



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 20 and 21**

**[Docket No. FWS–HQ–MB–2018–0012; FF09M21200–178–FXMB1232099BPP0L2]**

**RIN 1018–BC72**

**Migratory Bird Permits; Regulations for Managing Resident Canada Goose Populations**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** In 2005, the U.S. Fish and Wildlife Service (Service or “we”) published a final environmental impact statement on management of resident Canada geese (*Branta canadensis*) that documented resident Canada goose population levels “that are increasingly coming into conflict with people and causing personal and public property damage.” Subsequently, the Service implemented several actions intended to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages; those actions included depredation and control orders that allow destruction of Canada goose nests and eggs by authorized personnel between March 1 and June 30. However, some resident Canada geese currently initiate nests in February, particularly in the southern United States, and it seems likely that in the future nest initiation dates will

begin earlier and hatching of eggs will perhaps end later than dates currently experienced. This final rule amends the depredation and control orders to allow destruction of resident Canada goose nests and eggs at any time of year.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Comments we received on the proposed rule, as well as the proposed rule itself, the related environmental assessment, and this final rule, are available at <http://www.regulations.gov> in Docket No. FWS–HQ–MB–2018–0012.

**FOR FURTHER INFORMATION CONTACT:** Paul I. Padding, Atlantic Flyway Representative, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 11510 American Holly Drive, Laurel, MD 20708; (301) 497–5851; paul\_padding@fws.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority and Responsibility**

Migratory birds are protected under four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada in 1916, as amended in 1999), the United Mexican States (1936, as amended in 1972 and 1999), Japan (1972, as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (Act; 16 U.S.C. 703–712), which implements the above-mentioned treaties. The Act provides

that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means allowing hunting, killing, and other forms of taking of migratory birds, their nests, and eggs is compatible with the conventions. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are federally protected by the Act because they are listed as migratory birds in all four treaties. Because Canada geese are covered by all four treaties, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with

Canada. All regulations concerning resident Canada geese are compatible with its terms, with particular reference to Articles II, V, and VII.

Each treaty not only permits sport hunting, but permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of “The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States” provides specific limitations on allowing the take of migratory birds for reasons other than sport hunting. Article

VII authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Article V relates to the taking of nests and eggs, and Article II, paragraph 3, states that, in order to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with listed conservation principles.

The other treaties are less restrictive. The treaties with both Japan (Article III, paragraph 1, subparagraph (b)) and the Soviet Union (Article II, paragraph 1, subparagraph (d)) provide specific exceptions to migratory bird take prohibitions for the purpose of protecting persons and property. The treaty with Mexico requires, with regard to migratory game birds, only that there be a “closed season” on hunting and that hunting be limited to 4 months in each year.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated at title 50 of the Code of Federal Regulations (CFR), parts 13, 21 and 22, and are issued by the Service. The Service annually promulgates regulations governing the take, possession, and transportation of migratory game birds under sport hunting seasons at 50 CFR part 20. Regulations regarding all other take of migratory birds (except for eagles) are published at 50 CFR part 21, and typically are not changed annually.

## **Background**

In November 2005, the Service published a final environmental impact statement (FEIS) on management of resident Canada geese that documented resident Canada goose population levels “that

are increasingly coming into conflict with people and causing personal and public property damage” (see the FEIS’ notice of availability at 70 FR 69985; November 18, 2005).

On August 10, 2006, we published in the *Federal Register* (71 FR 45964) a final rule establishing regulations at 50 CFR parts 20 and 21 authorizing State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages. Those activities include depredation and control orders that allow destruction of resident Canada goose nests and eggs by authorized personnel between March 1 and June 30, because that timeframe encompassed the period when resident Canada geese typically nested. However, in recent years, some resident Canada geese have initiated nests in February, particularly in the southern United States, and it seems likely that in the future nest initiation dates will begin earlier and hatching of eggs will perhaps end later than dates currently experienced.

On April 25, 2018, we published in the *Federal Register* (83 FR 17987) a proposed rule to amend the special permit and depredation and control orders to allow destruction of resident Canada goose nests and eggs at any time of year, thereby affording State agencies, private landowners, and airports greater flexibility to use these methods of controlling local abundances of resident Canada geese. This final rule adopts the changes set forth in that proposed rule.

### **Definition of Resident Canada Geese**

The current definition of resident Canada geese set forth at 50 CFR 20.11 and 21.3 states that “Canada geese that nest within the lower 48 States and the District of Columbia in the months of March, April, May, or June, or reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August” are considered resident Canada geese. We are amending this definition by deleting the phrase, “in the months of March, April, May, or June,” following the first appearance of the word “Columbia,” to clarify that any Canada geese that nest within lower 48 States and the District of Columbia are resident Canada geese.

