

making determining Critical Habitat for the Snail Darter, but not the other five species. The present Rulemaking deals with four of those other species, but not the Whooping Crane. So much information on the Whooping Crane was received that more time will be required for evaluation and determination of additional measures on that species.

#### SUMMARY OF COMMENTS

Of the responses received to the Proposed Rulemaking of December 16, 1975, some dealing only with the Snail Darter were discussed in the Final Rulemaking of April 1, 1976, and 35 dealing only with the Whooping Crane will be discussed at a later time. Of the approximately 100 remaining comments, nine simply expressed general support for the Proposal and none indicated general opposition.

With regard to the American Crocodile, the National Park Service recommended that the Critical Habitat zone be expanded to include a portion of Everglades National Park to the west of that delineated in the original Proposal. Since the recommended area is within the Park, the Service considers it proper to include this area as part of the Critical Habitat designated below. The National Audubon Society suggested approximately the same addition as the Park Service, and also several other modifications which remain under consideration.

With regard to the California Condor, one person simply expressed approval of the Proposed Critical Habitat designation, and one expressed disapproval. The California Department of Fish and Game and the Director of the Santa Barbara Museum of Natural History suggested that small additional areas be designated as Critical Habitat, and these areas now are under consideration. Five major conservation organizations expressed concern that the western boundary of the Sespe-Piru Condor Area might have been drawn so as to deliberately exclude the land within a phosphate mining lease application from the Critical Habitat zone. In fact, however, the area of importance to the Condor long was recognized to have approximately the same boundary as that delineated in the Proposal, and there seems no biological justification to extend this boundary into the area of the phosphate lease application. Moreover, a letter from the United States Gypsum Company stated that although the Proposed Critical Habitat zone did not enter the phosphate lease application area, it did include most of an adjacent phosphate prospecting permit area. The Company recommended that the Critical Habitat zone be redrawn to exclude this permit area. The Service, however, considers the original boundary to be appropriate with respect to the biological situation, and no adjustment is being made.

The State of Illinois and two other parties expressed general approval of the Proposed Critical Habitat for the Indiana Bat. The States of Indiana, Kentucky, Missouri and Tennessee; three university professors; and three other

parties all recommended the designation of additional Critical Habitat, either more caves or other components of the habitat of the species. These recommendations are now under consideration and may be expressed, at least in part, in a future proposal.

The State of Florida and approximately 64 other parties expressed approval of the Proposed Critical Habitat for the Florida Manatee. The Director of the Florida State Museum suggested adding an additional area in Florida; and the Georgia Conservancy and Mr. Jerry L. McCollum of the Georgia Department of Natural Resources suggested adding parts of Georgia. These suggested additions now are under consideration.

#### BASIS FOR DETERMINATION

All of the areas delineated below are considered Critical Habitat because they contain constituent elements necessary to the normal needs or survival of one of the species in question. Specifically for the American Crocodile the delineated area must be considered an absolute minimum amount of Critical Habitat in Florida. The current population of the State, with only 200 to 300 individuals, is concentrated in this area and is dependent upon the included habitat of Florida Bay and associated brackish marshes, swamps, creeks, and canals. All known breeding females, of which there are less than ten in Florida, inhabit and nest in the delineated area.

With regard to the California Condor, the Sespe-Piru, Matilija, Sisquoc-San Rafael, and Hi Mountain-Beartrap Condor areas, as described below, are considered critical for nesting and related year-long activity. The Mt. Pinos and Blue Ridge Condor areas, as described below, are considered critical for roosting. The Tejon Ranch, Kern County rangelands, and Tulare County rangelands, as described below, are considered critical for feeding and related activities. The Tejon Ranch is very important because it contains the only significant feeding habitat remaining in close proximity to the Sespe-Piru Condor nesting area. In most cases Condor feeding habitat is not so restricted as nesting and roosting sites, and only certain portions of the areas described below are needed at any one time. Because, however, the location of food is directly related to both Condor distribution and reproductive success, substantial areas of open range, with adequate food, and limited development and disturbance, would have to be preserved in each delineated area in order to maintain the species.

With regard to the Indiana Bat, approximately 75 percent of the known population hibernates at the sites designated below. The bats are entirely dependent on the shelter provided by these caves and mines during the winter. Their loss or subjection to excessive disturbance or modification would lead to the near or total extinction of the species.

