

**U. S. FISH AND WILDLIFE SERVICE
ENVIRONMENTAL ACTION STATEMENT FOR
CATEGORICAL EXCLUSION**

The Service proposes to expand fishing opportunities (boating regulations changes) on 1,360 acres of the Kirwin National Wildlife Refuge, Kansas in accordance with existing State, local, and Refuge-specific regulations (50 CFR 32.35).

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and determined that the following proposed action is categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4, 43 CFR 46.205, and 516 DM 8.5.

The Service has fully satisfied the other requirements for expanding these opportunities on the refuge, including:

determining that the opportunities are compatible with the purposes for which the refuge was established and the mission of the National Wildlife Refuge System (see attached Compatibility Determination);

ensuring the opportunities are consistent with existing State, local, and refuge-specific regulations (50 CFR 32.35);

*Use of signs and brochures may supplement the refuge-specific regulations

complying with the National Environmental Policy Act (see attached);

complying with the Endangered Species Act section 7 evaluation (see attached)
OR N/A because there are no candidate, threatened or endangered species present;

complying with the National Historic Preservation Act section 106 consultation;

OR N/A because there are no cultural or historic resources present;

The Service is, therefore, waiving the requirement to prepare an opening package in compliance with Service policy (605 FW 2.9A). The request to amend the 2006 Kirwin National Wildlife Refuge Comprehensive Conservation Plan is also attached.

Signature _____

Date: _____

Title Project Leader

CATEGORICAL EXCLUSION CHECKLIST FOR NEPA COMPLIANCE

Proposed Action:

The Service proposes to expand fishing opportunities in accordance with existing State, local, and Refuge-specific regulations (50 CFR 32.35) at Kirwin National Wildlife Refuge, in Kansas. This opportunity would open 1,360 acres to fishing by motorized boats that are part of the Refuge's approximately 3,640 acres already open to fishing via bank access and non-motorized boats (see attached map). Based on the biological impacts addressed in the Compatibility Determination, it is determined recreational fishing by boat will not materially interfere with the habitat goals and objectives or purposes for refuge establishment. Fishing is a priority public use as listed in the National Wildlife Refuge System Improvement Act of 1997. Boating is not a priority public use. However, it does facilitate the six priority public uses. By specifying areas, time of year, no wake zones, and implementing a seasonal boat closure, boating is determined to be compatible.

This proposed action is covered by the following categorical exclusion: 516 DM 8.5 B (7). *An action by the Service that only results in "minor changes in the amounts or types of public use on Service or State managed lands, in accordance with existing regulations, management plans, and procedures" is categorically excluded from further NEPA analyses, because it has been determined to be a class of action which does not individually or cumulatively have a significant effect on the human environment.*

This action will result in minor changes in the type of fishing on the Refuge to allow motorized boats on 1,360 acres that are already open to bank fishing and fishing via non-motorized boats, as described in the 2006 CCP and associated Environmental Assessment. The 2006 CCP indicates that the existing fishing program will continue with only minimal modifications, but that increased efforts to improve the quality of the fishing program will be implemented. Although boats with motors were initially not permitted on these 1,360 acres, by specifying areas, time of year, no wake zones, and implementing a seasonal boat closure, motorized boating in the expanded area is determined to be compatible.

Extraordinary Circumstances (43 CFR 46.215) :

Could This Proposed Action (check (✓) yes or no for each item below):

Yes No

- a. Have significant adverse effects on public health or safety?
- b. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas?
- c. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)]?
- d. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?
- e. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?
- f. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects?
- g. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau?
- h. Have adverse effects on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species?
- i. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment?
- j. Have a disproportionately high and adverse effect on low income or minority populations (EO 12898).
- k. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007).
- l. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions

that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112).

- m. Have material adverse effects on resources requiring compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act?

(If any of the above exceptions receive a “Yes” check (✓), an EA/EIS must be prepared.)

Within the spirit and intent of the Council of Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined:

- The proposed action is covered by a categorical exclusion as provided by 43 CFR §46.210 or 516 DM 8.5. No further NEPA documentation will therefore be made.**
- An Extraordinary Circumstance (43 CFR 46.215) could exist for the proposed action and, so an EA/EIS must be prepared.**

Service signature approval:

Signature _____

Date: _____

Title _____

Final Compatibility Determination for Hunting and Fishing on Kirwin National Wildlife Refuge

Use: Expanded hunting and fishing

Refuge Name: Kirwin National Wildlife Refuge

Establishing and Acquisition Authorities:

- Fish and Wildlife Act of 1956 (16 United States [U.S.] Code 742f[a][4])
- Fish and Wildlife Act of 1956 (16 U.S. Code 742f[b][1])

Refuge Purpose(s):

Kirwin National Wildlife Refuge (NWR) was established in 1954 to provide habitat for and facilitate the management of the Nation’s migratory bird resources.

