solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 8, 1995.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–14764 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–05–M

Bureau of Land Management

43 CFR Part 3100

[WO–610–4110–02 1A]

RIN 1004–AC26

Promotion of Development, Reduction of Royalty on Heavy Oil

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed rulemaking; notice of reopening of comment period.

SUMMARY: On April 10, 1995, the Bureau of Land Management (BLM) published in the **Federal Register** (60 FR 18081) a notice of proposed rulemaking to amend the regulations related to the waiver, suspension, or reduction of rental, royalty, or minimum royalty on ''heavy oil'' (crude oil with a gravity of less than 20 degrees). The notice allowed a comment period of 60 days, closing on June 9, 1995.

The Department of Energy (DOE) is currently developing new information on the potential impacts of the proposed rule. DOE is focusing particularly on the effects of raising the qualifying crude oil gravity to more than 20 degrees. In order to allow all interested parties sufficient time to review the new DOE information, BLM is reopening the comment period for an additional 30 days. Information on the DOE findings is available from Dr. John Bebout, at the address shown below under **FOR FURTHER INFORMATION CONTACT.**

DATES: Comments should be submitted by July 17, 1995. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to Director (140), Bureau of Land Management, Room 5555, 1849 C Street, NW., Washington, DC 20240. Comments can also be sent to internet!WO140@attmail.com. Please include ''attn: AC26'' and your name and return address in your internet message. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Bebout, Bureau of Land Management (310), 1849 C Street, NW., Washington, DC 20240. (202) 452–0340.

Micheal A. Ferguson,

Acting Assistant Director, Resource Use and Protection.

[FR Doc. 95–14785 Filed 6–15–95; 8:45 am]

BILLING CODE 4130–84–P

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Swift Fox as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the swift for (*Vulpes velox*) under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service finds that listing this species is warranted but precluded by other higher priority actions to amend the List of Endangered and Threatened Wildlife and Plants.

DATES: The finding announced in this document was made on June 12, 1995.

ADDRESSES: Information, comments, or questions concerning this petition should be submitted to the Field Supervisor, Fish and Wildlife Service, Ecological Services, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501–5408. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Donald R. (Pete) Gober, Field Supervisor, at the above address, telephone (605) 224–8693.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, the Fish and Wildlife Service (Service) make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. Notice of the finding is to be published promptly in the **Federal Register**. This notice meets that requirement for a 12-month finding made earlier for the petition discussed below. Information contained in this notice is a summary of the information in the 12-month finding, which is the Service's decision

document. Section 4(b)(3)(C) requires that petitions for which the requested action is found to be warranted but precluded should be treated as through resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months.

A petition dated February 22, 1992, from Mr. Jon C. Sharps was received by the Service on March 3, 1992. The petition requested the Service to list the swift fox (*Vulpes velox*) as an endangered species in the northern portion of its range, if not the entire range. A 90-day finding was made by the Service that the petition presented substantial information indicating that the requested action may be warranted. The 90-day finding was announced in the **Federal Register** on June 1, 1994 (59 FR 28328).

The Service has reviewed the petition, the literature cited in the petition, other available literature and information, and has consulted with biologists and researchers familiar with the swift fox. On the basis of the best scientific and commercial information available, the Service finds the petition presented information indicating that the listing may be warranted but the immediate listing of the species is precluded by work on other species having higher priority for listing.

The petition and its referenced documentation states that the swift fox once occurred in abundant numbers throughout the species' historical range. The species was known from the Canadian Prairie Provinces south through Montana, eastern Wyoming, and North and south Dakota to the Texas Panhandle. The petitioner asserts that the swift fox has declined and is considered rare in the northern portion of its range. The petitioner indicates that the swift fox is extremely vulnerable to human activities such as trapping, hunting, automobiles, agricultural conversion of habitat, and prey reduction from rodent control programs. The petitioner requests that, at a minimum, the swift fox be listed as an endangered species in Montana, North Dakota, South Dakota, and Nebraska. Justification for such action as cited by the petitioner includes the present status of the species and its habitat in the petitioned area, the strong link to the prairie dog ecosystem, the large distance from the kit (*Vulpes macrotis*)-swift fox zone of intergradation, and the potential for these populations to contain the northern subspecies (*Vulpes velox hebes*).