With respect to the Florida Manatee, the areas delineated below contain the largest concentrations in the United States, and are the only areas that pres-

#### Title 50—Wildlife and Fisheries

### CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

#### SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

#### PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

#### Determination of Critical Habitat for American Crocodile, California Condor, Indiana Bat, and Florida Manatee

The Director, U.S. Fish and Wildlife Service (hereinafter, the "Director" and the "Service," respectively) hereby issues a Rulemaking pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter, the "Act") which determines Critical Habitat for the American Crocodile (*Crocodylus acutus*), California Condor (*Gymnogyps californianus*), Indiana Bat (*Myotis sodalis*), and Florida Manatee (*Trichechus manatus*).

#### BACKGROUND

In the FEDERAL REGISTER of December 16, 1975 (40 FR 58308-58312) the Service proposed the determination of Critical Habitat for the California Condor, Indiana Bat, Florida Manatee, American Crocodile, Whooping Crane (*Grus americana*), and Snail Darter (*Percina tanasi*). On April 1, 1976 (41 FR 13926-13928) the Service issued a Final Rule-

ently can be defined as having major dependent populations. The Crystal River and its King's Bay headwaters form one of the largest natural warm water resources for Manatees. Up to 60 Manatees possibly representing six to ten percent of the total population of the species in the United States, utilize this refugium during cold weather periods. The Little Manatee, Manatee, Myakka, and Peace rivers, and Charlotte Harbor all support large Manatee concentrations. Manatees also utilize the Caloosahatchee River and associated coastal areas. The warm water discharge of the Florida Power and Light Company Ft. Meyers power plant into the Orange River, on the south bank of the Caloosahatchee River at Tice, is known to attract as many as 75 Manatees during cold periods. The area off the coast of Collier and Monroe Counties, southwestern Florida, is the center of a large, but uncounted Manatee population. This population is at least partially resident and is dependent on the extensive local growths of *Thalassia* and *Diplanthera* as a primary food resource. Concentrations of as many as 75 Manatees are observed in Whitewater Bay. The waterway formed by Card, Barnes, Blackwater, and Buttonwood sounds may constitute the Manatee's essential thoroughfare between Miami-Biscayne Bay and the lower Keys and Florida Bay. Seaward movement along the upper Keys is very rare. Biscayne Bay, with its adjoining waterways is of central importance to the large Manatee populations of southeastern Florida. Abundant food resources exist in the area, and the warm water flow from the Florida Power and Light Company Miami River plant provides an important refugium. Lake Worth supports a large Manatee population year-round, and also serves as a warm water refugium for additional wintering Manatees. The outfall from the Florida Power and Light Company River plant supports up to 75 Manatees during cold weather. The Indian and Banana rivers may contain the largest Manatee population in Florida. These areas provide warm, quiet waters and abundant food resources. The St. Johns River also provides ample food resources to a significant Manatee population, and several of its spring-fed tributaries provide warm water refugia during cold spells. In Lake Monroe, two power plants provide warm water outfalls which are used by Manatees during cold periods. The Intracoastal Waterway from the St. Marys River to Highway A1A is a major concentration area and thoroughfare for Manatees.

It is emphasized that the areas delineated below may not represent the entire Critical Habitat of the species named. This Rulemaking in no way precludes the Service from at any time proposing additions or modifications to the designated Critical Habitat. It now seems likely that more Critical Habitat will be proposed for at least the California Condor, Indiana Bat, and Florida Manatee 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 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.

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 is a notification to such agencies that their responsibilities pursuant to Section 7 of the Act are applicable in a certain area.

#### FINAL RULEMAKING

The Director has considered all comments and data submitted in response to the proposed determination of Critical Habitat for the American Crocodile, California Condor, Indiana Bat, and Florida Manatee. The Director also has considered other information received by the Service both prior to and subsequent to the publication of the Proposal in the FEDERAL REGISTER of December 16, 1975. Based on this review, the areas delineated below are determined to be Critical Habitat for the American Crocodile, California Condor, Indiana Bat, and Florida Manatee. (Since the time when

proposed Critical Habitat Regulations for these species were published in the FEDERAL REGISTER (December 16, 1975), additional Subparts have been proposed for Part 17. Accordingly, the Section numbers in the Final Regulations have been changed to those shown below.)

These Final Regulations will become effective on October 22, 1976.

Dated: September 14, 1976.

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

Accordingly, 50 CFR Part 17 is hereby amended as set forth below:

1. The Table of Sections for Subpart F of Part 17 is amended to read as follows:

Subpart F—Critical Habitat	
Sec.	
17.60	[Reserved]
17.61	Snail Darter.
17.62	American Crocodile.
17.63	[Reserved]
17.64	California Condor.
17.65	Indiana Bat.
17.66	Florida Manatee.