“... shall be administered by him [Secretary of the Interior] directly or in accordance with cooperative agreements ... and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon, ...in behalf of the National Migratory Bird Management Program” 16 U.S. Code 664 (Fish and Wildlife Coordination Act).

National Wildlife Refuge System Mission:

The mission of the National Wildlife Refuge System (Refuge System) is to administer a national network of lands and waters for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the U.S. for the benefit of present and future generations of Americans.

Description of Use:

What is the use?

Hunting and fishing are activities conducted by the public under regulation authority of the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act); these activities are considered a priority public use. This compatibility determination (CD) updates and supersedes previous related CDs and is being completed as part of the 2020 Kirwin NWR Hunting and Fishing Plan and the associated environmental assessment (EA). This CD will reevaluate hunting and fishing opportunities in addition to the existing approved hunting and fishing uses on the refuge.

Hunting expansion includes archery hunting for turkey. Additional species to be hunted include small game (grey squirrel, jackrabbit), state-defined furbearers (coyote, fox, raccoon, badger, bobcat, mink, muskrat, weasel, opossum, raccoon and striped skunk), and migratory birds (woodcock, rail, and crow).

The Service proposes to expand fishing opportunities (boating regulation changes) on an additional 1,360 acres of the refuge in accordance with the State of Kansas’ rules and

regulations. These 1,360 acres are already open to fishing by foot and seasonal non-motorized boating activities.

Where will the use be conducted?

The described hunting will occur on refuge lands, specifically within the congressionally approved boundary as outlined in the 2020 Kirwin NWR Hunting and Fishing Plan and as shown on refuge hunt maps, brochures, and other forms of communication (see Figure 1). Adding any new lands, hunted species, or hunting opportunities require submission of an opening package, which includes an announcement in the Federal Register. This is completed on an annual basis.

When and how will the use be conducted?

All new hunting opportunities will occur within the existing hunt seasons established by the State of Kansas for hunting on the refuge. Hunting will not be allowed at night; refuge and shooting hours will remain the same as currently allowed. While specifics are described in the proposed hunting and fishing plan, closures will occur for the protection of species and the public at any time under the authority of the refuge manager (or other higher administrative authority). For example, closures will occur for the protection of whooping cranes using the refuge during migration (see Pearse et al. 2015).

The use is conducted according to state, federal, and refuge-specific regulations. Kansas Department of Wildlife, Parks, and Tourism publishes hunting regulations annually (<https://ksoutdoors.com/Hunting>). Regulations pertaining to hunting on all national wildlife refuges are available in 50 CFR 32.2 (<https://ecfr.io/>). Refuge-specific regulations are available on the refuge's website (www.fws.gov/refuge/kirwin/) and in brochures provided at refuge headquarters and kiosks.

The U.S. Fish and Wildlife Service (Service) limits hunt areas, seasons, hours, and other aspects of operations and procedures to ensure compatibility of multiple wildlife-dependent uses and with conservation priorities as described in the refuge comprehensive conservation plan (CCP) (USFWS 2006).

Why is this use being proposed?

The uses being proposed are to expand compatible wildlife-dependent opportunities on the refuge that collectively increase the potential for a heightened awareness and appreciation of natural resources. Hunting is one of six public use priorities named in the Improvement Act (www.fws.gov/willamettevalley/ccp/nwrsia.htm). Hunting was a traditional activity that occurred on refuge lands prior to and since refuge establishment. Expanding hunting opportunities and aligning regulations with state agencies implement Secretarial Order 3347, *Conservation Stewardship and Outdoor Recreation*, and Secretarial Order 3356, *Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories*. The hunt program is administered in accordance with sound wildlife management principles and public safety.

