

## 9. LEGAL ENFORCEMENT

The state is normally responsible for the investigation and enforcement of any unintentional whooping crane killing. The intentional killing of a whooping crane in Wisconsin is a dual violation of both state and federal law and may be investigated by either WI DNR or USFWS. It is expected that both agencies will cooperate in a coordinated effort.

### 9.1 STATE LAWS

The Conservation Act, s. 23.09 (1), Wisconsin Statutes (Wis. Stats.), requires the WI DNR to provide an adequate and flexible system for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources. Section NR 1.015(1)(a), Wisconsin Administrative Code (Wis. Adm. Code) and s. 29.039 Wis. Stats., further establishes the specific authorities and missions of the department for wildlife protection and use to include the protection and management of non-game species—particularly endangered, threatened and uncommon species.

The Wisconsin state legislature, through s. 29.604, Wis. Stats., determined that certain wild animals and wild plants are endangered or threatened, and are entitled to preservation and protection as a matter of general state concern. The Federal Endangered Species Act of 1973 and the Lacey Act together provide for the protection of wild animals and wild plants threatened with worldwide extinction by 1) prohibiting the importation of endangered or threatened wild animals and wild plants, and 2) by restricting and regulating interstate and foreign commerce in wild animals and wild plants taken in violation of state, federal and foreign laws. The state, however, also has assumed its responsibility for conserving these wild animals and for restricting the taking, possession, transportation, processing or sale of endangered or threatened wild animals within this state to assure their continued survival and propagation for the aesthetic, recreational, and scientific purposes of future generations.

The department is required under s. 29.604(3), Wis. Stats., to establish an endangered and threatened species list consisting of three parts:

1. Wild animals and wild plants on the U.S. list of endangered and threatened foreign species
2. Wild animals and wild plants on the U.S. list of endangered and threatened native species
3. A list of endangered and threatened Wisconsin species

Whooping cranes, in general, are considered an endangered species in Wisconsin. They are listed under the U.S. foreign and native endangered and threatened species portion of the department's list of endangered species found in s. NR27.03(1), Wis. Adm. Code. Unless permitted by the department, no person may take, transport, possess, process, or sell within this state any wild animal specified by the department's endangered and threatened species list [s. 29.604(4)(a), Wis. Stats.].

In addition to generally being considered an endangered species, all cranes, including the whooping crane are defined under Wisconsin state law as "Protected Wild Animals" under ss. NR 10.02(5) and 19.001(14), Wis. Adm. Code. It is unlawful for any person to take, attempt to take, transport, harass, disturb, pursue, shoot, trap, catch, kill or possess any protected wild animal at any time unless specifically authorized in writing by the department [NR 10.02 and NR 19.25, Wis. Adm. Code].

### **9.1.1 Accidental Shooting (State Law)**

Even though whooping cranes are classified as a Wisconsin endangered species, federal rules establishing the nonessential experimental population (NEP) of whooping cranes in the eastern U.S. created a provision that the Federal Endangered Species Act penalties would not apply if the take of an NEP whooping crane occurred accidentally and incidental to an otherwise legal activity [66 Fed. Reg. 123 (June 26, 2001) (to be codified at 50 CFR pt. 17)]. In other words, NEP whooping cranes accidentally shot or killed in the course of lawful activities (i.e., hunting other species in accordance with all laws and regulations), would not be considered in violation of the FESA, therefore, also not a violation of the Wisconsin endangered species prohibitions or penalties established in s. 29.604(4) and (5), Wis. Stats. The status of whooping cranes is defined on a purely geographic basis. For example, if Wisconsin birds travel to North Dakota, they take on an endangered species status there, while birds from Arkansas would be considered part of the NEP if they travel to Wisconsin.

