

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 21**

RIN 1018-AE46

Migratory Bird Special Canada Goose Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The United States Fish and Wildlife Service (Service) proposes, in cooperation with State wildlife agencies (States), to establish a Canada goose damage management program. This program is designed to provide a biologically sound and more cost-effective and efficient method for the control of locally-breeding (resident) Canada geese that pose a threat to health and human safety and are responsible for damage to personal and public property.

DATES: The comment period for this proposed rule closes June 1, 1998.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION:**Background**

Numbers of Canada geese that nest and reside predominantly within the conterminous United States have increased exponentially in recent years (Rusch et al., 1995; Ankney, 1996). These geese are sometimes collectively referred to as "resident" Canada geese. These increasing populations of locally-breeding geese are resulting in increasing numbers of conflicts with human activities, and concerns related to human health and safety are increasing (Ankney, 1996). To date, the Service has attempted to address this growing problem through existing annual hunting season frameworks and issuance of control permits on a case-by-case basis. While this approach has provided relief in some areas, the Service realizes that sport harvest will not completely address the problem and that the current permit-issuance system

has become a time-consuming and burdensome process for both applicants and the Service. Therefore, the Service is proposing changes to the way permits for control and management of resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property are issued under the Migratory Bird Treaty Act by the Service. Presently, the regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are authorized by the Migratory Bird Treaty Act and are promulgated in 50 CFR parts 13 and 21.

The geographic scope of this proposed rule is restricted to the conterminous United States and to the two subspecies of Canada geese (*Branta canadensis*) that nest and reside predominately within the conterminous United States (*B. c. maxima* and *B. c. hoffitti*), the "giant" and "western" Canada geese, respectively. Nesting geese within the conterminous United States are considered members of these two subspecies or hybrids between the various subspecies originating in captivity and artificially introduced into numerous areas throughout the conterminous United States. No evidence presently exists documenting breeding between Canada geese nesting within the conterminous United States and those subspecies nesting in northern Canada and Alaska. The geese nesting and residing within the conterminous United States in the months of June, July, and August will be collectively referred to in this proposed rule as "resident" Canada geese.

The remaining 9 subspecies of Canada geese recognized in North America nest, for the most part, in arctic and sub-arctic regions of Canada and Alaska (Lack 1974). These subspecies are encountered in the conterminous United States only during the fall, winter and spring of the year, or as a result of human placement.

Generally, the Service has stressed the need to manage geese on a population basis, guided by cooperatively-developed management plans. However, resident Canada goose populations and the development of a resident Canada goose damage management program present several potential problems with this approach. Because resident goose populations interact and overlap with other Canada goose populations during the fall and winter, these other goose populations could potentially be affected by any management action or program targeted at resident Canada geese during the fall and winter. Therefore, to avoid potential conflicts with existing management plans for

other goose populations, the temporal scope of this proposed rule is restricted to the period March 11 through August 31 each year. These dates encompass the period when sport hunting is prohibited throughout the conterminous United States by the Migratory Bird Treaty (1916) and resulting regulations promulgated under the Migratory Bird Treaty Act (1918). Injury/damage complaints occurring during the period September 1 to March 10, the period open to sport hunting, are outside the scope of this proposed rule and will continue to be addressed through either migratory bird hunting regulations or the existing migratory bird permit process.

Population Status/Public Conflicts

In the early 1960's Hanson (1965) rediscovered the giant Canada goose, then believed to be extinct (Delacour 1954). Hanson (1965) estimated there were about 50,000 of this subspecies left in both Canada and the United States at the time of his survey. In recent years, however, the numbers of these Canada geese that nest predominantly within the conterminous United States have increased tremendously. Recent surveys in the Atlantic, Mississippi, and Central Flyways (Nelson and Oetting, 1991; Sheaffer and Malecki, 1991; Wood et al., 1994; Caithamer and Dubovsky, 1997) suggest that the resident breeding population now exceeds 1 million individuals in both the Atlantic and Mississippi Flyways and is increasing exponentially.

Information from the 1997 Waterfowl Status Report (Caithamer and Dubovsky, 1997) shows that in the Atlantic Flyway, the resident population has increased an average of 17 percent per year since 1989 and currently exceeds 1 million geese. In the Mississippi Flyway, the resident population of Canada geese has increased at a rate of about 6 percent per year during the last 10 years and also currently exceeds 1 million birds. In the Central and Pacific Flyways, populations of resident Canada geese have similarly increased over the last few years. In some areas, numbers of resident Canada geese have increased to record high levels. The Service is concerned about the rapid growth rate and large sizes of resident goose populations, especially in parts of the Atlantic and Mississippi Flyways.

