Determination of Critical Habitat for the Whooping Crane
CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination of Critical Habitat for the Whooping Crane

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines Critical Habitat for the whooping crane (Grus americana), an Endangered species, in the States of Colorado, Idaho, Kansas, Nebraska, New Mexico, Oklahoma, and Texas. This rule provides Federal protection of Critical Habitat for the whooping crane in Kansas. That agency felt that sufficient protection was already afforded the whooping crane in Kansas.

The Critical Habitat proposal in Nebraska for the whooping crane was the largest single zone proposed. This part of the proposal received the most comment—28 letters. Concern with possible Federal intervention into the private and local government rights was expressed by several individuals and agencies. General support was given by five private citizens, the National Audubon Society (and local chapters), as well as the Nebraska Game and Parks Commission. The latter suggested that only the Platte River channel and immediately adjacent wetlands and all rainwater basins of Type III and IV wetlands and their associated watersheds be determined Critical Habitat within the originally proposed zone. They acknowledged that sufficient data was not available to determine precisely where the rainwater basins would meet the requirements of the whooping crane during migration. The Service agrees and the determination of the proposed Nebraska Zone as Critical Habitat has been refined to include the main channel and immediately associated riparian habitat of the Platte River in the stretch between Lexington and eastern Buffalo County. Until such time as the Service receives additional data on the habitat requirements of the whooping crane in Nebraska, the remaining area within this zone is not presently determined as Critical Habitat. However, the Service would be prepared to again propose such a determination at any time it is warranted by appropriate data on the whooping crane.

General opposition or concern to the proposed Critical Habitat in Nebraska was received without substantial biological data. The whooping crane's requirements from the city of Grand Island, the Grand Island Industrial Foundation, and the Nebraska Office of Planning and Programming, the Central Platte Natural Resources District, the Central Nebraska Public Power and Irrigation District, the Nebraska Department of Aeronautics, and the Tri-Basin Natural Resources District. Two members of Congress and the Governor also expressed concern over the proposed size of the Nebraska zone as well as the effect the designation might have on the citizens of Nebraska. Four private citizens also expressed concern and general opposition to the proposal.

Comments on proposed areas in New Mexico and Colorado were received from the New Mexico Department of Game and Fish, several biologists, and one other. In general, all suggested that the proposed zones in those States not be designated at this time (early 1976), since sufficient data was not available on whooping crane habitat requirements in those areas. Determination by the Service of the Colorado and New Mexico Critical Habitat is now being made based upon more recent data (through April 1978).

The National Audubon Society and the Oklahoma Department of Wildlife Conservation supported the proposal of Salt Plains National Wildlife Refuge as being designated Critical Habitat for the whooping crane.

The Whooping Crane Recovery Team provided the Service with much data and insight into the habitat requirements of the crane. In particular, the Team suggested refining and further restricting the final Critical Habitat from that proposed for the Aransas National Wildlife Refuge, Tex., Critical Habitat zone. The Service has accepted this refinement of that zone in the area delineated below. No comments were received in opposition to designating Aransas National Wildlife Refuge, Tex., as Critical Habitat for the whooping crane. One ranch owner expressed serious opposition to designation of a portion of Isla San Jose, adjacent to Aransas National Wildlife Refuge, because he felt his private enterprise would be restricted. Section 7 of the Act neither addresses nor directly affects private landowners and their use of such lands that are determined to be a part of the Critical Habitat of a species. The Service must also utilize clearly definable and reasonable permanent boundaries which, by necessity, might include small strips of land or water that is not habitat meeting the direct needs of the species.

Several letters were received requesting further information or commenting on the Critical Habitat proposed in the Federal Register of December 16, 1975. These letters were too late to address, nor were they reviewed or directly affects private landowners and their use of such lands that are determined to be a part of the Critical Habitat of a species. The Service must also utilize clearly definable and reasonable permanent boundaries which, by necessity, might include small strips of land or water that is not habitat meeting the direct needs of the species.