Because of the NEP designation, any whooping crane unintentionally shot or killed in Wisconsin would be treated as a "Protected Wild Animal," not an endangered species. Wisconsin Administrative Codes s. NR 10.02 and 19.25 states that no person may harass, disturb, shoot, trap, catch, take, or kill a protected wild animal. Wisconsin statute s. 29.971 states that whoever violates a statute or regulation pertaining to hunting, taking, transportation, or possession of game shall forfeit not more than \$1,000 [s. 29.971(3), Wis. Stats.]. In addition, the court may impose a wild animal protection surcharge of \$17.50 [s.29.983(1)(b)7. Wis. Stats.], and revoke or suspend any or all privileges and approvals granted under this chapter for a period of up to three years [s. 29.971(12), Wis. Stats.] . The 2006 Uniform Deposit and Bail Schedule for Conservation Violations sets the deposit permitted in lieu of an appearance in court at \$75. With the required court costs and surcharges, the total deposit required for this violation would be \$303.30.

Whoever unintentionally takes, shoots, or kills a whooping crane in a state where they are not part of the NEP, and then transports, possesses, processes, or sells the bird in Wisconsin would be required to forfeit not less than \$500 nor more than \$2,000. In addition, the court is required to order the revocation of all hunting approvals issued to the person under this chapter and shall prohibit the issuance of any new hunting approvals under this chapter for one year [s. 29.604(5)(a)1., Wis. Stats.]. The court may also impose a wild animal protection surcharge of \$875 [s.29.983(1)(b)1., Wis. Stats.]. The 2006 Uniform Deposit and Bail Schedule for Conservation Violations sets the deposit permitted in lieu of an appearance in court at \$500. With the required court costs and surcharges, the minimum total deposit required for this violation would be \$2,008, and the maximum \$4,165.50.

### **9.1.2 Intentional Shooting (State Law)**

Penalties for violation of Wisconsin's Endangered Species Law under s. 29.604((4), Wis. Stats., apply to the intentional shooting of any whooping crane, even an NEP whooping crane in Wisconsin. Whoever intentionally takes, shoots, kills, transports, possesses, processes, or sells an endangered species shall be fined not less than \$2,000 nor more than \$5,000, or imprisoned for not more than nine months, or both. In addition, the court shall order the revocation of all hunting approvals issued to the person under this chapter and shall prohibit the issuance of any new hunting approvals under this chapter for three years [s. 29.604(5)(a)1., Wis. Stats.]. Because this is a criminal violation, a mandatory appearance would be required. With all court costs and applicable surcharges, the minimum penalty for intentionally shooting a whooping crane in Wisconsin would be \$4,165.50, and the maximum \$11,053.

### **9.1.3 Interstate Transportation**

Under s. 29.047(1)(b), Wis. Stats., no person may transport into or through Wisconsin any whooping crane, or its carcass, from any other state in violation of any law of the other state. Similar to the shooting of a protected wild animal, a person who transports a whooping crane taken in violation of the laws of another state shall forfeit not more than \$1,000 [s. 29.971(3), Wis. Stats.]. In addition, the court may revoke or suspend any or all privileges and approvals granted under this chapter for a period of up to three years [s. 29.971(12), Wis. Stats.] and impose a wild animal protection surcharge of \$875 [s.29.983(1)(b)1., Wis.Stats.]. The 2006 Uniform Deposit and Bail Schedule for Conservation Violations sets the deposit permitted in lieu of an appearance in court at \$500 (fifty-percent of the maximum penalty). With the required court costs and surcharges, the total deposit for this violation would be \$2,008. In addition, there could be a Federal Lacey Act violation.

## **9.2 FEDERAL LAWS**

In the United States, the whooping crane was listed as threatened with extinction in 1967 and endangered in 1970; both listings were “grandfathered” into the Endangered Species Act of 1973. Critical Habitat was designated in 1978. In Canada it was designated as endangered in 1978 by the Committee on the Status of Endangered Wildlife in Canada and listed as endangered under the Species at Risk Act (SARA) in 2003. Critical Habitat in Canada is officially designated upon publication of a final SARA Recovery Strategy or Action Plan on the SARA Public Registry.

Before whooping cranes were reintroduced into the eastern U.S., all eastern whooping cranes were designated as “experimental nonessential” under the Endangered Species Act. This designation allows for greater management flexibility of the reintroduced population. Local citizens in the areas where endangered or threatened species are proposed for introduction are often concerned about the placement of restrictions and prohibitions on federal and private activities. Under section 10(j), the Secretary of the Interior can designate reintroduced populations established outside the species’ current range, but within its historical range, as “experimental”. Experimental populations carry fewer restrictions, since most federal activities are then exempt from the requirement to consult with the USFWS under Section 7 of the Act.