2. A new § 17.62 is added reading as follows:

#### § 17.62 American crocodile.

(a) The following area (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species) is critical habitat for the American crocodile (*Crocodylus acutus*): All land and water within the following boundary in Florida: beginning at the easternmost tip of Turkey Point, Dade County, on the coast of Biscayne Bay; thence southeastward along a straight line to Christmas Point at the southernmost tip of Elliott Key; thence southwestward along a line following the shores of the Atlantic Ocean side of Old Rhodes Key, Palo Alto Key, Angelfish Key, Key Largo, Plantation Key, Windley Key, Upper Matecumbe Key, Lower Matecumbe Key, and Long Key, to the westernmost tip of Long Key; thence northwestward along a straight line to the westernmost tip of Middle Cape; thence northward along the shore of the Gulf of Mexico to the north side of the mouth of Little Sable Creek; thence eastward along a straight line to the northernmost point of Nine-Mile Pond; thence northeastward along a straight line to the point of beginning.

(b) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of this critical habitat area.

3. A new § 17.63 is added and reserved as follows:

#### § 17.63 [Reserved]

4. A new § 17.64 is added reading as follows:

#### § 17.64 California condor.

(a) 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) in California are critical habitat for the California condor (*Gymnogyps californianus*).

(1) *Sespe-Piru Condor Area*: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, in Ventura and Los Angeles Counties, with the following components (San Bernardino Meridian): Sespe Condor Sanctuary, as delineated by Public Land Order C35 (January 1951); T4N R20W Sec. 2, 5-10, N $\frac{1}{2}$  Sec. 11; T4N R21W Sec. 1-3, 10-12, N $\frac{1}{2}$  Sec. 13, N $\frac{1}{4}$  Sec. 14, N $\frac{1}{4}$  Sec. 15; T5N R18W Sec. 4-9, 18, 19, 30, 31, N $\frac{1}{2}$  Sec. 3, N $\frac{1}{2}$  Sec. 17; T5N R21W Sec. 1-4, 9-16, 21-28, 33-36; T6N R18W Sec. 7-11, 14-23, 26-35; T6N R19W Sec. 7-30; T6N R20W Sec. 8-36; T6N R21W Sec. 13-36; T6N R22W Sec. 3-26, 35, 36; T6N R23W Sec. 1-3, 10-14, 24, N $\frac{1}{2}$  Sec. 23; T7N R22W Sec. 31; T7N R23W Sec. 34-36.

(2) *Matilija Condor Area*: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, in Ventura and Santa Barbara Counties, with the following components (San Bernardino Meridian): T5N R24W W $\frac{1}{2}$  Sec. 3, Sec. 4-11, 14, 15, N $\frac{1}{2}$  Sec. 10, N $\frac{1}{4}$  Sec. 17; T5N R25W E $\frac{1}{2}$  Sec. 1, NE $\frac{1}{4}$  Sec. 12; T5N R24W Sec. 31-34; T6N R24W S $\frac{1}{2}$  Sec. 22, S $\frac{1}{2}$  Sec. 33, S $\frac{1}{2}$  Sec. 34.

(3) *Siqooe-San Rafael Condor Area*: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, in Santa Barbara County, with the following components (San Bernardino Meridian): T6N R26W Sec. 5, C; T6N R27W Sec. 1, 2; T7N R26W Sec. 5-8, 17-20, 29-32; T7N R27W Sec. 1-14, 23-26, 35, 36; T7N R28W Sec. 1, 2, 11, 12; T8N R26W Sec. 19-22, 27-34; T8N R27W Sec. 19-33.

(4) *El Mountain-Beartown Condor Areas*: areas of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain in San Luis Obispo County, with the following components (Mt. Diablo Meridian): T30S R16E Sec. 13, 14, 23-26, SE $\frac{1}{4}$  Sec. 11, S $\frac{1}{2}$  Sec. 12; T20S R17E Sec. 17-20, 29, 30; T31S R14E Sec. 1, 2, 11, 12, E $\frac{1}{2}$  Sec. 3, E $\frac{1}{2}$  Sec. 10, N $\frac{1}{2}$  Sec. 14, N $\frac{1}{2}$  Sec. 13; T31S R15E W $\frac{1}{2}$  Sec. 6, W $\frac{1}{2}$  Sec. 7, NW $\frac{1}{4}$  Sec. 18.

(5) *Mt. Pinos Condor Area*: An area of land, water, and airspace in Ventura and Kern Counties, with the following components (San Bernardino Meridian): T8N R21W W $\frac{1}{2}$  Sec. 5, Sec. 6 N $\frac{1}{2}$  Sec. 7, NW $\frac{1}{4}$  Sec. 8; T8N R22W Sec. 1, 2, E $\frac{1}{2}$  Sec. 3, NE $\frac{1}{4}$  Sec. 10, N $\frac{1}{2}$  Sec. 11, N $\frac{1}{2}$  Sec. 12; T9N R21W Sec. 31, 32, W $\frac{1}{2}$  Sec. 33; T9N R22 W E $\frac{1}{2}$  Sec. 35, Sec. 36.

