



LOUISIANA WILDLIFE FEDERATION

The voice of Louisiana's wildlife and natural resources since 1940.

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Resolution No. 6, 2021

SUBJECT: SEEKING THE ELIMINATION OF U.S. DEPARTMENT OF JUSTICE'S McKITTRICK POLICY

WHEREAS, by 1950, Louisiana's historical population of Whooping Cranes, the tallest bird in North America, was previously wiped out by shooting and habitat destruction; and

WHEREAS, in 2011, Louisiana Department of Wildlife and Fisheries (LDWF) commenced a project to reintroduce Whooping Cranes, now an endangered species protected by the Endangered Species Act (ESA), into southwest Louisiana where they once thrived at a current cost of \$85,000 per Whooping Crane; and

WHEREAS, the entire North American population of this bird, wild and captive, is approximately 808 with 71 in the current Louisiana non-migratory flock; and

WHEREAS, Louisiana's efforts to discourage the indiscriminate shooting of Whooping Cranes through education, billboards, and press releases has been largely ineffectual, as shootings continue and Louisiana's death toll of Whooping Cranes is the highest in the United States; and

WHEREAS, true hunters are sportsmen who have educated themselves and are not involved in these illegal shootings; and

WHEREAS, the prospect of increased fines and jail time have been shown to be significant deterrents to future rule breaking [Furlong, W.J. 1991, *The deterrent effect of regulatory enforcement in the fishery*. Land Economics 67(1):116–129], and the fear associated with these potential negative consequences creates an important deterrent by itself [May, P.J. 2005. *Regulation and compliance motivations: Examining different approaches*. Public Administration Review 65(1):31–44]; and

WHEREAS, under the United States Department of Justice's *McKittrick* Policy, federal prosecutors are directed to request jury instructions with a heightened *mens rea* or intent requirement in all prosecutions for maximum penalties under the ESA, including Whooping Crane prosecutions, which deters prosecutors from pursuing maximum penalties and encourages them to pursue lesser penalties with their lesser burden of proof; and

WHEREAS, the *McKittrick* Policy runs contrary to the plain wording of the ESA as well as the rules promulgated under the authority of same [*United States v. McKittrick*, 142 F.3d 1170, 1177 (9th Cir. 1998)]; and

WHEREAS, all court challenges to the *McKittrick* Policy to date have failed; and

WHEREAS, the *McKittrick* Policy was not formulated pursuant to statute, rule-making or judicial decision and therefore can be revoked simply by Executive Order.

THEREFORE, BE IT RESOLVED that the Louisiana Wildlife Federation seeks to have the current Administration issue an Executive Order to eliminate the *McKittrick* Policy in its entirety.

Adopted by Louisiana Wildlife Federation in Convention Assembled virtually on August 21, 2021.