Further, in some regions, the management of these large populations of resident Canada geese is confounded by the presence of migratory Canada goose populations that are considered to be below management objectives. A case in point is the migratory Atlantic Population (AP) of Canada geese which

nests in northern Quebec and winters in the Atlantic Flyway. The number of breeding pairs of migratory AP geese declined from 118,000 in 1988 to only 29,000 in 1995. While numbers of this migratory population have since increased to 63,000 in 1997, as stated above, Atlantic Flyway resident Canada geese are estimated to have a population now exceeding 1 million. Traditional methods of dealing with the growing resident Canada goose population in the Atlantic Flyway, such as hunting, are not available in areas with migrating and wintering AP geese. The difficulty and challenge faced by the Service and State wildlife management agencies is one of striving to increase the migratory population while simultaneously addressing the problems caused by the growing resident population.

In many areas of the country, these burgeoning populations of resident Canada geese are increasingly coming into conflict with human activities. The urban/suburban populations have a relative abundance of preferred habitat provided by current landscaping techniques (i.e., open areas with short grass adjacent to small bodies of water), and this habitat availability combined with the lack of natural predators, the absence of waterfowl hunting in many of these areas, and free handouts of food by some people has served to increase resident Canada goose populations exponentially. Problem habitat examples include public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, amusement parks, cemeteries, hospitals, residential subdivisions, and along or between highways. As a consequence, injury complaints related to agricultural damage and other public conflicts are increasing as resident Canada goose populations increase.

To date, the Service has attempted to address injurious resident Canada goose problems through existing hunting seasons, the creation of new special Canada goose seasons designed to target resident populations, and issuance of permits allowing specific control activities.

The overall guidance for all existing and special hunting seasons is provided in a 1975 Environmental Impact Statement and a 1988 Supplemental Environmental Impact Statement (U.S. Department of Interior 1975, 1988). In general, the Service's approach has been to support special seasons, and as experience and information are gained, to allow expansion and simplification consistent with established criteria.

Special seasons targeting resident Canada geese were first initiated in 1977 in the Mississippi Flyway with an experimental late season in Michigan. Following these early experiments in Michigan and several other Midwestern States, the Service gave notice of pending criteria for special Canada goose seasons in the June 6, 1986, **Federal Register** (51 FR 20681). Criteria for special early seasons were finalized in the August 9, 1988, **Federal Register** (53 FR 29905) and later were expanded to include special late seasons in September 26, 1991, **Federal Register** (56 FR 49111). The original intent of these special seasons was to provide additional harvest opportunities on resident Canada geese while minimizing impacts to migrant geese. The criteria were necessary to control harvests of non-target populations and required States to conduct annual evaluations. Initially, all seasons were considered experimental, pending a thorough review of the data gathered by the participating State. Early seasons are generally held during early September, with late seasons occurring only after the regular season, but no later than February 15.

Special seasons for resident Canada geese are presently offered in all four Flyways, with 29 States participating. They are most popular among States when regular Canada goose seasons are restricted to protect migrant populations of Canada geese. Currently restrictive harvest regimes are in place for the Atlantic, Southern James Bay, Dusky, Cackling and Aleutian Canada goose populations.

Harvest of Canada geese during these special seasons has increased substantially over the last 8 years. In the Atlantic Flyway, 16 of 17 States hold special Canada goose seasons, with harvest rising from about 2,300 in 1988 to almost 124,000 in 1995 (MBMO, 1997). In the Mississippi Flyway, 10 of 14 States hold special Canada goose seasons, and harvest has increased from less than 10,000 birds in 1986 to almost 150,000 in 1995. Michigan currently harvests in excess of 50,000 locally-breeding Canada geese per year. While the opportunities are not as significant in the Central and Pacific Flyways, as areas and seasons have expanded, harvest has increased from approximately 1,300 in 1989 to over 20,000 in 1995.

While creation of special harvest opportunities has helped to limit the problem in some areas, many resident Canada geese remain in urban and suburban areas throughout the fall and winter where these areas afford them almost complete protection from sport

harvest. The Service realizes that harvest management will never completely address this problem and permits to conduct otherwise prohibited control activities will continue to be necessary to balance human needs with expanding resident Canada goose populations.