### **Removal of Date Restrictions on Nest and Egg Destruction**

In title 50 of the CFR, destruction of resident Canada goose nests and eggs is currently authorized under special Canada goose permits (§ 21.26), a control order for airports and military airfields (§ 21.49), a depredation order specific to nests and eggs (§ 21.50), a depredation order for agricultural facilities (§ 21.51), and a public health control order (§ 21.52). Each of these regulations prescribes the dates during which nests and eggs of resident Canada goose may be destroyed. This rule removes those date restrictions and allows destruction of Canada goose nests and eggs, as otherwise authorized under these regulations, at any time of year.

This adjustment is based on several factors. First, nest and egg destruction has been an effective tool in reducing local conflicts and damages caused by resident Canada geese. Second, resident Canada geese are identified as such based on where, not when, they nest. Lastly, some

Canada geese are already nesting in February in southern States, and it seems likely that nest

initiation dates will also advance into February in mid-latitude and perhaps northern States in the future and hatching of nests may occur later than June 30.

### **Eliminating Date Restrictions for Lethal Control Activities in California, Oregon, and Washington**

On June 17, 1999, we published in the *Federal Register* (64 FR 32766) a final rule establishing 50 CFR 21.26, the special Canada goose permit. Special Canada goose permits may be issued to State wildlife agencies authorizing them to conduct certain resident Canada goose management and control activities that are normally prohibited. At that time, we indicated that States may conduct those control activities between March 11 and August 31, but that they should make a concerted effort to limit the take of adult birds to June, July, and August in order to minimize the potential impact on migrant populations. We imposed a date restriction of May 1 through August 31 in some areas in California, Oregon, and Washington inhabited by the threatened Aleutian Canada goose (*Branta canadensis leucopareia*) pursuant to the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The Aleutian Canada goose was listed as endangered in 1967 (32 FR 4001; March 11, 1967) and reclassified to threatened status in 1990 (55 FR 51106; December 12, 1990).

Aleutian geese occur in a small numbers within these States, primarily San Joaquin Valley and Sacramento River Delta areas in central California, Humboldt Bay and Crescent City areas on the northern California coast, and Langlois and Pacific City areas on the Oregon coast. We indicated that if this subspecies is delisted, we would review this provision.

On March 20, 2001, we published in the *Federal Register* (66 FR 15643) a final rule to remove the Aleutian Canada goose from the Federal List of Endangered and Threatened Wildlife, due to recovery. Abundance of this population increased from 790 birds in 1975, to an estimated 156,030 in the winter of 2016. The Pacific Flyway Council's objective for this population is 60,000 geese. Currently, there is no special habitat or other threat that may reduce this population back to levels that may need protection under the ESA. Considering the current status of the Aleutian Canada goose, we are removing the May 1 restriction so that management and control activities may be conducted during the same period (March 11 through August 31) throughout all States.

### **Environmental Assessment**

We prepared an environmental assessment (EA) that analyzed two alternative courses of action to address these earlier nesting and later hatching dates and decrease local abundances of Canada geese that nest in the lower 48 States and the District of Columbia:

- (1) Maintain the current date restrictions specified in regulations at 50 CFR 21.26, 21.49,

21.50, 21.51, and 21.52 on destruction of resident Canada goose nests and eggs, and make no change to the definition of resident Canada geese at 50 CFR 20.11 and 21.3 (No action); and

(2) Revise the definition of resident Canada geese at 50 CFR 20.11 and 21.3, and allow destruction of resident Canada goose nests and eggs at any time of year under 50 CFR 21.26, 21.49, 21.50, 21.51, and 21.52 (Proposed action).

The full EA can be found on our website at <http://www.fws.gov/birds> or at <http://www.regulations.gov> at Docket No. FWS–HQ–MB–2018–0012. We note that the amendment to § 21.26 in regard to accounting for the current status of the Aleutian Canada goose was not addressed in the EA, but is a categorically excluded action (43 CFR 46.210) addressed in an environmental action statement (EAS). The EAS can be found on our website at <http://www.fws.gov/birds> or at <http://www.regulations.gov> at Docket No. FWS–HQ–MB–2018–0012.

## **Review of Public Comments**

We accepted comments on our April 25, 2018, proposed rule (83 FR 17987) for 30 days, ending May 25, 2018. During the public comment period on the proposed rule, we received public comments from seven private individuals (two of which were not relevant to this rule) and one organization.