Availability of Resources:

While additional hunting and fishing opportunities will require more time and monetary resources, implementation can occur under current administrative conditions. Existing programs,

such as signs, brochures, and other communications, could be updated with available resources. Maintenance of infrastructure is closely tied to the Service Asset Maintenance Management System. The refuge's base budget and additional regional fiscal support will cover the cost of updates. Current law enforcement is sufficient for safety and management related to expanded hunting uses. Monitoring will heavily rely on state surveys and research information (<https://ksoutdoors.com/Services/Research-Publications/Wildlife-Research-Surveys>); however, some refuge-specific activities will occur (such as whooping crane verification, monitoring, and reporting).

Anticipated Impacts of the Use:

There would be an increased number of species allowed to be hunted, as well as expanded areas and methods of take to satisfy different hunting user groups. The refuge would increase opportunities by allowing hunting of state-defined furbearers (coyote, badger, bobcat, fox, mink, muskrat, opossum, raccoon, striped skunk, and weasel), migratory birds (crow, rail, and woodcock), and small game (grey squirrel and jackrabbit) and turkeys with no appreciably adverse impacts in context of regional and/or statewide populations. Hunt seasons and limits are established within frameworks set by the Service for migratory birds and by the State of Kansas for resident game species. Restrictions are adjusted with consideration of species population trends, supporting long-term conservation of natural resources.

Fishing visitations and success fluctuate according to water elevation and shoreline access in the Kirwin Reservoir, Bow Creek, and the North Fork Solomon River. The river and creek have marginal fisheries due to their seasonal flow and elevation changes. Kirwin NWR allows both motorized and non-motorized access to fishing on the reservoir with a few restrictions in place. Restrictions include a seasonal closure when the water elevations fall below 1,722 feet (measured annually on October 1st). If the water elevation is below the threshold, the lake is closed to all boats from October 1st–April 1st, with the exception of Bow Creek Unit which remains open to boat access to support hunting and fishing during appropriate seasons year-round. On years where the water elevation is at or above the threshold, the lake will remain open to all boating access. Beyond limited staffing issues and enforcement concerns, biologists have determined that migratory bird disturbance will not increase by the presence of motorized boats because the areas affected are already being disturbed by hunters on nearby land and fisherman year-round. High water levels (which are uncommon) will be the only time boats can physically make it to the proposed expansion area. The low water years or those below 1,722 feet elevation will not support adequate water depth to allow motorized boating access.

Based on biological impacts described in the CCP (2006), it was determined that boating in support of the six priority public uses within the refuge will not materially interfere with or detract from the purpose for which the refuge was established. Boating is not a priority public use; however, it does facilitate the six priority public uses. Although boats with motors were initially not permitted on 1,360 acres of the refuge. Yet, by specifying areas, the time of year, no wake zones, and by implementing a seasonal boat closure, boating was determined to be compatible.

The challenge of balancing multiple consumptive and nonconsumptive uses while supporting the conservation of natural resources continues to evolve. Hunting, fishing, and other public use activities have short-term disturbance impacts to be carefully considered prior to approval. For

example, monitoring wildlife response and public comments about area and temporal closures can provide periodic feedback that helps to make adjustments in any activities that create unsafe conditions for humans or result in unacceptable disturbance during endangered species use. In the years since CCP approval (2006), current conditions have offered hunting and fishing opportunities while whooping cranes continue to safely increase use of the refuge. This trend is expected to continue. There are no foreseen long-term impacts to sensitive non-target species, but periodic assessments may lead to necessary changes in public use activities.

Activities as part of the 2020 Kirwin NWR Hunting and Fishing Plan may negligibly affect other hunting and recreational uses and refuge administration. Adherence and enforcement of state, federal, and refuge-specific regulations are intended to facilitate public safety, multiple-use interests, and wildlife-habitat conservation. With respect to indirect or cumulative impacts, there are no anticipated adverse affects to area land use, Indian trust resources, cultural resources, environmental justice, listed threatened and endangered species, or other biological community resources.

For a more in-depth evaluation of impacts, refer to the EA associated with the 2020 Kirwin NWR Hunting and Fishing Plan.

