
DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

**ENDANGERED AND THREATENED
WILDLIFE AND PLANTS****Proposed Determination of Critical Habitat
for the American Peregrine Falcon**

The Director, United States Fish and Wildlife Service (hereinafter, the Director and the Service, respectively) hereby issues a Proposed Rulemaking which would determine a portion of the Critical Habitat of the American Peregrine Falcon (*Falco peregrinus anatum*). This Proposal is issued pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter the Act).

BACKGROUND

The American Peregrine Falcon is among the rarest and most critically Endangered birds in the United States, and has been official listed as Endangered since 1970. Much of the hope for the survival and recovery of this species depends upon the maintenance of suitable, undisturbed nesting sites. The Service recognizes that areas containing such sites may qualify for recognition as Critical Habitat as referred to in section 7 of the Act. A notice of intent to determine Critical Habitat for the American Peregrine Falcon was published by the Service in the FEDERAL REGISTER of May 16, 1975 (40 FR 21499-21500). Subsequently, in late 1975, the Director was notified by the Region 1 Director of the Service in Portland, and by the Director of the California Department of Fish and Game, that certain areas of northern California, used for nesting by the Peregrine, should be designated as Critical Habitat for the species. After evaluating this recommendation and supporting data, the Director determined to proceed with the Proposed Rulemaking.

The areas delineated below have been utilized extensively by Peregrine Falcons within the last few years, and all contain many excellent nesting sites for the species. These areas also have or are adjacent to high concentrations of passerine birds, taken as prey by the Falcons. The named zones referred to below

were so designated for convenience by field personnel. It is emphasized that these areas represent only small segments of what may be the overall Critical Habitat of the American Peregrine Falcon in the United States, and that additional areas may be proposed for designation in the near future.

EFFECTS OF THE RULEMAKING

The effects of this determination are involved primarily with Section 7 of the Act, which 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 his 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 of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

An interpretation of the term "Critical Habitat" was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the *FEDERAL REGISTER* of April 22, 1975 (40 FR 17764-17765). Some of the major points of that interpretation are: (1) Critical Habitat could be the entire habitat of a species, or any portion thereof, if any constituent element is necessary to the normal needs or survival of that species; (2) actions by a Federal agency affecting Critical Habitat of a species would not conform with Section 7 if such actions might be expected to result in a reduction in the numbers or distribution of that species of sufficient magnitude to place the species in further jeopardy, or restrict the potential and reasonable recovery of that species; and (3) there may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely affect that species.

This last point has not been well understood by some persons. There has been widespread and erroneous belief that a Critical Habitat designation is something akin to establishment 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.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted be as accurate as possible in delineating the Critical Habitat of the American Peregrine Falcon. The Director, therefore, desires to obtain the comments and suggestions of the public, other concerned governmental agencies, the scientific community, or any other interested party on these Proposed Rules.

Final promulgation of Critical Habitat regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this Proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this Rulemaking by submitting written comments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments received no later than October 29, 1976 will be considered. The Service will attempt to acknowledge receipt of comments, but substantive responses to individual comments may not be provided. Comments received will be available for public inspection during normal business hours at the Service's Office in Suite 600, 1612 K Street, N.W., Washington, D.C.

Dated: August 20, 1976.

LYNN A. GREENWALT,
Director, Fish and Wildlife Service.

Accordingly, it is hereby proposed to amend 50 CFR Part 17:

1. By amending the Table of Sections for Subpart F of Part 17 to read as follows:

- Subpart F—Critical Habitat**
- Sec.
- 17.68 American peregrine falcon.
2. By adding a new § 17.68 reading as follows:
- § 17.68 American peregrine falcon.

The following areas are critical habitat for the American Peregrine Falcon (*Falco peregrinus anatum*).