SUMMARY OF COMMENTS

The Critical Habitat proposal for the whooping crane in Idaho was supported by the Governor and the Idaho Fish and Game Department, as well as the Idaho Wildlife Federation and the Ada County Fish and Game League. The latter also recommended that other habitat adjacent to Gray's Lake National Wildlife Refuge be considered in future Critical Habitat proposals. The Service would be prepared to make such a determination at any time it is warranted by appropriate biological data.

The Kansas Forestry, Fish and Game Commission opposed designation of the Cheyenne Bottoms Waterfowl Management Areas as Critical Habitat for the whooping crane in Kansas. That agency felt that sufficient protection was already afforded the whooping crane in Kansas.

The proposal of December 16, 1975, involved nine zones in six States. The zones delineated below in the final determination of Critical Habitat represent a considerable reduction, particularly with respect to the Platte River zone in Nebraska. The decision to make this reduction was based upon a more thorough assessment of available biological data, particularly that provided by the Nebraska Game and Parks Commission.

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The Critical Habitat zones include roosting areas used during migration, as well as rearing and wintering areas. As more precise information becomes available, regarding other sites not listed below, the Service may consider the proposal of additional Critical Habitat for the whooping crane.

**Critical Habitat**

Section 7 of the act, entitled “Interagency Cooperation,” states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat for such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

A definition of the term “Critical Habitat” was published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the Federal Register of January 4, 1978 (43 FR 870-876) to be codified at 50 CFR 402 and is reprinted below:

"Critical habitat" means any air, land, or water area existing by design or by chance, that currently provides (1) cover or shelter; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) rearing of offspring; (4) sites for breeding, reproduction, or rearing of offspring; and (5) habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

Each of the above five factors pertain to the whooping crane and are summarized below:

1. **Roosting sites.** Whooping cranes are territorial birds. Each pair requires several hundred acres of undisturbed wetlands in which to roost. Unmated subadults must also have a roosting site that is not regularly defended by the paired cranes. The population wintering in the vicinity of Aransas National Wildlife Refuge has been expanding. Although maximum density of the habitat has not yet been reached, some cranes are now moving up and down the coastal marshes from the refuge to establish wintering territories. The four refuges in Idaho, Colorado, and New Mexico will offer further space for individual and population growth as this separate flock becomes established in the wild.

2. **Habitat.** All areas designated in this rule provide food, water, and other nutritional or physiological needs of the whooping crane. Cranes at Aransas feed primarily on various crustaceans and molluscs found in the tidal flats and marshes. Crayfish, frogs, small fish, and other small animals appear to be the major items taken in wetlands on spring migration. During fall migration whooping cranes seem to feed more extensively in recently harvested grain fields where insects and wasted grains seem to constitute the bulk of their diet.

3. **Gravel bars in rivers and lakes for roosting.** This habit of using sand or gravel bars in rivers and lakes for roosting is common to the whooping crane. Cranes at Aransas roost in gravel bars in nearby lakes. Cranes at Aransas roost in gravel bars in nearby lakes. The bulk of their diet.

4. **Platte River Bottoms between Lexington and Dehman, Nebraska.** These areas are described in greater detail in the Regulation promulgation at the end of this publication.

5. **EFFECTS or THE RULEMAKING.**

- Most persons who commented on the proposal were apparently confused regarding the meaning and implications of Critical Habitat designations. For example, many expressed concern that the designation would automatically halt or greatly restrict all human activities and development within the entire designated areas. Many seemed to think that Section 7 provisions would apply to the actions of all parties, not just Federal agencies. Perhaps most unfortunately, many persons apparently thought that the Fish and Wildlife Service could arbitrarily determine or not determine, enlarge or reduce Critical Habitat areas based on non-biological factors for the species involved.

There has been widespread and erroneous belief that a Critical Habitat designation is something akin to estab-
lishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a Critical Habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to Section 7 of the Act are applicable in a certain area.