Complex Federal and State responsibilities are involved with Canada goose control activities. All State and private activities, except techniques intended to either scare geese out of or preclude them from a specific area, such as harassment, habitat management, or repellents, require a Federal permit, issued by the Service. Additionally, permits to alleviate migratory bird depredations are issued by the Service in coordination with the Wildlife Services (formerly Animal Damage Control) program of the Animal and Plant Health Inspection Service (APHIS/WS). APHIS/WS is the Federal Agency with lead responsibility for dealing with wildlife damage complaints. In most instances, State permits are required as well.

A brief summary of the complaints/requests for control permits placed with APHIS/WS indicates the increasing number of public conflicts. In 1996, the APHIS/WS received 3,265 complaints of injurious goose activity (APHIS/WS, 1996). In response to those complaints, APHIS/WS dispersed 513,585 Canada geese. In addition, those 3,265 complaints resulted in APHIS/WS recommending the Service issue 321 permits. Those recommendations included 93 for take, 5 for capture/relocation, and 238 for egg/nest destruction.

In 1995, APHIS/WS received 2,884 complaints of injurious goose activity which resulted in the dispersal of 525,000 Canada geese (APHIS/WS, 1995). In addition, during that same period, the APHIS/WS program reviewed 2,224 permit requests dealing with the control of injurious Canada geese (APHIS/WS, 1995). Of those 2,224 requests, APHIS/WS recommended the Service issue 250 permits. Those recommendations included 68 for take, 5 for capture/relocation, and 195 for egg/nest destruction.

Comparing these figures with previous years' data shows a steady increase in complaints since 1991. For example, in 1991 APHIS/WS received 1,698 complaints of injurious goose activity (APHIS/WS, 1991). In 1993, there were 2,802 complaints (APHIS/WS, 1993). In response to those complaints, APHIS/WS dispersed 730,692 and 862,809 geese, respectively, and recommended the Service issue 92 and 192 permits, respectively.

Permit issuance by the Service has also increased in recent years as resident Canada goose populations have grown to high levels in some areas. In Region 5 (the Northeastern/New England area), the Service issued 26 site-specific permits to kill resident Canada geese and 54 permits to addle eggs in 1994. In 1995, Region 5 issued 56 site-specific permits to kill resident Canada geese, 2 permits to relocate geese, and 109 permits to addle eggs. These permits resulted in the reported take of 291 geese, the relocation of 0 geese, and the addling of eggs in 833 nests. In 1996, Region 5 issued 70 site-specific permits to kill resident Canada geese, 1 permit to relocate geese, and 151 permits to addle eggs. These permits resulted in the reported take of 807 geese, the relocation of 0 geese, and the addling of eggs in 1,235 nests.

In addition to the site-specific permits, from 1994-96, Region 5 issued 10 statewide permits for the relocation of resident Canada geese to three government agencies: APHIS/WS, Delaware Division of Fisheries and Wildlife, and the Virginia Department of Agriculture (VDA). APHIS/WS and VDA were also authorized to addle eggs under these permits. From all statewide permits combined, in 1994, 2,573 resident Canada geese were relocated and eggs were addled in 24 nests. In 1995, 1,900 geese were relocated and eggs were addled in 45 nests. In 1996, 1,764 resident Canada geese were relocated and eggs were addled in 165 nests.

In the Service's Region 3, the Upper Midwest/Great Lakes area, the number and extent of permits issued to manage and control resident Canada geese has increased significantly in the past few years. In 1994, the Service issued 53 permits to trap and relocate, 84 permits to destroy nests/eggs and 12 permits allowing take of adults. These permits resulted in the relocation of 6,821 resident Canada geese, 176 nests and 1,300 eggs destroyed, and 31 adult geese killed. In 1995, Region 3 authorized 111 permits to either trap and relocate birds, destroy nests/eggs, or allow take of adults in Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. These 111 permits resulted in the relocation of 1,015 resident Canada geese, the destruction of 1,797 nests sites, and the take of 616 adult geese. In addition to the above site-specific permits, Region 3 issued Statewide permits in 1995 to the Michigan Department of Natural Resources, the Minnesota Department of Natural Resources, and the Ohio Department of Natural Resources allowing Statewide trapping and

