

[4310-55]

Title 50—Wildlife and Fisheries

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 these areas under Section 7 of the Endangered Species Act of 1973 and is taken to assure the conservation of the whooping crane.

DATE: This rule becomes effective June 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In the FEDERAL REGISTER of December 16, 1975 (40 FR 58308-58312), the Service proposed the determination of Critical Habitat for the whooping crane and five other endangered species. Determinations of Critical Habitat for those other five endangered species have been made (41 FR 13926-13928, April 1, 1976—Snail Darter; 41 FR 41914-41916, September 24, 1976—American Crocodile, California Condor, Indiana Bat, and Florida Manatee).

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 designa-

tion 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 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 which 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 on the whooping crane's requirements from the city of Grand Island, the Grand Island Industrial Foundation, 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 private citizen. 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 these areas. Determination by the Service of the zones in Colorado and New Mexico as 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 by the Service 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 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.

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 general to be categorized as being favorable or non-favorable towards the proposal. The Federal Highway Administration recommended that existing highways and their associated rights-of-way be specifically excluded from the Critical Habitat so designated. Existing man-made structures not necessary to the species' survival are excluded from this determination.

BASIS FOR DETERMINATION

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.

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 of 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 (exclusive of those existing man-made structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: Physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the regulations for Interagency Cooperation as published in the January 4, 1978, FEDERAL REGISTER (43 FR 870), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing of offspring; and generally,
- (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) Whooping cranes are territorial birds. Each pair requires several hundred acres of undisturbed wetlands in and around Aransas National Wildlife Refuge. Unmated subadults must also have some suitable habitat 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) 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) Generally, whooping cranes (as do most other cranes in the world) require an open expanse for nightly roosting. This habit of using sand or gravel bars in rivers and lakes for nightly roosting appears to be one of the major factors in crane habitat selection. Feeding cranes seen in migration are frequently found within short flight distances of reservoirs, lakes, and large rivers that offer bare islands for nightly roosting.

(4) In this rule only the Grays Lake area offers potential nesting habitat for the whooping crane. The rearing of young cranes extends for approximately ten months; that is, until the young cranes are driven out of the family unit by their parents on the spring migration. All the areas in this rule constitute habitats essential to the rearing of these young whooping cranes by providing the cranes with sites for training and protection as well as feeding and other normal behavior.

(5) Whooping cranes do not readily tolerate disturbances to themselves or their habitat. A human on foot can quickly put a whooping crane to flight at distances over one quarter of a mile. Loss of large expanses of wetlands and shooting were the major factors in causing the massive declines of whoop-

ing cranes in the late 1800's. The one common feature uniting the vast majority of confirmed sightings of this crane in migration is the proximity to wetlands that provide undisturbed roosting sites.

Based upon this review of the above five factors, the comments received, the scientific literature, and unpublished data in the files of the Service, it is our finding that the habitats determined to be Critical in this rule do constitute areas required by the whooping crane, the loss of which would appreciably decrease the likelihood of the survival and recovery of these cranes. The continued conservation and recovery of the whooping crane would be seriously threatened without these feeding or roosting areas being determined as Critical Habitat.

Critical Habitat for the whooping crane (*Grus americana*) is, therefore, determined to include the following areas (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species):

- (1) Monte Vista National Wildlife Refuge, Colorado;
- (2) Alamosa National Wildlife Refuge, Colorado;
- (3) Grays Lake National Wildlife Refuge and vicinity, Idaho;
- (4) Cheyenne Bottoms State Waterfowl Management Area, Kansas;
- (5) Quivira National Wildlife Refuge, Kansas;
- (6) Platte River Bottoms between Lexington and Dehman, Nebraska;
- (7) Bosque del Apache National Wildlife Refuge, New Mexico;
- (8) Salt Plains National Wildlife Refuge, Oklahoma; and
- (9) Aransas National Wildlife Refuge and vicinity, Texas.

These areas are described in greater detail in the Regulation promulgation at the end of this publication.

EFFECTS OF 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 a Critical Habitat area 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-

RULES AND REGULATIONS

FINAL RULEMAKING

ishment 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.