Public Review and Comment:

On April 1, 2020, the Service released the draft CD for a 30-day public review and comment period. On April 1, 2020, the Service made the Draft Kirwin NWR Hunting and Fishing Plan and associated EA available to the public for a 30-day public review and comment period. The Draft Kirwin NWR Hunting and Fishing Plan, associated EA, and CD were amended and the 30-day public review and comment period was extended through May 27, 2020. The Service received comments from seventeen individuals and two organizations. One commenter expressed support for expanding the fishing opportunities by allowing motorized boating in an area currently closed to motorized boats on Kirwin NWR. Fifteen commenters expressed opposition to the proposed expansion of fishing opportunities by allowing motorized boating in an area currently closed to motorized boats on Kirwin NWR. One individual and two organizations were partially opposed to the proposed expanded opportunities for both hunting and fishing. Opposition from the two organizations pertained to hunting of coyote, bobcat, and locally rare or uncommon species, and largely considered conflicts with the refuge's frequent nonconsumptive users and any increased potential disturbance of whooping cranes. The majority of comments received were local opposition to the proposed expansion of fishing opportunities and the potential overutilization of the lake and associated impacts on fish populations within the reservoir.

Additionally, on April 9, 2020, the Service published the Draft 2020–2021 Station-Specific Hunting and Sport Fishing Regulation Regulations in the Federal Register. The Service has removed all refuge-specific regulations from 50 CFR Part 32 that were duplicative of other Service or State regulations, and thus unnecessary. The regulations removed from the refuge-specific regulations are all still enforceable on the refuge under Federal and State law. The regulations applicable to hunting on the refuge have been clarified concerning the use of temporary hunting blinds because of the rulemaking this year. The refuge will ensure that refuge's hunting brochure includes all applicable regulations for hunting on the refuge.

The proposal has been coordinated with all interested and/or affected parties. Parties contacted include:

- Kansas Department of Wildlife, Parks, and Tourism; Pratt, Kansas
- Kansas State Historic Preservation Office; Topeka, Kansas
- Potentially impacted tribes

The Service Ecological Services program Kansas Field Supervisor was contacted (via phone and follow-up email) about the Kansas NWR Complex hunt plans on November 24, 2019. A request was made by the national wildlife refuges to review the list of species threatened, endangered, proposed, and under review as part of the environmental assessment Section 7 consultation requirement associated with the hunt plans.

Refuge staff met with Kansas Department of Wildlife, Parks, and Tourism on October 30, 2020, to discuss the current hunting program and recommendations for the future. During that meeting the state shared organization and public interests and responded to proposed hunting opportunities at the meeting and in follow-up verbal and written communications. These discussions helped adjust our plan to align, where possible, with state management goals. Overall, the state was supportive of the Service's proposals of expanded hunting opportunities and both agencies confirmed the continuance of a strong partnership. The refuge received a letter of concurrence from the state director on November 18, 2019.

The Service consulted with the Kansas State Historic Preservation Office, requesting review and comment concerning the Service's determination of no adverse effect to historic properties with regard to the opening of additional species to hunting on Kirwin NWR.

The Service mailed an invitation for comments to all tribes potentially impacted by initiating an EA to expand hunting opportunities at Kirwin NWR. The Service extended an invitation to engage in government-to-government consultation in accordance with Executive Order 13175.

Determination (check one below):

- Use is not compatible.
- Use is compatible with the below stipulations:

Stipulations Necessary to Ensure Compatibility:

To ensure compatibility with the Refuge System and refuge goals and objectives, hunting and fishing can only occur under the follow conditions:

- Implementation of uses as described in the refuge's 2020 hunting and fishing plan, in accordance with applicable state, federal, and refuge-specific regulations.
- Only nontoxic shot is permitted on the refuge when hunting with a shotgun (waterfowl, upland game, turkey).
- Vehicle travel is limited to designated roads, trails, and parking areas.

- Promote sound hunting practices for safe recreational use and provide quality experiences.

Justification:

Hunting is identified as a priority public use in the Improvement Act, and will help meet Refuge System goals with minimal conflicts. Wildlife-based recreation can instill a greater appreciation of natural resources. Hunting seasons and bag limits are established by the states within a framework set nationally by the Service for migratory game birds, and at the state level for big game, upland game, and furbearers. These restrictions ensure the continued well-being of migratory birds and resident wildlife populations. Hunting does result in the take of individuals within the overall population, but the annually established restrictions are designed to safeguard adequate breeding population from year to year. The area closed to waterfowl hunting (Kirwin Reservoir) on the refuge provides safe stopover habitat for migratory birds during migration that coincides with the hunting season. Yet, specific refuge regulations address equity and quality opportunities for hunters.