In 1970, the Service listed the northern swift fox as endangered (35 FR 8485; June 2, 1970). This designation was removed in the United States due to controversy over its taxonomy; however, the designation as endangered in Canada remains (45 FR 49844; July 25, 1980).

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The Service reviewed information regarding the status of the swift fox throughout its range. Historically, the swift fox was considered abundant throughout the Great Plains and the Prairie Provinces of Canada (Hall and Kelson 1959; Egoscue 1979; Zumbaugh and Choates 1985; U.S. Fish and Wildlife Service 1990; FaunaWest 1991). Beginning in the late 1800's to early 1900's, the swift fox declined in numbers, and the northern population disappeared with the southern population decreasing in numbers (Cary 1911; Warren 1942; Egoscue 1979; Bee et al. 1981; FaunaWest 1991).

In the mid-1950's, the swift fox staged a limited comeback in portions of its historical range (Long 1965; Kilgore 1969; McDaniel 1976; Sharps 1977; Hines 1980; FaunaWest 1991). However, this reappearance was limited in nature and, in recent years, many of these populations have again declined. Several factors are provided as reasons for the decline of the species throughout much of its historical range. These factors include (1) loss of nature prairie habitat through conversion for agricultural production and mineral extraction, (2) fragmentation of the remaining habitat, creating a less suitable cropland-grassland habitat mosaic, (3) degradation of habitat due to prairie-dog control activities, (4) predation and interspecific competition, and (5) the species' vulnerability to human activities such as predator control, trapping, shooting, and collisions with automobiles (Hillman and Sharps 1978; Hines 1980; Armbruster 1983; Uresk and Sharps 1986; Jones et al. 1987; Sharps 1989; U.S. Fish and Wildlife Service 1990; FaunaWest 1991; Carbyn et al. 1992).

Currently, swift fox exist in highly disjunct populations in a greatly reduced portion of the species' historical range (Hines 1980; Jones et al. 1987; U.S. Fish and Wildlife Service 1990; FunaWest 1991). Swift fox are believed to be extirpated in North Dakota. Remnant populations remain in Montana and Oklahoma. Small, disjunct populations of unknown status remain in South Dakota, Wyoming, Nebraska, Kansas, Colorado, New Mexico and Texas. There is limited but encouraging evidence that some reoccupation of its former range may be occurring in Montana, Oklahoma, Kansas, Colorado, and Wyoming. New Mexico also appears to contain localized populations distributed throughout reduced portions of the State's historical range. However, there has been no biological or scientific evidence presented to the Service during the extended status review period to confirm the viability or stability of any of these populations. Seventy to 75 percent of remaining swift fox populations are believed to reside on private lands, with the remaining populations on Federal lands belonging to the U.S. forest Service, the National Park Service, the Bureau of Land Management, and the Department of the Army.

Summary of Factors Affecting the Species

The following information is a summary and discussion of the five factors or listing criteria as set forth in section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act and their applicability to the current status of the swift fox.

A. *The Present or threatened destruction, modification, or curtailment of the species' habitat or range.* The swift fox is a prairie-dwelling species that generally requires 518 ha to 1,296 ha (1,280 to 2,300 acres) of short to midgrass prairie habitat with abundant prey to support a pair (Cameron 1984; Jones et al. 1987; Rongstad et al. 1989; Jon Sharps, Wildlife Systems, pers. comm. 1993). Swift fox habitat is comprised of level to gently sloping topography containing an open view of the surrounding landscape (<15 percent slope), abundant prey, and lack of predators and competitors (Cutter 1958a; Hillman and Sharps 1978; Hines 1980; Fitzgerald et al. 1983; Lindberg 1986; U.S. Fish and Wildlife Service 1990; FaunaWest 1991; Carbyn et al. 1992).