### *Summary of Relevant Comments*

The National Wildlife Control Operators Association supported the proposed changes, but each of the private individuals opposed some aspect(s) of the rule. One individual stated that we should allow larger bag limits and more access to hunting locations instead of conducting direct control operations, while another commenter expressed opposition to capturing resident Canada geese on National Wildlife Refuges and then euthanizing them, because this reduces hunting opportunity. One commenter objected to the lethal control of a native species and urged the Service to expend its resources on invasive species and recovering endangered species instead, and two individuals expressed opposition to the killing of any animals.

#### *Service Response to Relevant Comments*

Hunting harvest alone has not reduced resident Canada goose numbers enough to alleviate conflicts in some areas, despite long hunting seasons and large bag limits; also, the hunting season does not coincide with the time when many conflicts with geese, such as crop depredation, need to be addressed. Furthermore, many locales frequented by Canada geese are either closed to hunting for safety purposes (e.g., airports, urban areas) or are privately owned, where access to hunters can only be granted by the property owner. Direct control measures such as nest and egg destruction and lethal removal are usually employed to alleviate local conflicts; thus, whether to conduct such measures is a local decision. The Service has a responsibility to reduce risks to public safety (e.g., at airports) and prevent serious injuries to agricultural crops that are caused by resident Canada geese. We favor

nonlethal control methods, but if those fail to resolve an identified conflict, we do allow lethal take.

Therefore, this final rule does not make any changes in response to these comments to the actions we proposed on April 25, 2018 (83 FR 17987).

### **Required Determinations**

#### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We developed this rule in a manner consistent with these requirements.

#### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business

Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b).

The economic impacts of this rule will primarily affect State and local governments and the U.S. Department of Agriculture’s Wildlife Services because of the structure of wildlife damage management. Data are not available to estimate the exact number of local governments that will be affected, but it is unlikely to be a substantial number nationally. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act:*

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It will not have a significant

impact on a substantial number of small entities.

This rule will not have an annual effect on the economy of \$100 million or more. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Finally, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the abilities of U.S.-based enterprises to compete with foreign-based enterprises.

*Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs*

This final rule is an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) deregulatory action because it relieves a restriction in 50 CFR parts 20 and 21.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we have determined the following:

- a. This rule will not “significantly or uniquely” affect small government activities. A small government agency plan is not required.
  - b. This rule will not produce a Federal mandate on local or State government or private entities.
- Therefore, this action is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

*Takings*

In accordance with E.O. 12630, this rule does not contain a provision for taking of private property, and will not have significant takings implications. A takings implication assessment is not required.

#### *Federalism*

This rule does not interfere with the States' abilities to manage themselves or their funds. We do not expect any economic impacts to result from this regulations change. This rule will not have sufficient Federalism effects to warrant preparation of a federalism summary impact statement under E.O. 13132.

#### *Civil Justice Reform*

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Paperwork Reduction Act*

This rule does not contain new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements associated with the control and management of resident Canada geese at 50 CFR part 20 and 50 CFR part 21, and assigned assigned OMB Control Number 1018–0133 (expires May 31, 2019, and in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the submission is

pending at OMB). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act*

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and U.S. Department of the Interior regulations at 43 CFR part 46. We have completed an environmental assessment of the amendment of the depredation and control orders that allows destruction of resident Canada goose nests and eggs at any time of year; that environmental assessment is included in the docket for this rule (available at <http://www.regulations.gov>; Docket No. FWS–HQ–MB–2018–0012). We conclude that our action will have the impacts listed below under “Environmental Consequences of the Action.” The amendment to § 21.26 in regard to accounting for the current status of the Aleutian Canada goose was not addressed in the EA, but is a NEPA categorically excluded action (43 CFR 46.210) addressed in an environmental action statement (EAS), which is also included in the docket for this rule (available at <http://www.regulations.gov>; Docket No. FWS–HQ–MB–2018–0012).

#### Environmental Consequences of the Action

Migrant Canada geese do not nest in the lower 48 States or the District of Columbia; thus, this action (amendments related only to depredation and control orders) is not expected to have any significant impacts on migrant Canada geese. All resident Canada goose population abundances are

well above population objectives. Assuming that the number of resident Canada geese that initiate nests in January or February does not exceed the current number that initiate nests in March, we expect that this action will result in destruction of a maximum of 2,749 additional nests in January and February. We expect it is more likely that the action will shift some portion of the current resident Canada goose nest and egg destruction activities occurring in March to either January or February. All populations of resident Canada geese are expected to remain at or above population objective levels.