### **9.2.1 Accidental Shooting (Federal Law)**

As part of the final rule establishing the nonessential experimental population (NEP) of whooping cranes in the eastern United States, a provision was included that Endangered Species Act penalties would not apply if the taking of a NEP whooping crane occurred accidentally, and incidental to an otherwise legal activity. Accidental shooting, occurring in the course of a lawful activity (i.e., hunting in accordance with all laws and regulations), would be covered under that provision. 66 Fed. Reg. 123 (June 26, 2001) (to be codified at 50 CFR pt. 17), (f).

Although Endangered Species Act penalties would not apply in that situation, applicable federal penalties under the Migratory Bird Treaty Act and, or state penalties may still apply. The incidental take provision was included in an effort to allay concerns of hunters and other sectors of the public. There was concern that federal penalties or restrictions of property rights, business, or recreational activities might be imposed if a whooping crane was injured or killed unintentionally on private property as a result of a legal activity (66 Fed.Reg. 123, June 26, 2001, to be codified at 50 CFR pt. 17).

In the AWBP, it is difficult to assess the impacts of shooting since most losses of adult birds occur between departure from the wintering grounds and return the next fall (USFWS, 1994). Given the numbers of hunters present in different areas during the fall migration period, the greatest level of risk for accidental shooting likely occurs in the Central flyway and on the Texas wintering grounds. Within this area, the similarly-colored snow geese are abundant, and inexperienced hunters could potentially mistake a whooping crane for a snow goose. Sandhill crane hunting is also permitted in the Central flyway, again presenting the potential for misidentification and accidental shooting.

However, even given the occurrence of similar species within the migration corridor that may lead to accidental shooting, it is thought the loss of whooping cranes to hunters in the AWBP is a small fraction of total mortality. Only four or five mortalities have been documented incidental to hunting activities within the past 20 years (T. Stehn, personal communication, January 2006). A November 2004 incident in Kansas during opening day of sandhill crane hunting season resulted in the deaths of two whooping cranes. As a result, seven hunters were each fined \$3,000 and lost their hunting privileges for two years.

### **9.2.2 Intentional Shooting (Federal Law)**

In the event a whooping crane is shot intentionally the penalties of the Endangered Species Act would still apply, which could result in a maximum \$50,000 fine and up to a year in prison (66 Fed. Reg. 123, June 26, 2001, to be codified at 50 CFR pt. 17). Over the past 20 years, there have been several deaths due to intentional shootings. Recently (2003), a Texas man shot an adult whooping crane in a closed area. He was subsequently sentenced to six months imprisonment and a \$2000 fine. In Florida (2000), a teenager intentionally shot and killed two members of the nonmigratory population.

Because sandhill cranes are not hunted in Wisconsin, any whooping crane shooting would likely be considered intentional. In the past few years, several trumpeter swans in the restored Wisconsin population were shot. Based on these occurrences, it is possible a whooping crane may be intentionally killed. In this event, the full penalties of the Endangered Species Act would apply [66 Fed. Reg. 123 (June 26, 2001) (to be codified at 50 CFR pt. 17)].

### **9.3 VIOLATION PROTOCOLS AND SPECIMEN MANAGEMENT**

Any incident involving the injury, death, or possession of a whooping crane should be reported to the conservation warden in the relevant county. Reports may be made directly to the warden or through the nearest WI DNR Service Center, sheriff's department, or by calling the WI DNR violation hotline at 1-800-TIP-WDNR (847-9367). Wardens will document the report and subsequent investigation on a law enforcement complaint form (Form #4800-48). (Refer to Appendix 6, Response Protocols, for a sample of the "Dead Crane Data Sheet".)

As soon as practical after receiving a report the warden or the warden supervisor will notify the Regional Enforcement and Science leader and the Bureau of Endangered Resources. The investigating state warden will coordinate the investigation with the USFWS federal warden as appropriate on all intentional shootings. Any unlawfully killed or possessed whooping crane carcass will be tagged by the warden with a seizure record tag (Form # 4100-190). Proper chain of custody will need to be maintained for any incidents that might result in enforcement action.