CALIFORNIA—Dry Creek Zone: areas of land, water, and airspace in Sonoma County, with the following components (Mt. Diablo Base Meridian): (a) T10N R11W W1/2 of SW1/4 Sec. 6, W1/2 of NW1/4 Sec. 6, NW1/4 of NW1/4 Sec. 7; T10N R12W Sec. 1, E1/2 of NE1/4 Sec. 2, SW1/4 of NE1/4 Sec. 2, SE1/4 Sec. 2, E1/2 of SW1/4 Sec. 2, SE1/4 of NW1/4 Sec. 2, N1/2 of NE1/4 Sec. 11, NE1/4 of NW1/4 Sec. 11, N1/2 of NE1/4 Sec. 12, N1/2 of NW1/4 Sec. 12; T11N R11W SW1/4 of SE1/4 Sec. 31, S1/2 of SW1/4 Sec. 31; T11N R12W S1/2 of SE1/4 Sec. 36, SE1/4 of SW1/4 Sec. 36; (b) T10N R11W NW1/4 of SW1/4 Sec. 1, W1/2 of NW1/4 Sec. 1, N1/2 Sec. 2, N1/2 of SE1/4 Sec. 2, N1/2 of SW1/4 Sec. 2, N1/2 Sec. 3, N1/2 of SE1/4 Sec. 3, N1/2 of SW1/4 Sec. 3, NE1/4 Sec. 4, N1/2 of SE1/4 Sec. 4, NE1/4 of SW1/4 Sec. 4, E1/2 of NW1/4 Sec. 4; T11N R11W E1/2 of SE1/4 Sec. 33, S1/2 Sec. 34, S1/2 Sec. 35, W1/2 of SE1/4 Sec. 36, SW1/4 Sec. 36; (c) T11N R12W S1/2 Sec. 19, Sec. 30; T11N R13W SE1/4 Sec. 24, E1/2 of SW1/4 Sec. 24, E1/2 Sec. 25, E1/2 of SW1/4 Sec. 25, E1/2 of NW1/4 Sec. 25.

Palisades-Table Rock Zone: an area of land, water, and airspace in Napa County, with the following components (Mt. Diablo Base Meridian): T9N R6W S1/2 Sec. 5, S1/2 Sec. 6, Sec. 7, Sec. 8, Sec. 9, Sec. 16, Sec. 17, Sec. 18, Sec. 19, Sec. 20; T9N R7W E1/2 Sec. 12, E1/2 Sec. 13, NE1/4 Sec. 24, E1/2 of SE1/4 Sec. 24.

Mount St. Helena Zone: an area of land, water, and airspace in Lake, Napa, and Sonoma counties, with the following components (Mt. Diablo Base Meridian): T9N R7W W1/2 of NE1/4 Sec. 3, W1/2 of SE1/4 Sec. 3, W1/2 Sec. 3, Sec. 4, E1/2 Sec. 5, E1/2 of SW1/4 Sec. 5, E1/2 of NW1/4 Sec. 5; T10N R7W that portion of Sec. 29 east of Ida Clayton Road, Sec. 21, W1/2 of NE1/4 Sec. 22, W1/2 of SE1/4 Sec. 22, W1/2 Sec. 22, W1/2 of NE1/4 Sec. 27, W1/2 of SE1/4 Sec. 27, W1/2 Sec. 27, Sec. 28, that portion of Sec. 29 east of Ida Clayton Road, that portion of the NE1/4 Sec. 32 east and south of Ida Clayton Road, SE1/4 Sec. 32, E1/2 of SW1/4 Sec. 32, that portion of the SE1/4 of NW1/4 Sec. 32 south of the Ida Clayton Road, Sec. 33, W1/2 of NE1/4 Sec. 34, W1/2 of SE1/4 Sec. 34, W1/2 Sec. 34.

Cobb Mountain Zone: an area of land, water, and airspace in Lake and Sonoma counties, with the following components (Mt. Diablo Base Meridian): T11N R8W S1/2 of SE1/4 Sec. 8, SE1/4 of SW1/4 Sec. 8, S1/2 of SW1/4 Sec. 9, SW1/4 of SE1/4 Sec. 14, SW1/4 Sec. 14, S1/2 Sec. 15, W1/2 of NE1/4 Sec. 16, SE1/4 Sec. 16, W1/2 Sec. 16, E1/2 Sec. 17, E1/2 of NW1/4 Sec. 17, NE1/4 Sec. 17, NE1/4 of NE1/4 Sec. 20, N1/2 of NE1/4 Sec. 21, N1/2 of NW1/4 Sec. 21, N1/2 Sec. 22, W1/2 of NE1/4 Sec. 23, NW1/4 Sec. 23.

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