relocation activities. Michigan reported relocating over 4,000 resident Canada geese, Minnesota moved between 5,000 and 7,000 birds, and Ohio conducted goose roundups at approximately 1,000 sites across the state. In 1996, Region 3 issued 226 permits authorizing resident Canada goose control activities. Permit holders, including APHIS/WS, airports, and state wildlife agencies, reported taking 6,922 eggs and 827 geese, and trapped and relocated over 15,300 resident Canada geese. States in which control activities were conducted included Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Since 1995, the Service's Region 3 has also issued permits to the Michigan Department of Natural Resources and the Minnesota Department of Natural Resources (MDNR) authorizing the capture and processing of resident Canada geese as food for local food-shelf programs. Minnesota's permit was a part of the MDNR's Urban Goose Management Program for the Minneapolis-St. Paul Metropolitan Area (initiated in 1982). In 1995, under these permits, Michigan and Minnesota were authorized to take up to 2,000 and 325 geese, respectively. Michigan reported taking 24 birds with Minnesota taking its full allotment of 325 birds. In 1996, Michigan and Minnesota were again authorized to take up to 1,000 and 2,500 resident Canada geese, respectively, for the food-shelf programs. Michigan reported taking 490 birds and Minnesota 1,847. In 1997, the Service again issued Michigan and Minnesota permits authorizing the take up to 1,000 and 2,500 resident Canada geese, respectively, for the food-shelf programs.

In Region 1, the Pacific Northwest/West Coast area, the Service has primarily limited permits for the control of resident Canada geese to the addling of eggs. In 1995, the Region issued permits authorizing the take of 900 eggs in the Puget Sound Area of Washington. In 1996, this number was increased to 2,000 eggs and 200 adult birds. APHIS/WS subsequently reported taking 911 and 1,570 eggs in 1995 and 1996, respectively, and 6 geese in 1996. For 1997, the Region has again authorized the take of 2,000 eggs in the Puget Sound Area and another 500 eggs in the City of Fremont, California.

The Service realizes that APHIS/WS has limited personnel and resources to respond to requests for assistance. Likewise, as the number of complaints continue to increase, greater demand will be placed on the Service and the States to assist in damage-management programs. With the increase in

complaints, the current system is becoming time-consuming, cumbersome and inefficient. The Service, with its State and other Federal partners, believe development of an alternative method of issuing permits to control problem resident Canada geese, beyond those presently employed, is needed so that agencies can provide responsible, cost-effective, and efficient assistance. The proposed special Canada goose permit provides the States that opportunity while maintaining protection of our migratory bird resources.

Proposed Special Canada Goose Permit

The Service proposes to add a new permit option available to State conservation agencies specifically for resident Canada goose control and damage management. The special permit would only be available to a State conservation or wildlife management agency responsible for migratory bird management. Under this permit, States and their designated agents could initiate resident goose damage management and control injury problems within the conditions/restrictions of the program. Those States not wishing to obtain this new permit would continue to operate under the current permitting process.

Applications for the special permit would require a detailed statement from the State estimating the size of the resident Canada goose population in the State, requesting the number of resident Canada geese, including eggs and nests, to be taken, and showing that such damage-control action will either provide for human health and safety, protect personal property, or provide compelling justification that the permit is needed to allow resolution of other conflicts between people and resident Canada geese. The permit holder (i.e., State Agency) would also be required to inform all designated agents of the permit conditions that apply to the implementation of resident Canada goose damage management.

The special resident Canada goose damage-management permit would be subject to the following conditions/restrictions:

1. Take of injurious resident Canada geese as a management tool could be utilized only after applicable non-lethal alternative means of eliminating the damage problem have been proven to be unsuccessful or not feasible.
2. No other migratory birds or any species designated under the Endangered Species Act as threatened or endangered may be affected by the action.
3. Actions under the State permit are limited to the period between March 11

and August 31. Permits will be issued annually. In California, Oregon and Washington, in areas where the threatened Aleutian Canada goose (*B. c. leucoperia*) has been present during the previous 10 years, lethal control activities are restricted to the period May 1 through August 31, inclusive. Delisting of this subspecies would result in a review of this provision.

4. Control activities must be conducted clearly as such and cannot be set up so as to be in fact a "hunt."

5. The permit cannot be used to limit or initiate management actions on Federal land within a State without concurrence of the Federal Agency with jurisdiction.

6. Canada geese killed in control programs must be properly disposed of or utilized. Canada geese killed under this permit may be donated to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes or given to charities for human consumption, or buried or incinerated. This permit does not, however, allow for Canada geese taken pursuant to this section, nor their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

7. Methods of take are at the discretion of the permittee responsible for the control action. Methods may include, but are not limited to, firearms, alpha-chloralose, traps, egg and nest manipulation and other control techniques that are consistent with accepted wildlife-damage management programs.