A Critical Habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in accordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives; for example, to enlarge a Critical Habitat delineation so as to cover additional habitat under Section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of Critical Habitat delineations. Such questions should, and can more conveniently, be dealt with after Critical Habitat has been designated. In this respect, the Service in cooperation with other Federal agencies has drawn up a set of guidelines which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on Critical Habitat. Provisions for Interagency Cooperation were published as 50 CFR 402 in the Federal Register (43 FR 870-876) to assist Federal agencies in complying with their responsibilities under Section 7 of the Act.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Office of Endangered Species in Washington, D.C. The assessment is the basis for a decision that the determinations of this rulemaking are not major Federal actions that would affect significantly the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

RULES AND REGULATIONS

The Director has considered all comments and data submitted in response to the proposed determination of Critical Habitat for the whooping crane. The Director also has considered other information received by the Service, both prior to and subsequent to the publication of the proposed Critical Habitat determination in the Federal Register of December 16, 1976. Based upon this review, the areas delineated below are determined to be Critical Habitat for the whooping crane.

The primary author of this rule is Mr. Jay M. Sheppard, Office of Endangered Species (202/343-7814).

REGULATION PROMULGATION

Accordingly, §17.95(b), Subpart I, Part 17, Chapter I, Title 50 of the Code of Federal Regulations, is amended by adding the following Critical Habitat description before the Critical Habitat description for the Mississippi sandhill crane:

Subpart I—Interagency Cooperation

§17.95 Critical habitat—fish and wildlife.

(b) Birds.

Whooping Crane (Grus americana)

Colorado. Areas of land, water, and airspace with the following components: (1) Monte Vista National Wildlife Refuge in Alamosa and Rio Grande Counties; and (2) Alamosa National Wildlife Refuge in Alamosa and Conejos Counties.

Idaho. An area of land, water, and airspace in Bonneville and Caribou Counties with the following components; Grays Lake National Wildlife Refuge, and all contiguous land and water within 1 mile of the boundaries of this refuge.

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Kansas. Areas of land, water, and airspace with the following components: (1) Quivira National Wildlife Refuge in Stafford, Reno, and Rice Counties; and (2) Cheyenne Bottoms State Waterfowl Management Area in Barton County.

Nebraska. An area of land, water, and airspace in Dawson, Buffalo, Hall, Phelps, Kearny, and Adams Counties with the following boundaries: Platte River bottom—a strip of river bottom with a north-south width 3 miles, a south boundary paralleling Interstate 80, beginning at the junction of U.S. Highway 283 and Interstate 80 near Lexington, and extending eastward along Interstate 80 to the interchange for Shelton and Dehman, Nebr. near the Buffalo-Hall County line.
**New Mexico.** An area of land, water, and airspace in Socorro County with the following component: All areas at or below 4,600 feet in elevation within Bosque del Apache National Wildlife Refuge.

**Oklahoma.** An area of land, water, and airspace in Alfalfa County with the following component: Salt Plains National Wildlife Refuge.

**Texas.** An area of land, water, and airspace in Aransas, Calhoun, and Refugio Counties with the following boundaries: Beginning at the point where the north boundary of the Aransas National Wildlife Refuge intersects the shore of San Antonio Bay at Webb Point; thence, from this point along a straight line across San Antonio Bay through the westernmost tip of Mosquito Point and inland to a point of intersection with metal surfaced road; thence eastward along a straight line across Espiritu Santo Bay to the intersection of the bay shore and a road at the east end of Pringle Lake on Matagorda Island; thence south along this road to the intersection with the main Matagorda Island road; southwestward along this main road to Cedar Bayou at latitude 28°04'10" N; thence due west across Cedar Bayou, Vinson Slough, and Isla San Jose to Gulf Intracoastal Waterway platform channel marker No. 25; thence north to the southwest corner of the proclamation boundary, just south of Blackjack Point; thence north along the proclamation boundary into St. Charles Bay to a line drawn as an eastward extension of Twelfth Street on Lamar Peninsula; thence westward along this line to intersection with Palmetto Avenue; thence northward along a straight line to the southwest corner of the Aransas National Wildlife Refuge at Texas State Highway 25 and the north shore of Cavasso Creek; thence northeast on a straight line to the corner of the Aransas National Wildlife Refuge north boundary adjacent to triangulation station "Twin"; thence along the north boundary of said refuge to the starting point at Webb Point.

**Note.**—The Service has determined that this document does not contain a major action requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.


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