

NATURAL RESOURCE DAMAGE ASSESSMENT

DRAFT RESTORATION PLAN and ENVIRONMENTAL ASSESSMENT

SOUTHERN LAKES TRAP & SKEET CLUB SITE LAKE GENEVA WALWORTH COUNTY, WISCONSIN

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*Department of the Interior
U.S. Fish and Wildlife Service
Midwest Region*

Introduction

This Draft Restoration Plan and Environmental Assessment is proposed by the U.S. Fish and Wildlife Service (Service) to guide the implementation of a restoration project(s) to compensate for natural resources lost and injured at the Southern Lakes Trap & Skeet Club Site (the "Site"), in Walworth County, Wisconsin. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or "Superfund"; 42 U.S.C §§ 9601, *et seq.*) identifies trustees for natural resources and authorizes them to assess and recover damages for injury to natural resources resulting from releases of hazardous substances. Damages are to be used for the restoration, replacement, or acquisition of equivalent natural resources. The Service is acting on behalf of the U.S. Department of the Interior (Department) as a natural resource trustee at the Site under the authority of the CERCLA and Executive Order 12580.

Background and Natural Resource Injuries at the Southern Lakes Trap & Skeet Club Site

The Southern Lakes Trap & Skeet Club at the Grand Geneva Resort and Spa was located near Lake Geneva, Wisconsin. The Site included a trap and skeet shooting range; shooting stations were located such that spent shot was deposited in and around a 36-acre wetland on the Site.

In January 1992, the Service investigated the death of Canada geese near the Site, and subsequently concluded the geese died from lead poisoning resulting from the consumption of lead shot released at the Site. The wetland at the Site provides feeding habitat for geese and other migratory birds. The Service completed a Preassessment Screen and Determination pursuant to federal regulations (43 CFR 11, Part 23) for the

Site on January 22, 1993, noting that hazardous substances were released at the Site in sufficient quantities to cause injuries to natural resources, and that migratory bird and supporting habitat (trust resources) had in fact been exposed and injured. Because Site response actions had not yet begun at that time to remediate the hazardous substances, the Service determined to proceed with a natural resource damage assessment to restore trust resources lost and injured at the Site. The Service notified the U.S. Environmental Protection Agency (EPA) of its intent to do so on January 27, 1992. The Service also transmitted Notices of Intent to Perform an Assessment to Potentially Responsible Parties (PRPs) at the Site on February 18, 1993 and July 15, 1993. The Wisconsin Department of Natural Resources declined to participate in the assessment with the Service as a co-trustee.

The Department and the Service worked together with the EPA in negotiations with the PRPs to address remediation at the Site, as well as the restoration of natural resources, in response to releases of hazardous substances. EPA informed the PRPs at the Site of potential liabilities pursuant to Section 104 of CERCLA on January 8, 1993, and September 11, 1996. EPA issued an Administrative Order on Consent (AOC) in July 1994, under which the PRPs agreed to perform a two-phase site assessment to investigate polynuclear aromatic hydrocarbons, elemental lead, and lead contamination of soils, surface waters and sediments; and, to develop clean up criteria for the Site. Pursuant to the AOC, the PRPs conducted an extensive site assessment in August and September 1994, and submitted a Phase I Site Report detailing extensive lead shot distribution throughout the Site. The PRPs also submitted a Draft Phase II Removal Plan to EPA in August 1995. EPA rejected the Draft Phase II Removal Plan, and instead issued an Action Memorandum to the PRPs on September 5, 1996 to implement removal activity sufficient to mitigate the “imminent and substantial threat to public health and the environment posed by the presence of hazardous substances” in the form of lead shot at the Site.

EPA coordinated with the Service to design and conduct removal activities at the Site from October 1996 through July 1997. Remedial actions included excavation and disposal of lead-contaminated sediments and soils in wetland and surrounding upland habitat areas, respectively; as well as, seeding and planting of native prairie and wetland species to restore habitat. On January 22, 1998, EPA issued its finding that no further response activities were planned at the Site. The Service determined these response actions were sufficient to restore migratory bird habitat on-site to the extent possible; however, the Service also noted additional restoration, replacement, or acquisition of equivalent natural resources off-site was necessary to compensate for the interim loss of this habitat and for direct injuries to migratory birds.