8. States may designate agents who must operate under the conditions of the permit.

9. Any employee/designated agent authorized by the State to carry out control measures under the special permit must retain in their possession a copy of the State's permit, and designation, in the case of an agent, while carrying out any control activity.

10. Any State agency, when exercising the privileges of this permit, must keep records of all activities, including those of designated agents, carried out under the authority of the special permit. An annual report detailing activities conducted under the permit will be required by the Service prior to any permit renewal.

11. The Service will annually review reports submitted by permit holders and will periodically assess the overall impact of this permit program to ensure compatibility with long-term conservation of this resource.

12. Nothing in the permit should be construed to authorize the killing of Canada geese contrary to any State law

or regulation or on any Federal land without written authorization by the appropriate management authority, and none of the privileges granted under the permit shall be exercised without any State permit that may be required for such activities.

13. The Service reserves the authority to immediately suspend or revoke any permit if it finds that the terms and conditions set forth have not been adhered to as specified in 50 CFR 13.27 and 13.28.

Currently, nearly all permits for resident Canada goose control activities are handled, evaluated, and issued on a case-by-case specific basis. However, with the increasing numbers of requests for permits, the permit-issuance process has become time-consuming and lengthy in some instances. Thus, the Service believes that it is likely that some injury to people and property from resident Canada geese are tolerated rather than go through the lengthy permit-issuance process. With the proposed special resident-goose damage-management permit, the Service expects that the use of resident Canada goose control and management activities, particularly lethal control methods such as egg/nest destruction, would increase. Lethal control methods associated with hazing techniques of adult birds would also be expected to initially increase. However, following this initial increase, continual use of hazing methods should become more effective and may result in fewer overall lethal control activities. Such lethal and non-lethal activities would be expected to decrease the number of injurious resident Canada geese in localized areas, especially urban/suburban areas. Regionally, little overall impact on the resident Canada goose population would be expected because many goose populations have demonstrated the ability to sustain harvest rates in excess of 20 percent. The Service anticipates the magnitude of any lethal control activities will be well below 20 percent of any State's resident Canada goose breeding population.

Little impact on sport hunting would be expected under the proposed special permit. Resident Canada goose populations in areas that are targeted for management/control activities are generally those that provide little or no sport hunting opportunities due to restricted access within urban/suburban areas where hunting is either precluded or severely restricted. Areas and resident Canada goose populations already open to sport hunting would be expected to remain open, as special Canada goose season frameworks and guidelines would not change. However,

due to the increased availability of control measures, there could be the removal of some open hunting areas due to public use/safety considerations. Further, some potential hunting areas under consideration as open hunting areas might lose some justification and basis for opening hunting.

The Service also expects that this approach would result in more aggressive resident Canada goose-control activities. By allowing injurious resident Canada goose problems to be dealt with on the State/local level, instead of the Service's Regional level, it is expected that control activities would be more responsive and timely to the problem(s) than is currently the case. Consequently, it is expected that with reduced injurious populations and more effective hazing programs, fewer complaints would be likely to occur and less resident Canada goose damage would be likely.

With State fish and wildlife agencies responding to individual resident Canada goose problems within their respective jurisdictions, Service administrative responsibilities for each individual control activity that currently necessitate the determination and/or issuance of a permit would be expected to decrease significantly. Currently, the Service, in most instances, must decide on a case-by-case basis whether a permit should be issued. This new permit would greatly lessen the number of these permits.

Summary of Comments

On September 3, 1996, the Service issued in the **Federal Register** (61 FR 46431) a notice of availability of a Draft Environmental Assessment (DEA) on Permits for Control of Injurious Canada Geese and Request for Comments on Potential Regulations. The notice advised the public that a DEA had been prepared and was available for public comment. The notice also announced the Service's intent to consider regulatory changes to the process for issuance of permits to control injurious resident Canada geese. The Service subsequently extended the public comment period on November 12, 1996 (61 FR 58084).

As a result of this invitation for public comment, the Service received 101 comments including two from Federal agencies, 28 from State wildlife agencies, 24 from private organizations and 47 from private citizens. Comments included a wide range of topics; however, several patterns emerged that indicated key points of concern.

To summarize, the August 1996 DEA offered the following three permit alternatives: first, to continue the

existing permit procedure; second, to provide a special Canada goose permit to APHIS/WS and State wildlife agencies with the added authority of allowing subpermits to be issued by APHIS/WS and the States to others; and thirdly, to develop a more restrictive permit procedure. The DEA identified the second option as the preferred alternative, describing a procedure for issuing special resident Canada goose permits and providing the additional option of subpermitting resident Canada goose damage management activities to designated agents. After consideration of the comments received, the Service has revised the preferred alternative as described below in the discussion of comments. This change will provide the Service with more direct control but does not alter the conclusions or analyses displayed in the EA.