(6) *Blue Ridge Condor Area*: An area of land, water, and airspace in Tulare County, with the following components (Mt. Diablo Meridian): T19S R29E Sec. 5-9, 15-22, 27-30.

(7) *Tejon Ranch*: an area of land, water, and airspace in Kern County, with the following components (San Bernardino Meridian): R16W T10N, R17W T10N, R17W T11N, R18W T9N, R18W T10N, R19W T10N.

(8) *Kern County rangelands*: an area of land, water, and airspace in Kern County between California State Highway 65 and the western boundary of Sequoia National Forest, with the following components (Mt. Diablo Meridian): R29E T25S, R29E T26S, R30E T25S, R30E T26S.

(9) *Tulare County rangelands*: an area of land, water, and airspace in Tulare County between California State Highway 65, State Highway 198, and the western boundary of Sequoia National Forest, with the following components (Mt. Diablo Meridian): R28E T18S (all sections); R28E T19S (all sections); R28E T20S (all sections); R28E T21S Sec. 1-18; R29E T20S (all sections); R29E T21S Sec. 1-18.

(b) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of these critical habitat areas.

5. A new § 17.65 is added reading as follows:

§ 17.65 Indiana bat.

(a) 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) are critical habitat for the Indiana bat (*Myotis sodalis*):

(1) *Illinois*. The Blackball Mine, La Salle County.

(2) *Indiana*. Big Wyandotte Cave, Crawford County; Ray's Cave, Greene County.

(3) *Kentucky*. Bat Cave, Carter County; Coach Cave, Edmonson County.

(4) *Missouri*. Cave 021, Crawford County; Cave 009, Franklin County; Cave 017, Franklin County; Pilot Knob Mine, Iron County; Bat Cave, Shannon County; Cave 028, Washington County. Numbers assigned by Division of Ecological Services, U.S. Fish and Wildlife Service, Region 61.

(5) *Tennessee*. White Oak Blowhole Cave, Blount County.

(6) *West Virginia*. Hellhole Cave, Pendleton County.

(b) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of these critical habitat areas.

6. A new § 17.66 is added reading as follows:

§ 17.66 Florida manatee.

(a) 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) in Florida are critical habitat for the Florida manatee (*Trichechus manatus*): Crystal River and its headwaters known as King's Bay, Citrus County; the Little Manatee River downstream from the U.S. Highway 301 bridge, Hillsborough County; the Manatee River

downstream from the Lake Manatee Dam, Manatee County; the Myakka River downstream from Myakka River State Park, Sarasota and Charlotte Counties; the Peace River downstream from the Florida State Highway 700 bridge, De Soto and Charlotte Counties; Charlotte Harbor north of the Charlotte-Lee county line, Charlotte County; Caloosahatchee River downstream from the Florida State Highway 31 bridge, Lee County; all U.S. territorial waters adjoining the coast and islands of Lee County; all U.S. territorial waters adjoining the coast and islands and all connected bays, estuaries, and rivers from Gordon's Pass, near Naples, Collier County, southward to and including White-water Bay, Monroe County; all waters of Card, Barnes, Blackwater, Little Blackwater, Manatee, and Buttonwood sounds between Key Largo, Monroe County, and the mainland of Dade County; Biscayne Bay, and all adjoining and connected lakes, rivers, canals, and waterways from the southern tip of Key Biscayne northward to and including Maule Lake, Dade County; all of Lake Worth, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway A1A southward to its southernmost point immediately north of the town of Boynton Beach, Palm Beach County; the Loxahatchee River and its headwaters, Martin and West Palm Beach Counties; that section of the intracoastal waterway from the town of Sewalls Point, Martin County to Jupiter Inlet, Palm Beach County; the entire inland section of water known as the Indian River, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway 3, Volusia County, southward to its southernmost point near the town of Sewalls Point, Martin County, and the entire inland section of water known as the Banana River and all waterways between the Indian and Banana rivers, Brevard County; the St. Johns River, including Lake George, and including Blue Springs and Silver Glen Springs from their points of origin to their confluences with the St. Johns River; that section of the intracoastal waterway from its confluence with the St. Marys River on the Georgia-Florida border to the Florida State Highway A1A bridge south of Coastal City, Nassau and Duval Counties.

(b) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of the critical habitat area.

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