Historically, the species was distributed throughout the contiguous short to midgrass prairie habitat from the south-central Prairie Provinces in Canada to the southern portions of the western Great Plains. In recent times, the swift fox has experienced a significant reduction in its historic range due to a combination of human activities. Based on current range-wide swift fox distribution information, the Service estimates that the swift fox is extirpated from 80 percent of its historical range. Within the remaining 20 percent of its historical range, swift fox populations exist in scattered,

isolated pockets of remnant short to midgrass prairie habitat. The Service estimates that swift fox may actually occupy only half of the remaining 20 percent of its historical range.

Habitat loss and fragmentation has occurred due to a variety of human activities such a agricultural conversion of the prairie and mineral extraction. Beyond direct agricultural conversion, the remaining short to midgrass prairie ecosystem has been significantly altered due to creation of a grassland-cropland mosaic, with continued reduction of the prairies rodent prey base and modification of the native predator community. Roadways also alter the availability and suitability of habitat, thus fragmenting swift fox habitat and exposing them to traffic, trapping, shooting, predator control, and rodent control.

B. *Overutilization from commercial, recreational, scientific, or educational purposes.* Commercial trapping for other furbearers occurs throughout the range of the swift fox. Often swift fox are harvested incidental to commercial trapping for other furbearers such as coyotes (McDaniel 1976; Sharps 1984; Jones et al. 1987; U.S. fish and wildlife Service 1990). Unlike other furbearers, swift fox pelts are not particularly valuable (Arnold 1925; Jones et al. 1987; FaunaWest 1991). This lack of value and pelt quality has not completely stopped trade in swift fox pelts. Protection is minimal because the swift fox is unwary and naive, making it susceptible to trapping, ragardless of whether it is the targeted species. Legal and/or incidental take of the species is expected to continue.

The swift fox is legally harvested in four States (Colorado, New Mexico, Kansas, and Texas). In Wyoming, it is a protected species by virtue of its nongame status, but it is still legal to buy and sell swift fox pelts. In addition, Wyoming has supplied 25 to 30 swift fox per year to Canada for their recovery program. Harvest data received from the above States is insufficient to assist the Service in the determination of population trends or to determine the actual numbers being legally harvested on an annual basis. The New Mexico data shows a significant (95 percent) decrease in the kit-swift fox harvest in recent years, but its significance relative to swift fox status cannot be determined. The Colorado data shows that harvest of kit/swift fox has decreased from a high of 3,322 animals during the 1981–1982 season to 161 animals (fox) in 1990 and 373 animals in 1991, respectively. Harvest data from Kansas indicates that between 1982 and 1994, 1,220 swift fox were harvested from approximately 23 counties located in the western-most one-fourth of the State. Jones (1987) reports that available harvest data from Texas is limited, but it shows an annual harvest of between 300 and 500 animals.

C. *Disease and predation.* The effects of infectious diseases in swift fox are relatively unknown. However, they are susceptible to most diseases that plague canids (FaunaWest 1991). Studies conducted in California on the kit fox noted canine parvovirus as a major disease (FaunaWest 1991). Since parvovirus is found throughout the U.S. and is fatal to domestic dogs, it is probably also fatal to swift foxes. Other diseases documented in kit foxes include canine hepatitis, tularemia, brucellosis, toxoplasmosis, and coccidiomycosis (FaunaWest 1991). Many of these diseases are known to be widespread and their presence in swift fox populations is highly probable.