*Socioeconomic.* This action is expected to have positive impacts on the socioeconomic environment in localized urban and suburban areas where resident Canada geese are subjected to continued (annual) nest and egg destruction actions that gradually reduce goose numbers and resulting conflicts. It is also expected to reduce crop depredation at some localized agricultural sites where nest destruction can encourage geese to leave the site.

*Endangered and threatened species.* The rule will not affect endangered or threatened species or critical habitats.

#### *Compliance with Endangered Species Act Requirements*

Section 7 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), requires that “The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act” (16 U.S.C. 1536(a)(1)). It further states that “[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary,

insure that any action authorized, funded, or carried out by such agency \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat” (16 U.S.C. 1536(a)(2)). This rule will not affect endangered or threatened species or critical habitats.

#### *Government-to-Government Relationship with Tribes*

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. This rule will not interfere with the tribes’ abilities to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

#### *Energy Supply, Distribution, or Use (E.O. 13211)*

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 13211, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action. No Statement of Energy Effects is required.

#### **List of Subjects in 50 CFR Parts 20 and 21**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

#### **Regulation Promulgation**

For the reasons stated in the preamble, we hereby amend parts 20 and 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 20—MIGRATORY BIRD HUNTING**

1. The authority citation for part 20 continues to read as follows:

AUTHORITY: 16 U.S.C. 703 *et seq.*, and 16 U.S.C. 742a-j.

2. Amend § 20.11 by revising paragraph (n) to read as follows:

**§ 20.11 What terms do I need to understand?**

\* \* \* \* \*

(n) *Resident Canada geese* means Canada geese that nest within the lower 48 States and the District of Columbia or that reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August.

**PART 21—MIGRATORY BIRD PERMITS**

3. The authority citation for part 21 continues to read as follows:

AUTHORITY: 16 U.S.C. 703–712.

4. Amend § 21.3 by revising the definition for “*Resident Canada geese*” to read as follows:

**§ 21.3 Definitions.**

\* \* \* \* \*

*Resident Canada geese* means Canada geese that nest within the lower 48 States and the

District of Columbia or that reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August.

\* \* \* \* \*

5. Amend § 21.26 by revising paragraph (d)(2) to read as follows:

**§ 21.26 Special Canada goose permit.**

\* \* \* \* \*

(d) \* \* \*

(2) *When may a State conduct management and control activities?* States and their employees and agents may conduct egg and nest manipulation activities at any time of year. Other management and control activities, including the take of resident Canada geese, under this section may only be conducted between March 11 and August 31.

\* \* \* \* \*

6. Amend § 21.49 by revising paragraph (d)(3) to read as follows:

**§ 21.49 Control order for resident Canada geese at airports and military airfields.**

\* \* \* \* \*

(d) \* \* \*

(3) Airports and military airfields may conduct management and control activities, involving the take of resident Canada geese, under this section between April 1 and September 15. The destruction of resident Canada goose nests and eggs may take place at any time of year.

\* \* \* \* \*

7. Amend § 21.50 by revising paragraph (d)(4) to read as follows:

**§ 21.50 Depredation order for resident Canada geese nests and eggs.**

\* \* \* \* \*

(d) \* \* \*

(4) Registrants may conduct resident Canada goose nest and egg destruction activities at any time of year. Homeowners' associations and local governments or their agents must obtain landowner consent prior to destroying nests and eggs on private property within the homeowners' association or local government's jurisdiction and be in compliance with all State and local laws and regulations.

\* \* \* \* \*

8. Amend § 21.51 by revising paragraph (d)(4) to read as follows:

**§ 21.51 Depredation order for resident Canada geese at agricultural facilities.**

\* \* \* \* \*

(d) \* \* \*

(4) Authorized agricultural producers and their employees and agents may conduct

management and control activities, involving the take of resident Canada geese, under this section between May 1 and August 31. The destruction of resident Canada goose nests and eggs may take place at any time of year.

\* \* \* \* \*

9. Amend § 21.52 by revising paragraph (e)(3) to read as follows:

**§ 21.52 Public health control order for resident Canada geese.**

\* \* \* \* \*

(e) \* \* \*

(3) Authorized State and Tribal wildlife agencies and their employees and agents may conduct management and control activities, involving the take of resident Canada geese, under this section between April 1 and August 31. The destruction of resident Canada goose nests and eggs may take place at any time of year.

\* \* \* \* \*

Dated: June 13, 2019.

Karen Budd-Falen,  
Deputy Solicitor for Parks and Wildlife,

Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.  
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