed that 6-18 fox squirrels taken from viable populations located in Dorchester and Talbot Counties, Maryland, will be introduced into the Sussex County site. The Dorchester and Talbot County populations have been monitored by the State of Maryland for the past 10 years. These are healthy populations that are naturally expanding their current range. The removal of 6-18 animals over a period of 18 months is not likely to jeopardize the continued existence and viability of these populations and release of these experimental populations as proposed will further the conservation of the species throughout its range.

Status of Reintroduced Populations

The reintroduced population of Delmarva Peninsula fox squirrels is proposed as an experimental population that is "nonessential" to the continued existence of the species according to the provisions of the 1982 Amendments to the Endangered Species Act. Nonessential experimental population status for the introduced fox squirrels would mean that they would be subject only to provisions of Sections 7(a)(1) and except for Section 7(a)(1), they would be treated as if they were proposed for listing under Section 4 for Section 7 purposes. Thus, Section 7(a)(1), which authorizes Federal agencies to establish programs furthering conservation of the species and Section 7(a)(4), which requires Federal agencies to confer informally with the Secretary regarding actions that are likely to jeopardize the continued existence of the species, would apply to the fox squirrels in the experimental population. The restrictions on Federal agency activity in Section 7(a)(2), which pertain to listed species would not apply.

Justification for the "nonessential" status for the proposed introduced experimental population is as follows: By the early 1970's, the Delmarva fox squirrel was found in portions of four eastern shore counties of Maryland, and one location in Virginia. In Kent County, Maryland, this species was known from the Eastern Neck National Wildlife Refuge (NWR) and in Accomac County, Virginia, from the Chincoteague NWR (a

translocated population established in the early 1970's).

Population status has changed since the early 1970's, principally due to translocation efforts by the State of Maryland to restore this species. Additional translocated and reproducing populations now exist within historic range in the Maryland counties of Cecil, Kent (outside of Eastern Neck NWR), Somerset, Worcester, Dorchester, and Talbot, and a summer 1982 translocation to Northampton County, Virginia has been accomplished.

Techniques for trapping and relocating this species are in place. Relocation efforts have been successful in Maryland for the past 10 years and techniques are continually being improved and refined. Monitoring of 6 release sites in Maryland has shown reproduction in 5 of the 6 sites within one year of release and the Chincoteague site now serves as a donor population for other reintroductions. This suggests that no new procedures need to be developed to proceed with this reintroduction.

The removal of individuals from extant populations in Talbot and Dorchester Counties is not expected to affect adversely the viability of those populations; therefore, the loss of the reintroduced populations would not reduce the likelihood of the survival of the species in the wild. In fact the anticipated success of this reintroduction will enhance the recovery potential of this species by extending its current range and occupying currently unutilized habitat.

Location of Reintroduced Populations

The site proposed for reintroduction of Delmarva Peninsula fox squirrels is totally isolated from existing populations of this species. The fox squirrels will be released into the Assawoman Wildlife Area in Sussex County, Delaware, in the extreme southeast corner of the State between Miller and Dirikson Creeks. This is approximately 50 miles from the nearest extant population located at the Chincoteague NWR.

Previous releases of this species have shown that individuals are not likely to travel more than 2 to 3 miles from the point of release. This assures that the Delaware population will remain geographically isolated and easily identifiable from other extant populations.

Management

This translocation project will be a joint cooperative effort between the Delaware Department of National Resources and Environmental Control,

the Maryland Department of Natural Resources, and the Fish and Wildlife Service. Present plans call for the release of 6 animals (4 females, 2 males) in the spring of the year, followed 6 months later with a fall release of 6 additional animals (4 females, 2 males). A third release of 6 animals the following spring will result in a total reintroduction of 18 animals. If the initial spring release is delayed until fall, the second and third releases will occur in the following spring and fall.

Released animals will be checked periodically to determine movement, reproductive success, and general health. This proposed nonessential experimental population would be treated as a threatened species under all provisions of the Act other than Section 7(a)(2). All of the prohibitions referred to in 50 CFR 17.31 would apply to this population. Moreover, permits would be available to take members of this population for the purposes set forth in 50 CFR 17032. In addition, members of this experimental population could be incidentally taken in accordance with applicable State law. Thus, if a squirrel hunter accidentally took a member of this experimental population based upon a misidentification of the species, there would be no violation of Federal law.

Public Comments Solicited

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible.

Final promulgation of a rule to implement this proposed action will take into consideration any comments or additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft Environmental Assessment under NEPA has been prepared and is available to the public at the Office of Endangered Species, U.S. Fish and Wildlife Service, at the address listed above. This assessment will form the basis for a decision, to be made prior to the publication of a final rule, as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy

Act of 1969 (implemented at 40 CFR Parts 1500-1508).

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

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291; that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96-354). The introduction site occurs within several miles of Atlantic Ocean resorts in a region that can be considered as high use for vacationers and wildlife enthusiasts. However, this site is not in the vicinity of a high concentration of year-round inhabitants. The Assawoman Wildlife Area has been set aside by the State of Delaware for wildlife use. The introduction of a nonessential experimental population into this area is compatible with current utilization of the site and is expected to have no impact on public use days. No private entities will be affected by this action. The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Author

The principal author of this proposal is Peter G. Poulos, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations 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 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; and Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1513 *et seq.*).

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order (following the existing entry for this species) to the list of endangered and threatened mammals:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Delmarva Peninsula fox squirrel	<i>Sciurus niger cinereus</i>		U.S.A. (Sussex County, Delaware).	XN			17.84(b)

§ 17.84 [Amended]

3. It is proposed that Title 50 CFR 17.84 be amended by adding new paragraph (b) as follows:

* * *

(b) Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*).

(1) The delmarva Peninsula fox squirrel population identified in paragraph (b)(4) of this section is a nonessential experimental population.

(2) All prohibitions and exceptions listed in §§ 17.31 and 17.32 apply to this population identified in paragraph (b)(4) of this section, except that it may also be incidentally taken in accordance with applicable State laws and regulations.

(3) any violation of State law regulating the take of this species from (b)(4) of this section will also be a violation of the Endangered Species Act.

(4) The site for reintroduction of Delmarva Peninsula fox squirrel is totally isolated from existing populations of this species. The nearest extant population is in the Chincoteague National Wildlife Refuge approximately 50 miles from the reintroduction site. The reintroduction site is within the historic range of this species and is located at the Assawoman Wildlife Area, Sussex County, Delaware. Observation of previous releases have shown that fox squirrels have not traveled more than 2 or 3 miles from release sites, therefore, the possibility of this population contacting extant wild populations is unlikely.

(5) The reintroduced population will be checked periodically to determine its condition. Of special concern will be the establishment of breeding pairs and the reproductive success of the population. The movement patterns of the released individuals and the overall health of the population will also be observed.

Dated: March 9, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.