Hunting is consistent with the refuge's larger goals to restore and re-establish native plant communities throughout the refuge for wildlife and for education and recreational opportunities; to maintain the refuge through active management programs, including hunting; and to provide opportunities for visitors to understand, observe, and enjoy wildlife and native habitats of the Solomon River Basin. Additional information about these goals can be found in the CCP (2006). The refuge will continue to provide sanctuary habitat for birds and other wildlife throughout the year while hunting has been determined compatible, provided the above stipulations be implemented. Therefore, hunting use will be permitted, as it is a priority public use and will not diminish the primary purposes of the refuge.

Fishing is also identified as a priority public use in the Improvement Act and will help meet Refuge System goals with only minimal conflicts. This is considered a wildlife-based recreational activity that can instill a greater appreciation of natural resources. Yet, the refuge will continue to provide sanctuary habitat for birds and other wildlife throughout the year. The administration of the boating program is conducted using available resources. Implementing new programs, activities, and facilities outlined in the CCP is tied to funding requests. Hunting, fishing, and other human activities can cause disturbance to wildlife. Disturbance to migrating and wintering waterfowl will continue to be limited by maintaining the current seasonal boat closure on most of the reservoir during low water conditions. Boating in support of the six public uses (hunting, fishing, wildlife observation, wildlife photography, environmental education, and interpretation) is compatible.

Signatures:

Submitted By:

Brad Krohn, Refuge Manager
Kirwin NWR
U.S. Fish and Wildlife Service
Kirwin, Kansas

Date

Concurrence:

Refuge Supervisor
Interior Regions 5 and 7
U.S. Fish and Wildlife Service
Lakewood, Colorado

Date

Approved:

Refuge System Chief
Interior Regions 5 and 7
U.S. Fish and Wildlife Service
Lakewood, Colorado

Date

Mandatory 10- or 15-Year Reevaluation Date: 2035

References

Pearse, A.T.; Brandt, D.A.; Harrell, W.C.; Metzger, K.L.; Baasch, D.M.; Hefley, T.J. 2015. Whooping crane stopover site use intensity within the Great Plains: U.S. Geological Survey Open-File Report 2015–2016, 12 p. <www.dx.doi.org/10.3133/ofr20151166>

[USFWS] U.S. Fish and Wildlife Service. 2006. Comprehensive Conservation Plan – Kirwin National Wildlife Refuge, Kansas. Lakewood, CO: U.S. Department of Interior, Fish and Wildlife Service. 221 p.

