

on the conservation and recovery of the species.

(d) The Fish and Wildlife Service shall consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. When appropriate, a public meeting will be conducted with interested members of the public. Any regulation promulgated pursuant to this section shall, to the maximum extent practicable, represent an agreement between the Fish and Wildlife Service, the affected State and Federal agencies and persons holding any interest in land which may be affected by the establishment of an experimental population.

(e) Any population of an endangered species or a threatened species determined by the Secretary to be an experimental population in accordance with this subpart shall be identified by special rule in §§ 17.84—17.86 as appropriate and separately listed in § 17.11(h) (wildlife) or § 17.12(h) (plants) as appropriate.

(f) The Secretary may designate critical habitat as defined in section (3)(5)(A) of the Act for an essential experimental population as determined pursuant to paragraph (c)(2) of this section. Any designation of critical habitat for an essential experimental population will be made in accordance with section 4 of the Act. No designation of critical habitat will be made for non-essential populations. In those situations where a portion or all of an essential experimental population overlaps with a natural population of the species during certain periods of the year, no critical habitat shall be designated for the area of overlap unless implemented as a revision to critical habitat of the natural population for reasons unrelated to the overlap itself.

#### § 17.82 Prohibitions.

Any population determined by the Secretary to be an experimental population shall be treated as if it were listed as a threatened species for purposes of establishing protective regulations under section 4(d) of the Act with respect to such population. The Special rules (protective regulations) adopted for an experimental population under

§ 17.81 will contain applicable prohibitions, as appropriate, and exceptions for that population.

#### § 17.83 Interagency cooperation.

(a) Any experimental population designated for a listed species (1) determined pursuant to § 17.81(c)(2) of this subpart not to be essential to the survival of that species and (2) not occurring within the National Park System or the National Wildlife Refuge System, shall be treated for purposes of section 7 (other than subsection (a)(1) thereof) as a species proposed to be listed under the Act as a threatened species.

(b) Any experimental population designated for a listed species that either (1) has been determined pursuant to § 17.81(c)(2) of this subpart to be essential to the survival of that species, or (2) occurs within the National Park System or the National Wildlife Refuge System as now or hereafter constituted, shall be treated for purposes of section 7 of the Act as a threatened species. Notwithstanding the foregoing, any biological opinion prepared pursuant to section 7(b) of the Act and any agency determination made pursuant to section 7(a) of the Act shall consider any experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the analyses under such sections.

#### § 17.84 Special rules—vertebrates.

(a) Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*). (1) The Delmarva Peninsula fox squirrel population identified in paragraph (a)(6) of this section is a nonessential experimental population.

(2) No person shall take this species, except:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act and in accordance with applicable State fish and wildlife conservation laws and regulations; or

(ii) Incidental to recreational activities.

(3) Any violation of applicable State fish and wildlife conservation laws or