Many commenters expressed support for "cleaning up" the process and making it more responsive to the needs of the public. However, some comments challenged the need for any type of resident Canada goose damage-management activities. For purposes of this proposed rule, the following review combines comments into general categories. The issues and the Service response to each are summarized below:

Issue 1: Several commenters expressed concern that the Service did not have the authority under the Migratory Bird Treaty Act (Act) and subsequent regulations to allow non-Service entities (APHIS/WS, States) to issue permits. This theme was repeated throughout and many saw this as an attempt by the Service to abrogate their goose-management responsibility.

Service Response: With regard to the issues raised by these comments, the Service has decided to utilize a process whereby permits would only be issued to State conservation or wildlife management agencies. The Service proposes a system whereby State employees or designated agents may carry out resident Canada goose damage management and control injurious problems within the conditions/restrictions of the permit program.

Issue 2: Several comments suggested that the special permit be replaced by a depredation order, arguing that this approach would be a more cost-effective/efficient means to manage resident Canada Geese.

Service Response: The Service has included this alternative in the revised EA. However, while the Service agrees that depredation orders in other circumstances have proven to be valuable tools in wildlife damage management, the Service believes that

management of resident Canada geese deserves special attention and consideration which can best be provided by the proposed special Canada goose permit. The Service believes that a special Canada goose permit will provide the management flexibility needed to address this serious problem and at the same time simplify the procedures needed to administer this program. A special Canada goose permit will satisfy the need for an efficient/cost-effective program while allowing the Service to maintain management control.

Issue 3: Several comments challenged the notion that there are in fact "injurious" Canada geese and that the entire concept of "resident" Canada geese is invalid.

Service Response: The Service strongly disagrees with both these assertions and has included data in the revised EA that demonstrate the impact of resident Canada goose populations on personal property, agricultural commodities, and health and human safety. In addition, data are available that clearly point out that Canada goose populations do, in fact, nest in parts of the conterminous United States during the spring and summer and that these birds are causing injury to people and property. These data are presented in the revised EA. Furthermore, the Service is not redefining what is or is not a migratory bird under the Treaty. We are using the term "resident" to identify those commonly injurious Canada geese that will be the subject of control activities within the scope of the Treaty.

Issue 4: A number of comments included in the August 1996 DEA addressed the procedures that dealt with the implementation of a resident Canada goose damage-management program. These comments expressed concern that the methods of take were too restrictive, that no mention was made of egg and nest management, that the time period associated with damage control was too restrictive, that the 25 percent population figure was unrealistic and virtually impossible to ascertain, and the directions for disposition of geese were incomplete.

Service Response: The Service carefully considered all these comments and has made modifications in the proposed regulation to address the concerns expressed. Information specific to the applicant State's population of resident geese and the numbers expected to be taken annually will now be required in the application. The Service will utilize this information and other pertinent biological and

population-specific data as the basis for determining the premitted take. The Service made major changes to expand the methods of take to include the use of alpha-chloralose when warranted and to allow the on-site biologist more flexibility. The Service also made provisions to include egg-addling and nest destruction as viable damage-management tools. The Service agrees that the 25 percent population figure on which to determine allowable take is nebulous and does not provide a legitimate guideline for identifying a population level.

Issue 5: A large number of commenters indicated that they were philosophically opposed to the killing of Canada geese and any other "inhumane" treatments of these birds. They expressed preferences for non-lethal solutions to all resident Canada goose/human conflicts and pointed out that people need to be more tolerant of wildlife. Some commenters also opposed the removal of geese on the grounds that these management actions were only short-term solutions.

Service Response: The Service is also opposed to the inhumane treatment of any birds, but does not believe the capture and relocation, or processing for human consumption, of resident Canada geese from human conflict areas is by definition "inhumane." Over the past few years, thousands of problem resident Canada geese have been rounded up by wildlife managers and relocated to unoccupied sites. However, few such sites remain. Therefore, the Service believes that humane lethal control of some geese is an appropriate part of an integrated resident Canada goose damage/control management program.

The Service also prefers non-lethal control activities, such as habitat modification, as the first means of eliminating resident Canada goose conflict/damage problems and has specified language to this effect in the proposed regulations. However, habitat modification and other harassment tactics do not always work satisfactorily and lethal methods are sometimes necessary to increase the effectiveness of non-lethal management methods.