Because of major changes to the faunal community of the western Great Plains ecosystem, the swift fox has become extremely vulnerable to predation from coyotes. Historically, the gray wolf (*Canis lupus*) was the dominant canid in the Great Plains hierarchy. The gray wolf was not considered a significant predator on swift fox and, because it targeted large ungulates, it probably provided swift fox with a source of carrion (Moravek 1990; U.S. Fish and Wildlife Service 1990; FaunaWest 1991). The coyote and red fox, while widely distributed in specific habitats, were not generally considered abundant because of the wolf's dominant canid role in the western Great Plains ecosystem (Johnson and Sargeant 1977). Coyotes are now the most abundant and widely distributed canid on the Great Plains (Alan Sargeant, U.S. Fish and Wildlife Service, pers. comm. 1992). Studies have shown that predation by coyotes has a severe impact on the survival of swift fox (Robinson 1961; Reynolds 1986; Rongstad et al. 1989; Sharps 1989; Moravek 1990; U.S. Fish and Wildlife Service 1990; Carbyn et al. 1992). Furthermore, the red fox, which historically existed in isolated pockets on the Great Plains, expanded its distribution westward because of agriculture development (Moravek 1990; A. Sargeant, pers. comm. 1992). Also red foxes undoubtedly compete with swift fox.

D. *Inadequacy of existing regulatory mechanisms.* The swift fox is listed as endangered in Nebraska, threatened in South Dakota, and is protected by regulation in Wyoming. Despite having this protective status, it is still legal to buy and sell swift fox pelts in Wyoming (Bob Oakleaf, Wyoming Game and Fish Department, pers. comm. 1993). The swift fox is listed as a furbearer in seven States (Colorado, Montana, Kansas, Oklahoma, New Mexico, North Dakota, and Texas) and it is legally harvested in Colorado, Kansas, Texas, and New Mexico). In Montana, Oklahoma, and North Dakota, no legal harvest of swift foxes is allowed because of the species' rarity (Arnold Dood, Montana Department of Fish, Wildlife and Parks, pers. comm. 1993; Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, pers. comm. 1993; Randy Kreil, North Dakota Game and Fish Department, pers. comm. 1993).

Since the swift fox is not federally protected and its pelts are of little economic value, there is little effort by the States to determine the status of the swift fox in their jurisdiction, even though it is harvested legally or incidentally taken. Other than State trapping regulations, there is little regulatory protection afforded the swift fox or its habitat. Efforts by the States to modify techniques to avoid the unintentional trapping of swift fox are minimal.

E. *Other man-made or natural factors affecting the species' continued existence.* The swift fox is inquisitive in nature, thus making it extremely vulnerable to human activities. Swift fox are easily trapped, shot, captured by dogs, or killed along country roadsides (Kilgore 1969; Hillman and Sharps 1978; Hines 1980; Sharps and Whitcher 1983; Uresk and Sharps 1986; U.S. Fish and Wildlife Service 1990; Dr. Clyde Jones, Texas Technology University, pers. comm. 1993). Additionally, swift fox are mistakenly taken for coyotes or by people wishing to remove all canids for fear of livestock predation (Zegers 1976).

Habitat loss and modification, rodent control programs, and other human activities often reduce the prey base, impacting the species' ability to find prey. Historically, the range of the swift fox and prairie dog overlapped extensively (Hall and Kelson 1959; Sharps 1993). Swift fox are extremely vulnerable to prey reduction caused by habitat modification and prairie dog control programs (Hines 1980; Egoscue 1979; Sharps 1984; Sharps 1989; Uresk and Sharps 1986; Moravek 1990). Where the prey base has been reduced, swift fox often seek out carrion along roadsides (Hines 1980). Additionally, predator control in the area is conducted by private individuals who use leg hold traps, snares, and shoot animals (U.S. Fish Wildlife Service 1990; Sharps 1993; FaunaWest 1991).

Finding

Section 4(b)(3)(B)(iii) of the Act states that the Service may make warranted but precluded findings if it can demonstrate that an immediate proposed rule is precluded by other pending proposals and that expeditious progress is being made on other listing actions. Since September 30, 1993, the Service has proposed the listing of 118 species and has finalized the listing for 182 species. The Service believes this demonstrates expeditious progress. Furthermore, on September 21, 1983 (48 FR 43098), the Service published a system for prioritizing species for listing. This system considers 3 factors in assigning species' numerical listing priorities on a scale of 1 to 12. The three factors magnitude of threat, immediacy of threat, and taxonomic distinctiveness.