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, 1975. 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

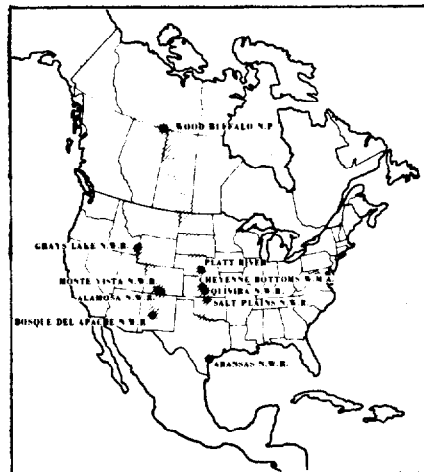
Accordingly, § 17.95(b), Subpart I, Part 17, Chapter I, Title 50 of the Code of Federal Regulations, is amended by adding the following Critical Habitat description before the Critical Habitat description for the Mississippi sandhill crane:

Subpart I—Interagency Cooperation

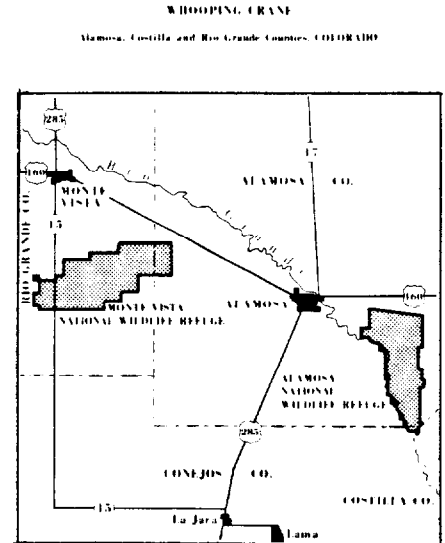
§ 17.95 Critical habitat—fish and wildlife.

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- (b) *Birds.*
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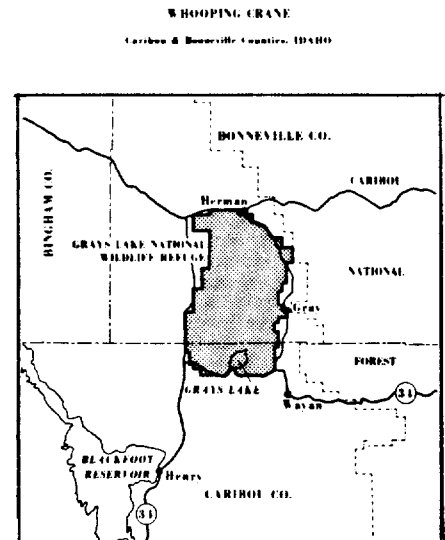
WHOOPING CRANE (*Grus americana*)



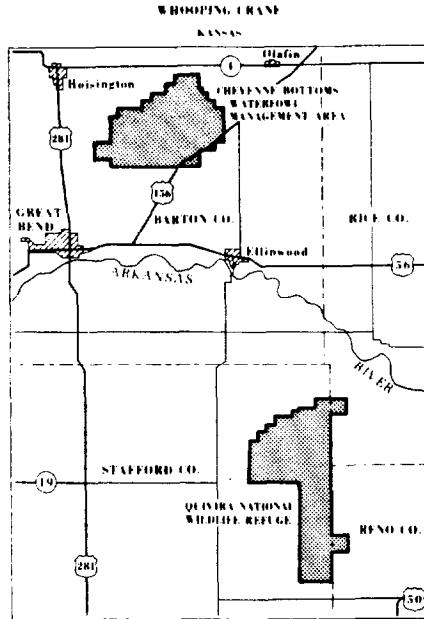
Colorado. Areas of land, water, and airspace with the following components: (1) Monte Vista National Wildlife Refuge in Alamosa and Rio Grande Counties; and (2) Alamosa National Wildlife Refuge in Alamosa and Conejos Counties.



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.