Following final settlement negotiations between all parties, a Consent Decree was entered with the U.S. District Court for the Eastern District of Wisconsin on November 25, 1998 (U.S. v. Lake Geneva Associates et al.; Civ. No. 98-C-0972) resolving all remediation and restoration issues at the Site. Under terms of the Consent Decree, EPA’s response costs were reimbursed, and \$75,000 was paid to the Department for natural resource

damages noted above due to shooting activities at the Site, as well as for the costs of assessing those damages.

Settlement funds recovered for natural resource damages were deposited into the Department's Natural Resource Damage Assessment and Restoration Fund. With accrued interest, \$101,797 is now available (as of January 13, 2009) for the restoration, replacement, or acquisition of equivalent natural resources lost and injured due to the releases of hazardous substances at the Site. The Service proposes to utilize these funds to restore natural resources as described below.

Proposed Restoration

Restoration Plan Framework

The Service proposes to use the *Wisconsin Whooping Crane Management Plan* (December 6, 2006, Wisconsin Department of Natural Resources PUBL-ER-650 06) as the framework to develop specific actions to restore, replace, and/or acquire the equivalent of natural resources lost and injured at the Southern Lakes Trap & Skeet Club Site. The *Wisconsin Whooping Crane Management Plan* is a regional conservation plan which establishes habitat and species restoration goals for the whooping crane (*Grus americana*), and identifies an associated implementation strategy.

The Service considered four principle factors in the decision to use the institutional infrastructure of the *Wisconsin Whooping Crane Management Plan*:

- 1) Remediation of migratory bird wetland habitat at the Site provided on-site habitat restoration to the extent possible. Off-site projects must now be located to complete the restoration specified in the natural resource damage assessment settlement for the Site;
- 2) The amount of the settlement for natural resource damages is relatively small; therefore, it is necessary to minimize transaction costs to efficiently complete the restoration;
- 3) Service policy in the Midwest Region requires using existing arrangements for resource management and conservation to the extent possible; and
- 4) A key component of the Natural Resource Damage Assessment & Restoration (NRDAR) Program in the Service's Midwest Region is to integrate the program as a tool to achieve the broader mission of the Service. Habitat restoration enabled by the NRDAR process, but conducted through other existing institutional conservation arrangements, results in the greatest contribution to Service resource management goals. This strategy is consistent with the Service's cross-program approach to fish and wildlife management wherein conservation projects are implemented by teams representing multiple Service programs.

The *Wisconsin Whooping Crane Management Plan* was developed to guide the reintroduction of a migratory flock of whooping cranes to Eastern North America. The whooping crane is classified as “nonessential experimental population” in Wisconsin (and other states); and is a federally-listed endangered species in other parts of its range within the states of Colorado, Kansas, Montana, North Dakota, Oklahoma, South Dakota, and Texas. Within the *Wisconsin Whooping Crane Management Plan* “management strategies and protocol recommendations have been developed to maintain a high level of protection and ensure future success of whooping cranes in Wisconsin”.

The *Wisconsin Whooping Crane Management Plan* was developed by a diverse stakeholder group of public and private organizations participating in the Whooping Crane Eastern Partnership (Partnership). The Partnership is an international coalition working to establish a discrete, self-sustaining migratory population of whooping cranes that will augment two existing populations: (1) the only naturally occurring population that migrates between northern Canada and southern United States in the west; and, (2) the non-migratory flock reintroduced into central Florida beginning in 1993. Founding members of the Partnership include the International Crane Foundation, Operation Migration Inc., Wisconsin Department of Natural Resources, the Service, the U.S. Geological Survey’s Patuxent Wildlife Research Center and National Wildlife Health Center, the National Fish and Wildlife Foundation, the Natural Resources Foundation of Wisconsin, and the International Whooping Crane Recovery Team. The *Wisconsin Whooping Crane Management Plan* was approved by the Wisconsin Natural Resources Board following a public review and comment process.

Because whooping crane habitat requirements in Wisconsin for breeding, foraging, and migration are similar to the migratory bird habitat impacted at the Southern Lakes Trap & Skeet Club Site, the Service believes the *Wisconsin Whooping Crane Management Plan* provides an efficient means to achieve the restoration goals for the Site, while at the same time, facilitates the conservation and recovery of a migratory bird endangered species.