After reviewing and considering the scientific merits and significance of all comments, recommendations, and study proposals received from State and Federal agencies and from private individuals relative to the Service's 90-day Administrative Finding, the Service has concluded that the magnitude of the threat to the swift fox is moderate throughout its present range. The States of Kansas, Colorado, and Wyoming have presented evidence that swift foxes have reoccupied former prairie habitats and have also moved into agricultural lands. However, scientific evidence also indicates that identifiable threats to the swift fox exist over the entire 10-State range, and the Service has concluded that the immediacy of these threats is ''imminent.'' The Service, in its determination of the current degree of threat to the species, also considered a long-range conservation strategy document drafted by an interagency State team which provides a framework of goals, objectives, and strategies. Implementation of this plan, including the formation of a swift fox working team should help reduce some of these threats to its survival. Having considered this draft conservation strategy document and the significance of the evidence provided by the aforementioned States, the Service believes that the magnitude of threats is ''moderate'' but the immediacy of these threats remains ''imminent.'' Therefore, a listing priority of 8 is assigned for the species. The Service will reevaluate this warranted but precluded finding 1 year from the date of the finding. If sufficient new data or information becomes available in the future regarding the magnitude of threats, abundance, and health of these swift fox populations, the Service will reassess the status of the species. The warranted but precluded finding elevates the swift fox's candidate species status from category 2 to category 1.

The Service's 12-month finding contains more detailed information regarding the above decisions. A copy may be obtained from the South Dakota Field office (see **ADDRESSES** section).

References Cited

A complete list of references cited in the rule is available upon request from the South Dakota Field office (see **ADDRESSES** section).

Author

The primary author of this document is David A. Allardyce (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: June 12, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–14730 Filed 6–15–95; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 229

[Docket No. 950605147–5147–01; I.D. 052395C]

RIN 0648–AH33

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Authorization for Commercial Fisheries; Proposed List of Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the new management regime for the taking of marine mammals incidental to commercial fishing operations established by certain provisions of the Marine Mammal Protection Act of 1972 (MMPA) as added to that Act by certain amendments in 1994. The regulations would implement requirements to authorize vessels engaged in commercial fishing to incidentally, but not intentionally, take species and stocks of marine mammals upon the receipt of specified information and that require commercial fishers to report to NMFS the incidental mortality and injury of marine mammals in the course of commercial fishing and comply with certain other requirements. The intended effect of this rule is to provide for a limited exemption of commercial fisheries from the MMPA's moratorium on the taking of marine mammals incidental to commercial fishing activities. NMFS issues a proposed list of fisheries (LOF), categorized according to frequency of incidental serious injury and mortality of marine mammals. Comments are invited on the proposed rule and the proposed LOF.

DATES: Comments on this proposed rule must be received by July 31, 1995. Comments on the proposed LOF must be received by September 14, 1995.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the Environmental Assessment (EA) may be obtained by writing to this address, by telephoning one of the contacts listed below, or by accessing the NMFS ''Home Page'' on the World Wide Web at http://kingfish.ssp.nmfs.gov:80/home-page.html which will be available by June 19, 1995. Comments regarding the burden-hour estimate or any other aspects of the collection of information requirements contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB); Attention: NOAA Desk Officer, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Eagle or Robyn Angliss, Office of Protected Resources, 301–713–2322; Douglas Beach, Northeast Region, 508–281–9254; Charles Oravetz, Southeast Region, 813–570–5301; James Lecky, Southwest Region, 310–980–4015; Brent Norberg, Northwest Region, 206–526–6140; Dr. Steve Zimmerman, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION:

Legislative and Regulatory History

Prior to passage of the 1988 amendments to the MMPA (Public Law 92–522), commercial fishers could receive an exemption from the MMPA's general moratorium on the taking of marine mammals by applying for a general permit and certificates of inclusion. The 1988 amendments to the MMPA (Public Law 100–711), added a section 114 to the MMPA that exempts, on an interim basis, commercial fishers who comply with certain registration