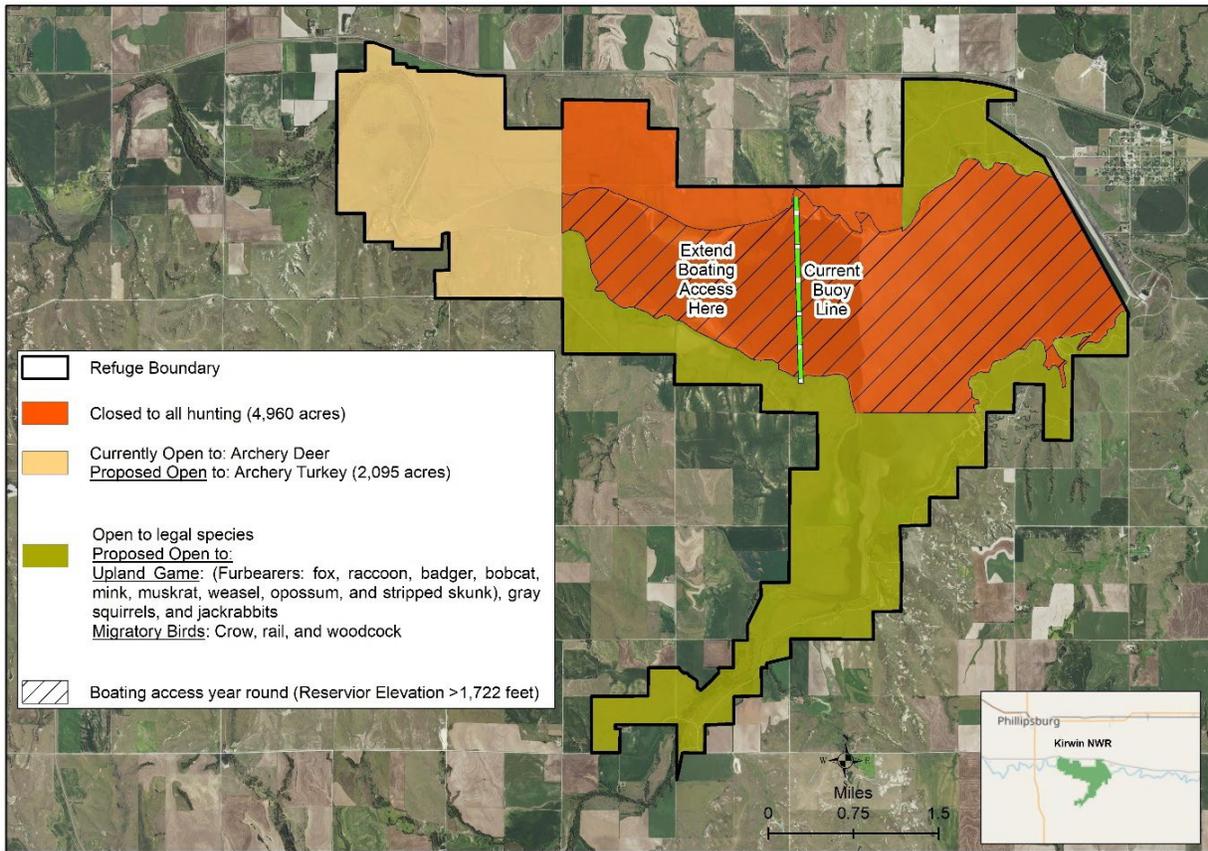


Figure 1. Proposed Hunting and Boating Changes at Kirwin National Wildlife Refuge.

Intra-Service Section 7 Biological Evaluation Form – Region 6

Originating Person: Brad Krohn

Date Submitted: 6/16/2020

Telephone Number: 308-263-3000

- I. **Service Program and Geographic Area or Station Name:** Kirwin National Wildlife Refuge
- II. **Flexible Funding Program** (e.g. Joint Venture, etc) if applicable: N/A
- III. **Location:** Location of the project including County, State and TSR (township, section & range):

Phillips County, Kansas, Section, township, and range: Kirwin NWR includes parts or all of sections 26, 27, 28, 33, 34, 35, 36 in Township 4 South, Range 17 West; sections 1, 2, 13, 23, 24, 25 in Township 5 South, Range 17 West; sections 28, 29, 31, 32, 33 in Township 4 South, Range 16 West; sections 4, 5, 6, 7, 8, 9, 18 in Township 5 South, Range 16 West.

The Refuge visitor center is located 6 miles east of Glade, Kansas, on State Highway 9, one mile south on 700 Road.

- IV. **Species/Critical Habitat:** List federally endangered, threatened, proposed, and candidate species or designated or proposed critical habitat that may occur within the action area. To obtain species lists: <http://ecos.fws.gov/ipac/>
- Whooping crane, *Grus americana* (federally listed: endangered)
 - Least tern, *Sterna antillarum* (federally listed: endangered)
 - Piping plovers, *Charadrius melodus* (federally listed: threatened)
 - Northern Long-Eared Bat, *Myotis septentrionalis* (federally listed: threatened)

There is no federally designated critical habitat at Kirwin NWR.

- V. **Project Description:** Describe proposed project or action or, if referencing other documents, prepare an executive summary (attach additional pages as needed):

The Service proposes to expand fishing opportunities (boating regulation changes) on an additional 1360 acres of the Refuge in accordance with the State of Kansas' rules and regulations. These 1360 acres are already open to fishing and seasonal non-motorized boating activities.

VI. Determination of Effects:

(A) Description of Effects: Describe the action(s) that may affect the species and critical habitat list in item IV. Your rationale for the Section 7 determination made below (B) should be described here.

Whooping crane: Whooping cranes migrate through the area in the spring and fall. Critical U.S. whooping crane migration habitat includes Cheyenne Bottoms State Waterfowl Management Area and Quivira NWR, Kansas; the Platte River bottoms between Lexington and Denman, Nebraska; and Salt Plains NWR, Oklahoma, have been designated as critical to the conservation of the species. The Refuge is a major stopover area actually in both the spring and fall, and the species has been observed as recently as 2018. The species can occasionally be found on the Refuge in short duration during the spring and fall migration, however it is expected that the amendments to the hunting plan would have no negative impacts.

In the event of sightings, the refuge will continue to work with the State to monitor conflicts between sport hunting and whooping cranes. In addition, the refuge will work with the State to follow and update contingency plans for protection of whooping cranes that appear in hunt areas or other hazardous situations.

