



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–HQ–MB–2018–0080; FF09M21200–190–FXMB1231099BPP0]

RIN 1018–BD74

Migratory Bird Permits; Regulations for Managing Resident Canada Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to amend the depredation order that allows take of resident Canada geese at agricultural facilities by authorized personnel between May 1 and August 31. This time period is too restrictive in portions of the Atlantic Flyway where specific crops are now being planted and depredated prior to May 1. Under this proposal, we would allow take of resident Canada geese at agricultural facilities in the Atlantic Flyway States of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina,

Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia between April 1 and August 31.

DATES: Comments on this proposed rule must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Document availability:* You may obtain copies of the related environmental assessment at <http://www.regulations.gov> in Docket No. FWS-HQ-MB-2018-0080.

Comment submission: You may submit comments by either one of the following methods. Please do not submit comments by both.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-HQ-MB-2018-0080.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-HQ-MB-2018-0080; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>, including any personal information you provide. See **Public Comments**, below, for more information.

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.

SUPPLEMENTARY INFORMATION:

Authority and Responsibility

Migratory birds are protected under four bilateral migratory bird treaties that 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, killing, 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 a depredation order that allows take of resident Canada geese at agricultural facilities by authorized personnel between May 1 and August 31, and the destruction of resident Canada goose nests and eggs between March 1 and June 30, at 50 CFR 21.51.

On June 20, 2019, we published in the *Federal Register* (84 FR 28769) a final rule to amend our Canada goose depredation and control orders, including the depredation order at 50 CFR 21.51, to allow destruction of resident Canada goose nests and eggs at any time of year.

This Proposed Rule

The time periods set forth at 50 CFR 21.51(d)(4) for take of resident Canada geese at agricultural facilities are too restrictive in portions of the Atlantic Flyway where specific crops are now being planted and depredated prior to May 1. This proposed rule would amend the depredation order at 50 CFR 21.51 to allow authorized personnel to take resident Canada geese

at agricultural facilities in the Atlantic Flyway States of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia between April 1 and August 31, thereby enabling agricultural producers to protect crops planted in early spring from depredation by resident Canada geese.

Environmental Assessment

We prepared an environmental assessment (EA) that is tiered to the 2005 FEIS, specifically to the actions pertaining to control of resident Canada geese at agricultural facilities that were proposed under Alternative E (Control and Depredation Order Management; pages II–12–13). Those actions were subsequently implemented through the depredation order at 50 CFR 21.51, under Alternative F (Integrated Damage Management and Population Control; pages II–13–15). The EA analyzed three alternative courses of action to address crop depredation by resident Canada geese in Atlantic Flyway States in April:

(1) Maintain the current date restrictions on the take of geese as specified in regulations at 50 CFR 21.51(d)(4) (No action);

(2) Expand the time period during which Canada geese may be taken under 50 CFR 21.51(d)(4) to April 1 through August 31, in the Atlantic Flyway States of Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia; and

(3) Expand the time period during which Canada geese may be taken under 50 CFR 21.51(d)(4) to April 1 through August 31, in the Atlantic Flyway States of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and

West Virginia (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–2018–0080.

Public Comments

You may submit your comments and supporting materials by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email or fax, or written comments sent to an address other than the one listed in **ADDRESSES**. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, are available for public inspection at <http://www.regulations.gov>. We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

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 have developed this proposed 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 would 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 would 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 proposed rule would primarily affect agricultural producers, but the impacts would be beneficial to those entities because their crops would be afforded better protection. Data are not available to estimate the exact number of agricultural

facilities that would benefit from this proposed rule, but it is unlikely to be a substantial number at the Atlantic Flyway-wide scale. Therefore, we certify that, if adopted as proposed, this rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on a substantial number of small entities.

This rule would not have an annual effect on the economy of \$100 million or more. This rule would 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 would 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 proposed rule is expected to be an Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) deregulatory action because it would relieve a restriction in 50 CFR part 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 proposed rule would not “significantly or uniquely” affect small government activities. A small government agency plan is not required.

b. This proposed rule would 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 proposed rule does not contain a provision for taking of private property, and would not have significant takings implications. A takings implication assessment is not required.

Federalism

This proposed rule would not interfere with the States' abilities to manage themselves or their funds. We do not expect any economic impacts to result from this proposed revision to the regulations. This rule would 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 proposed 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 proposed 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 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 proposed 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 proposed amendment of the depredation order that would allow take of resident Canada geese at agricultural facilities in Atlantic Flyway States from April 1 through August 31; that environmental assessment is included in the docket for this proposed rule. We conclude that our proposed action would have the impacts listed below under *Environmental Consequences of the Action*. The docket for this proposed rule is available at <http://www.regulations.gov> under Docket No. FWS–HQ–MB–2018–0080.

Environmental Consequences of the Action

The expected additional take of resident Canada geese would have minimal impact to the overall population status of resident Canada geese in any participating State or the Atlantic Flyway as a whole. Based on the current average annual take (in the listed States) of 2,233 Canada geese under 50 CFR 21.51, we expect an additional 558 Canada geese to be taken during the month of April in participating States. This is based on an assumed average of a similar number of geese taken each month. There is the potential for take of migrant Canada geese in more northern areas of the flyway. Assuming that 50 percent of the expected additional take in April are migrants, the take of migrant Canada geese under this alternative would be 279 geese. Population-level impacts to any individual population of migrant geese would be minimal.

Socioeconomic. This proposed action is expected to have a net positive impact on the

socioeconomic environment by reducing crop depredation at localized agricultural sites.

Individual agricultural producers in participating States will be afforded some additional relief from injurious Canada geese.

Endangered and threatened species. The proposed rule would 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)). The proposed rule would 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 proposed rule would not interfere with the tribes’ abilities to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

Clarity of this Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not a significant regulatory action under E.O. 13211, and would 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 Part 21

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

Proposed Regulation Promulgation

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

PART 21—MIGRATORY BIRD PERMITS

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

AUTHORITY: 16 U.S.C. 703-712.

2. 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) Under this section, authorized agricultural producers and their employees and agents may:

(i) Conduct management and control activities, involving the take of resident Canada geese, as follows:

Where	When
(A) In the Atlantic Flyway States of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia	Between April 1 and August 31
(B) In the Mississippi and Central Flyway portions of these States: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming	Between May 1 and August 31

(ii) Destroy the nests and eggs of resident Canada geese 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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