There are many situations where resident Canada geese have created injurious situations and damage problems that few people would accept if they had to directly deal with the problem situation. The Service continues to encourage state wildlife management agencies to work with not only the local citizens impacted by the management actions but all citizens.

While it is unlikely that all resident Canada goose/human conflicts can be eliminated in all urban settings, implementation of broad-scale resident Canada goose management activities may result in an overall reduced need for other management actions, such as large-scale goose round-ups and lethal control.

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NEPA Considerations

The Service has prepared an Environmental Assessment (EA), as defined under the authority of the National Environmental Policy Act of 1969, in connection with this proposed regulation. The EA is available for review at the above address.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "ensure that any action authorized, funded or carried out ... 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 ..." Consequently, the Service initiated Section 7 consultation under the ESA for this proposed rulemaking. Completed results of the Service's consultation under Section 7 of the ESA may be inspected by the public in, and will be available to the public from, the Office of Migratory Bird Management at the above address.

Paperwork Reduction Act and Information Collection

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Service is submitting the necessary paperwork to OMB for approval to collect this information. The Service will not collect any information until approved by OMB and a final regulation is published. Additionally, no person may be required to respond to a collection of information unless it displays a currently valid OMB number. The proposed information collection requirement will be used to administer this program and, particularly in the issuance and monitoring of these special Canada goose permits. The information requested will be required to obtain a special Canada goose permit, and to determine if the applicant meets all the permit issuance criteria, and to protect migratory birds.

The applicants will be State wildlife agencies responsible for migratory bird management that wish to initiate a

resident Canada goose control and damage management program within the guidelines provided by the Service. The annual number of applicants is estimated to be less than 45. The public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information, yielding an annual burden of 360 hours.

Comments are invited from the public on: (1) Whether the collection of information is necessary for the proper performance of the function of the Service, including whether the information will have practical utility; (2) The accuracy of the Service's burden of the collection of information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) How to minimize the burden of the collection of information on those who are to respond, including the use of electronic, mechanical, or other forms of information technology. Comments and suggestions on the requirement should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer, Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 224—ARLSQ, 1849 C Street NW., Washington, DC 20204.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. The Service has determined that this proposed rulemaking would not have a significant effect on a substantial number of small entities, which include small businesses, organizations and small governmental jurisdiction. This proposed rule will only effect State wildlife agencies responsible for migratory bird management that wish to initiate a resident Canada goose control and damage management program within the guidelines provided by the Service. The Service anticipates that the annual number of applicants will be less than

45. Therefore, this proposed rule will have minimal effect on small entities.

Executive Order 12866

The Service has determined that this proposed rule is not significant under the definition in Executive Order 12866. Therefore, this proposed rule was not subject to review by the Office of Management and Budget.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Public Comment Invited

The policy of the Department of the Interior is, whenever practical, to afford the public the opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposal to the location identified in the address section above. Comments must be received on or before June 1, 1998. Following review and consideration of the comments, the Service will issue a final rule on these proposed amendments.

The Service is also requesting comments on the proposed information collection requirements. Comments should be submitted to the Service's Information Collection Clearance Officer at the U.S. Fish and Wildlife Service, 1849 C Street, NW., ms 224—ARLSQ, Washington, D.C. 20240; or by calling 703/358-1943.

List of Subjects in 50 CFR Part 21

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—[AMENDED]

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

AUTHORITY: Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend § 21.3 by adding alphabetically a definition for "Resident Canada geese."

§ 21.3 Definitions.

* * * * *

Resident Canada geese means Canada geese that nest and reside within the conterminous United States in the months of June, July, and August.

3. Add a new § 21.26 to read as follows:

* * * * *

§ 21.26. Special Canada goose permit.

The Service may issue to State wildlife agencies a special permit authorizing resident Canada goose damage management actions, when issuance of such a permit will contribute to human health and safety, or will protect personal property, or when presented with compelling justification in the permit application that issuance of the permit will allow resolution or prevention of injury to people or property. The privileges granted under this section are intended to relieve or prevent injurious situations only, and shall not be construed by the permittee as opening, reopening, or extending any hunting season contrary to regulations promulgated pursuant to Section 3 of the Migratory Bird Treaty Act.

(a) *Permit requirement.* The Director may, upon receipt of an application from a State wildlife agency, and in accordance with the criteria of this section, issue a permit to any such agency to undertake various methods of control, including lethal control, of injurious resident Canada geese in accordance with the above requirements. Only employees or designated agents of a permitted State wildlife agency may take injurious resident Canada geese in accordance with conditions specified in the permit, conditions set forth in 50 CFR part 13, and as specified in (c) below.