In that hunting is already allowed on these 902 acres, additional species will not impact the following species, whose Refuge occurrence is noted as follows:

Interior least tern: Occasional visitors to the Refuge. Nesting has been confirmed in the past with young produced in 1974, 1976, and 1980. The majority of nesting habitat is found on the east end of the reservoir.

Piping plovers: Occasional visitor during migration. Prefers sandy areas bordering vegetation and open shoreline areas.

Northern Long-Eared Bat: There have been no documented cases on the Refuge, although they might be found elsewhere in Phillips County.

(B) Determination: Determine the anticipated effects of the proposed project on species and critical habitat lists in item IV. Check all applicable boxes and list the species (or attach a list) associated with each determination.

Determination

No Effect: This determination is appropriate when the proposed project will not directly or indirectly affect (neither negatively nor beneficially) individuals of listed/proposed/candidate species or designated/proposed critical habitat of such species. **No concurrence from ESFO required.**

___X___

whooping crane (*Grus americana*) federally listed: endangered
piping plover (*Charadrius melodus*) federally listed: threatened
least tern (*Sterna antillarum*) federally listed: threatened

May Affect but Not Likely to Adversely Affect: This determination is appropriate when the proposed project is likely to cause insignificant, discountable, or wholly beneficial effects, to individuals of listed species and/or designated critical habitat. **Concurrence from ESFO required.**

May Affect but Likely to Adversely Affect: This determination is appropriate when the proposed project is likely to adversely impact individuals of listed species and/or designated critical habitat. **Formal consultation with ESFO required.**

May Affect but Likely to Adversely Affect but the proposed action is for the purpose of endangered or threatened species recovery and falls under Region 6's Programmatic Consultation on Service-initiated Recovery Actions: this determination is appropriate when the adverse effects are likely but the project is designated to assist with recovery of listed species and/or designated critical habitat. **Concurrence from the ESFO required that the project is covered by the programmatic consultation is required.**

May Affect but Not Likely to Jeopardize candidate or proposed species/critical habitat: This determination is appropriate when the proposed project may affect, but is not expected to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. **Concurrence from ESFO optional.**

Likely to Jeopardize candidate or proposed species/critical habitat: This determination is appropriate when the proposed project is reasonably expected to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. **Concurrence from ESFO required.**



Signature **BRAD KROHN**
Brad Krohn, Project Leader, Kirwin NWR

Digitally signed by BRAD KROHN
Date: 2020.06.16 15:49:59 -05'00'

Date _____

Reviewing Ecological Services Office Evaluation (check all that apply):

A. Concurrence Nonconcurrence
Explanation of nonconcurrence _____

B. Formal Consultation Required
List species or critical habitat unit _____

C. Effects are addressed in the Programmatic Consultation _____
On R6's Recovery Program – no further consultation needed

D. Conference required _____
List species or critical habitat unit

Name of Reviewing ES Official: _____



United States Department of the Interior

FISH AND WILDLIFE SERVICE
702 E. Xavier Road
Kirwin, Kansas 67644



In Reply Refer to:
FWS/IR05/IR07

Memorandum

To: Will Meeks, Assistant Regional Director, Refuges

Through: Barbara Boyle, Refuge Supervisor, Prairie Zone

From: Brad Krohn, Project Leader, Kirwin National Wildlife Refuge

Subject: Request for Minor Revision to 2006 Comprehensive Conservation Plan for Kirwin National Wildlife Refuge

The Service is currently drafting a Hunt and Fish Plan for hunting and fishing on Kirwin National Wildlife Refuge (NWR, refuge). In 2006, the Service completed a Comprehensive Conservation Plan (CCP) for Kirwin National Wildlife Refuge.

For Kirwin NWR, the Visitor Services Goals in the CCP state that “Kirwin NWR provides an important recreation area for the citizens of Phillips County and the surrounding area.” and “The reservoir is the only major water body in the county, attracting many people to the area.” Visitation levels fluctuate between 40,000 and 90,000 visitor days per year, depending on the water level and the fishing quality. The most popular fishing season is during May and June, but the reservoir is open for fishing year-round. I am proposing minor revisions to the CCP that will extend the motorized boating opportunity for fishing activities on Kirwin NWR. Specifically, I am proposing to extend the fishing opportunities by motorized boat on areas currently open to non-motorized boat, fishing by foot (or bank fishing), and ice fishing. In addition, Kirwin NWR Current Conditions state “Under low water conditions (elevation <1,722 feet), a seasonal boat closure will be implemented on the majority of the reservoir October 1 to April 1. Under high water conditions elevation >1,722 feet), the seasonal boat closure will be lifted to provide additional fishing opportunities.