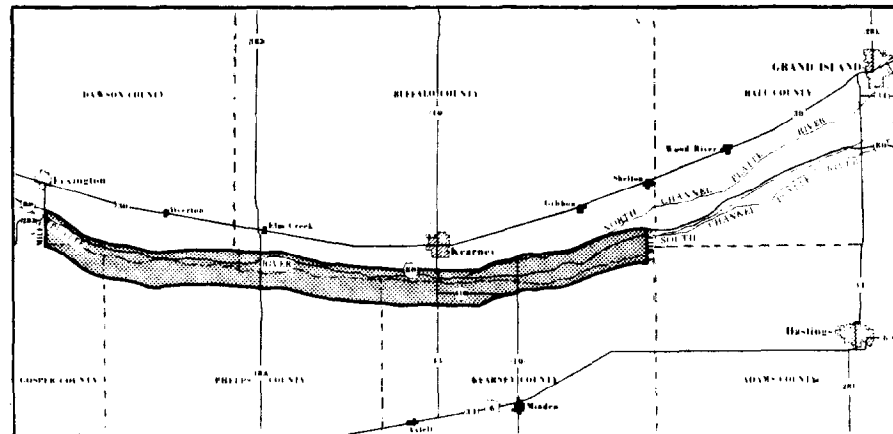


Kansas. Areas of land, water, and airspace with the following components: (1) Quivira National Wildlife Refuge in Stafford, Reno, and Rice Counties; and (2) Cheyenne Bottoms State Waterfowl Management Area in Barton County.



Nebraska. An area of land, water, and airspace in Dawson, Buffalo, Hall, Phelps, Kearny, and Adams Counties with the following boundaries: *Platte River bottoms*—a strip of river bottom with a north-south width 3 miles, a south boundary paralleling

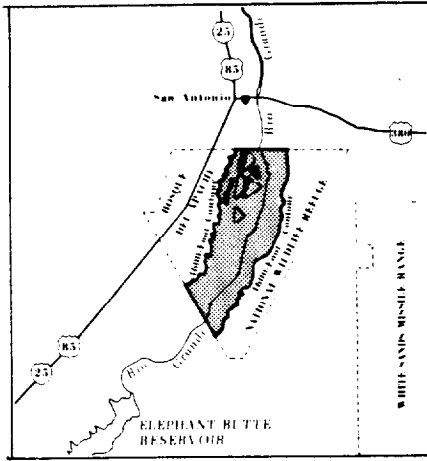
Interstate 80, beginning at the junction of U.S. Highway 283 and Interstate 80 near Lexington, and extending eastward along Interstate 80 to the interchange for Shelton and Dehman, Nebr. near the Buffalo-Hall County line.



RULES AND REGULATIONS

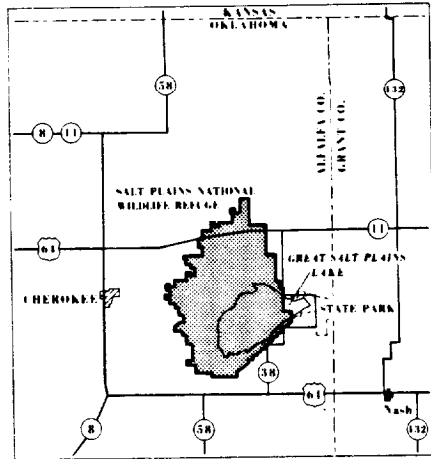
New Mexico. An area of land, water, and airspace in Socorro County with the following component: All areas at or below 4,600 feet in elevation within Bosque del Apache National Wildlife Refuge.

WHOOPIING CRANE
Socorro County, NEW MEXICO



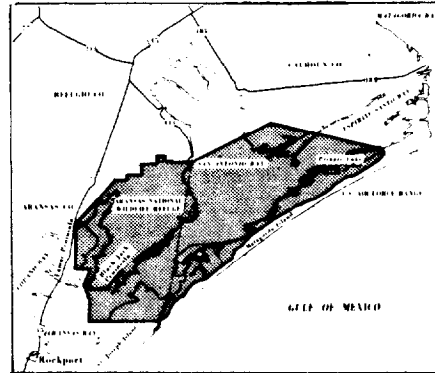
Oklahoma. An area of land, water, and airspace in Alfalfa County with the following component: Salt Plains National Wildlife Refuge.

WHOOPIING CRANE
Alfalfa County, OKLAHOMA



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 35 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.

Dated: May 8, 1978.

ROBERT S. COOK,
Acting Director,
Fish and Wildlife Service.

[FR Doc. 78-12925 Filed 5-12-78; 8:45 am]