(b) *Application procedures.* A State wildlife agency must submit an application to the appropriate Regional Director (see section 13.11(b) of this subchapter). Each such application must contain the general information and certification required by section 13.12(a) of this subchapter plus the following information:

(1) A detailed statement which makes a sufficient showing that the control action will provide for human health and safety, or will protect personal property, or provides other compelling justification that the permit is needed to allow resolution of other injury to people or property.

(2) An estimate of the size of the resident Canada goose population in the State and the annual number of resident Canada geese, including eggs and nests, for which authorization to take is requested.

(3) A statement that indicates that the permit holder (State Agency) will inform and brief all employees/designated agents of the requirements of these regulations and permit conditions that apply to the implementation of resident Canada goose control measures.

(c) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B and elsewhere in this section and unless otherwise specifically authorized on the permit, the special resident Canada goose permits shall be subject to the following conditions:

(1) *Limitations and methods of take.*

(i) Take of resident Canada geese as a management tool pursuant to this section may be utilized only after applicable non-lethal alternative means of eliminating the damage problem have been proven to be unsuccessful or are not feasible and may not exceed the number authorized by the permit.

(ii) Method of take for the control of resident Canada geese is at the discretion of the permittee responsible for the action. Methods may include, but are not limited to, firearms, alpha-chloralose, traps, egg and nest manipulation and other damage control techniques that are consistent with accepted wildlife damage-management programs.

(2) *Time frame.* Permittees and their employees and agents may take only injurious resident Canada geese pursuant to this section between March 11 and August 31 in any year. In California, Oregon and Washington, in areas where the threatened Aleutian Canada goose (*B. c. leucoperia*) has been present during the previous 10 years, lethal control activities are restricted to the period May 1 through August 31, inclusive.

(3) *Disposal and utilization.* The permittee and its employees and agents may possess, transport, and otherwise dispose of by donation to public museums or public institutions for scientific or educational purposes, injurious resident Canada geese killed pursuant to this section. Additionally, geese taken under authority of a permit issued under this section may be processed for human consumption and distributed free of charge to charitable organizations or buried or incinerated. A permit issued under this section shall not allow for resident Canada geese

taken pursuant to this section, nor their plumage or eggs, to be sold, offered for sale, bartered, or shipped for the purpose of sale or barter.

(4) *State law.* Nothing in this section shall be construed to authorize the killing of injurious resident Canada geese contrary to any State law or regulation, nor on any Federal land without specific authorization by the agency responsible for the management of these lands. None of the privileges granted under this section shall be exercised unless the person possesses any permits as may be required for such activities by any State or by any Federal land manager.

(5) *Inspection.* Any State employee/ designated agent authorized to carry out control measures under a permit granted under this section shall retain in their possession a copy of the permit and designation while carrying out any activity under the permit. The permit holder shall require the property owner or occupant on whose premises activities are carried out to allow, at all reasonable times, including during actual operations, any Service special agent, refuge officer or State wildlife or deputy wildlife agent, warden, protector, or other wildlife law

enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted, and shall furnish promptly to such officer whatever information may be required concerning said operations.

(6) *Reporting.* Any State employee or designated agents exercising the privileges granted by this section shall keep records of all activities carried out under the authority of this special-purpose permit, including the number of Canada geese killed pursuant to this section and their disposition. The State must submit an annual report detailing activities conducted under this section, including the time, numbers and location of birds, eggs, and nests taken and non-lethal techniques utilized on or before December 31 of each year. The annual report shall be provided to the appropriate Assistant Regional Director - Refuges and Wildlife (see section 10.22 of this chapter).

(7) *Limitations.* The following limitations shall apply:

- (i) Nothing in this section applies to any Federal land within a State's boundaries without written permission of the Federal Agency with jurisdiction.
- (ii) No action under any special permit issued under this section may be

undertaken if other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act are or will be affected by the control activity.

(iii) Permits will only be issued to State wildlife agencies in the conterminous United States.

(iv) States may designate agents who must operate under the conditions of the permit.

(v) Term of permit—a special Canada goose permit issued or renewed under this section expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years from the date of issuance or renewal.

(vi) Permit revocation—the Service reserves the right to suspend or revoke any permit, as specified in 50 CFR 13.27 and 13.28.

* * * * *

Dated: March 4, 1998.

Donald Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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