The seasonal boat closure will include an area designated as low disturbance for migrating and wintering waterfowl providing added protection for nesting, migrating, and wintering water birds”. Besides the seasonal boat closure, there is a “no wake zone” in effect within 300 feet of all shorelines and islands, as well as on the Bow Creek arm. The North Shore boat ramp is available during periods of high water. The South Shore boat ramp is available at times of high water and when the water is at medium height. The Low Water boat ramp is available at low water levels and is located on the north end of the dam. Launching of boats on low water years from the face of the dam is also allowed.

INTERIOR REGION 5
Missouri Basin

Kansas, Montana*, Nebraska, North Dakota,
South Dakota

INTERIOR REGION 7
Upper Colorado River Basin

Colorado, New Mexico, Utah, Wyoming

*PARTIAL

I am proposing no changes to the seasonal boat closure or any other regulations in effect, and only expanding a minimal portion of the remaining lake currently closed to motorized boating. The surface acreage of the reservoir varies dramatically from about 5,000 acres at conservation pool (1,731 feet elevation) to 879 acres during drought periods (Erich Gilbert, 2003, Refuge Manager, Kirwin NWR, March). Reservoir drawdowns have historically occurred in mid to late summer. The portion of the lake included in the proposed expansion is generally frozen in the winter months and too shallow for motorized boats during the established seasonal access elevations measured below 1,722 feet. 2

A CCP goal as defined is a descriptive, broad statement of desired future conditions that conveys a purpose, but does not define measurable units. Goals will work at directly at carrying out the refuge's mandates and achieving the purposes. I am not changing or amending any goals. All public uses will be compatible with the purpose of the refuge and the mission of the Refuge System. The following wildlife-dependent public uses will be prioritized: hunting, fishing, wildlife observation, wildlife photography, environmental education, and interpretation. Boating in support of the six public uses is compatible on the refuge.

I am proposing to add the following *Strategy* to *Objective 2* under the Ecology Goal for *Deepwater (Reservoir) Habitat* for Kirwin National Wildlife Refuge: "Maintain Kirwin NWR Reservoir boating year-round within the current seasonal boat closure regulation". This change will provide additional potential fishing opportunities to the public, as referenced in Secretarial Order 3356.

The National Wildlife Refuge System Improvement Act of 1997 and Service policy (Fish and Wildlife Service Manual chapters 602 FW 1 and 3) identify the need to periodically review and revise Comprehensive Conservation Plans. Specifically the Service Manual chapter 602 FW 3, (Comprehensive Conservation Planning Process) Section 3.2 states "We will revise the CCP every 15 years ... or earlier if monitoring and evaluation determine that we need changes to achieve planning unit purpose(s), vision, goals, or objectives". Kirwin NWR is in the 14th year of a 15-year plan and new Hunting and Fishing opportunities have been proposed from the national office as well as by individual states, such as the State of Kansas.

The addition of a new strategy to the Ecology Goal is a minor CCP revision because it does not significantly change the management direction of the refuge. Compliance with the National Environmental Policy Act of 1969 (NEPA), meets the criteria for the following categorical exclusion: 516 DM 8.5 B (9) "Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples include minor changes in the type and location of compatible public use activities and land management practices."

This memorandum complies with the National Wildlife Refuge System Improvement Act of 1997, which states that the "Secretary shall ... revise the plan at any time if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly." Examples of new information or changed conditions include but are not limited to the following: 1) changes in the acreage of a specific habitat type; 2) changes in water management or availability; 3) changes in the status of a listed species; 4) the need for changes to wildlife management or public use programs; 5) changes to Service policy; 6) the need to construct new facilities, and/or 7) changes in sea level or other climate related changes.

Submitted By

Project Leader: **BRAD KROHN** Digitally signed by BRAD KROHN
Date: 2020.04.23 16:32:34 -05'00'

(Signature) (Date)

Concurrence:

Refuge Supervisor: **BARBARA BOYLE** Digitally signed by BARBARA BOYLE
Date: 2020.04.23 14:41:18 -06'00'

(Signature) (Date)

Approval:

Assistant Regional Director, Refuges: **MAUREEN GALLAGHER** Digitally signed by MAUREEN GALLAGHER
Date: 2020.04.24 10:45:41 -06'00'

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