Restoration Project(s)

Whooping cranes utilize wetlands for nesting, chick hatching and rearing, and feeding. The *Wisconsin Whooping Crane Management Plan* notes that “any wetland with minimal human disturbance, even small isolated wetlands, bears potential use by whooping cranes.” Therefore, restoration projects will be selected to restore, enhance, and/or protect wetland habitat. Information from the Whooping Crane Eastern Partnership’s eastern migratory population whooping crane monitoring database will be utilized to target specific wetland types, size, and locations that will provide the greatest benefit to whooping cranes in Wisconsin.

The reintroduced whooping cranes use suitable wetland habitat across Wisconsin, but are currently concentrated in and around their release location at the Necedah National Wildlife Refuge (NWR), near Necedah, in Juneau County, Wisconsin. The Necedah NWR is situated within a network of public and private lands, including the adjacent

Meadow Valley Wildlife Area and Sandhill Wildlife Area managed by the Wisconsin Department of Natural Resources. These largely formerly agricultural lands currently support some whooping crane foraging, roosting, and nesting requirements; additional wetland habitat restoration and enhancement is anticipated to further advance whooping crane recovery. Therefore, the Service proposes to use restoration funding from the Southern Lakes Trap & Skeet Club Site (see below) for wetland habitat restoration and enhancement actions within these areas for ditch plugging, exotic species control, water level management, and/or prescribed burns, among other management techniques.

Restoration Project(s) Schedule and Budget

Following public review of this draft plan, the Service anticipates issuing a Final Restoration Plan and Environmental Assessment for the Southern Lakes Trap & Skeet Club Site during the third quarter of FY2009. At that time, all restoration funding for the Southern Lakes Trap & Skeet Club Site in the Department's Natural Resource Damage Assessment and Restoration Fund will be transferred to the Service to begin project(s) implementation. With accrued interest, the current balance (as of February 26, 2009) of the restoration funding account for the Site is \$101,803. Specific restoration project actions supported by the use of these funds are anticipated to be implemented from the last quarter of FY2009 through 2010.

Restoration Project Final Report

At the completion of the restoration project activities, a final report documenting accomplishments will be prepared. The report will describe actions taken as part of the *Wisconsin Whooping Crane Management Plan* to restore, enhance, and/or acquire the equivalent of natural resources lost or injured at the Southern Lakes Trap & Skeet Club Site. Photographs documenting habitat enhancement and select documents (such as conservation easements or management agreements) demonstrating habitat protection, will be included in the report (as applicable); as well as, cost information for each restoration action completed in fulfilling this restoration plan.

Restoration Project(s) Administration and Coordination

The Service's Green Bay Ecological Services Field Office (GBFO) is responsible for overall administration, coordination, and support of the restoration project(s). The GBFO will work with the Whooping Crane Eastern Partnership to ensure that the project(s) is developed and implemented to restore trust resource (migratory bird) habitat in supporting the resource goals identified in the *Wisconsin Whooping Crane Management Plan*. The GBFO will administer project funds according to a budget developed for each specific restoration project action. Completed restoration project(s) expenditures will be documented in a final report (referenced above) prepared by the GBFO. Fiscal accountability will be maintained following the "Superfund Financial Management and Recordkeeping Guidance for Federal Agencies" (EPA publication EPA 220 M-89 00).

Environmental Assessment

With respect to additional environmental review requirements under the National Environmental Policy Act of 1969 (NEPA), the Service has determined that the restoration, acquisition, and/or replacement of equivalent natural resource values following a natural resource damage assessment restoration plan meets the criteria for a Categorical Exclusion (516 DM 2, Appendix 1 and 516 DM 8). Further, actions contemplated in the *Wisconsin Whooping Crane Management Plan* are consistent with the Service's Final Rule establishing a nonessential experimental population of whooping cranes in the eastern United States that migrate from Wisconsin to Florida. That Final Rule was published in the Federal Register on June 26, 2001, following a public review and comment period. The Service conducted an Environmental Assessment on the actions identified in the Final Rule, and a Finding of No Significant Impact was determined.

Therefore, the Service determines that proposed actions following this Draft Restoration Plan and Environmental Assessment for the Southern Lakes Trap & Skeet Club Site are Categorical Exclusions under NEPA. An Environmental Action Statement documenting this determination is attached.

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Attachments

Environmental Action Statement