

## **Finding of No Significant Impact and Decision for Bird Damage Management in Texas**

The U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS) program responds to a variety of requests for assistance from individuals, organizations, and agencies experiencing damage caused by wildlife in Texas. TWSP activities are conducted in cooperation with other federal, state, and local agencies, as well as private organizations and individuals. Ordinarily, according to APHIS procedures implementing the National Environmental Policy Act (NEPA), individual wildlife damage management (WDM) actions may be categorically excluded (7 CFR 372.5(c), 60 Fed. Reg. 6000-6003, 1995). However, TWSP prepared an environmental assessment (EA) to comply with APHIS NEPA implementing regulations and interagency agreements, to facilitate planning, interagency coordination, streamline program management, and to involve the public. The EA, released by WS February 21, 2013, documented the need for bird damage management (BDM) in Texas and assessed potential impacts of various alternatives in relation to issues analyzed for responding to bird damage problems.

WS is part of a cooperative program within Texas, henceforth known as the Texas Wildlife Services Program (TWSP), and operates under a Memorandum of Understanding (MOU) with Texas A&M AgriLife Extension Services (AgriLife Extension) within the Texas A&M University System and the Texas Wildlife Damage Management Association. TWSP receives State legislative support through legislative action. These bills mandate that the State of Texas shall cooperate through the A&M System with appropriate federal officers and agencies in controlling animals to protect livestock, food and feed supplies, crops, and rangeland. TWSP conducts WDM through this cooperative relationship as AgriLife Extension-WS under the A&M System. TWSP is the agency in Texas that has the expertise to respond to the majority of wildlife damage complaints. The State AgriLife Extension-WS and federal WS program cooperate further, through a separate MOU, with the Texas Wildlife Damage Management Association which identifies requested services on a more localized basis. The Texas Wildlife Damage Management Association consists of local cooperative groups, including county governments, private associations, and individuals. This MOU also allows for sharing the direct operating costs of providing WDM services.

The proposed action was to allow the use of all BDM methods on any lands authorized in the State for the protection of agriculture, property, natural resources, and public safety. TWSP cooperates closely with the Texas Department of Agriculture (TDA), Texas Parks and Wildlife Department (TPWD), and U.S. Fish and Wildlife Service (USFWS), and other agencies as necessary. In Texas, most bird species are protected and managed by USFWS and TPWD. TWSP, under the necessary USFWS or TPWD permits, assists landowners, local governments, and organizations to resolve bird damage problems. TWSP would also assist public entities and Tribes with BDM when requested.

The EA evaluated ways that BDM could be carried out to resolve conflicts with bird species in Texas. BDM is an important function of TWSP. Appendix C listed all bird species that have been found in Texas with Table C1 listing those species that have the highest probability of coming into conflict with people in Texas or being part of disease surveillance projects.

WS is a cooperatively funded and service oriented program. Before operational BDM is conducted, a *Work Initiation Document* or a *WS Work Plan* must be signed by TWSP and the land owner/administrator. TWSP cooperates with private property owners and managers and with appropriate land and wildlife management agencies, as requested, with the goal of effectively and efficiently resolving wildlife damage problems in compliance with all applicable federal, state, and local laws.

A major overarching factor in determining how to analyze potential environmental impacts of TWSP's involvement in BDM is that such management will apparently be conducted by state and local government, or private entities as allowed by State law that are not subject to compliance with NEPA even if TWSP were not involved. In fact, TWSP conducts much of the BDM as an agent of the State through the cooperative relationship. This means that the Federal WS program has limited ability to affect the environmental outcome of BDM in Texas since much of it would be conducted whether or not the Federal portion, WS, of TWSP was involved. Therefore, WS has limited ability to affect the environmental *status quo*. Despite this limitation of federal decision-making in this situation, this EAS process is valuable for informing the public and decision-makers of the substantive environmental issues and alternatives of BDM for resource protection.

### **Interagency Involvement**

Three agencies with professional expertise and regulatory authority covering different aspects of the EA, TPWD, TDA and the U.S. Fish and Wildlife Service (USFWS), were invited for their review and comments. Written comments were received from TDA and TPWD, both providing excellent clarifications and edits for the EA, primarily reviewing areas within their area of expertise (e.g. TDA reviewed pesticide usage and TPWD reviewed species information and impacts to native wildlife). TDA (*D. T. Villarreal, Ph.D., Environ. Specialist, Environ. and Biosecurity Program, Jan. 2, 2013*) specifically reinforced the notion that people will resort to illegal means of resolving damage problems with birds given no assistance, *"I also agree, that given my 15 years of working with TDA, the hypothetically situation of the public illegally using lethal means to manage bird communities is extremely likely if the TWSP does not continue to manage in the manner outlined appropriately within these pages. The consequences of these illegal and potentially devastating actions on the part of a frustrated citizen far outweigh any negative impacts of the standard methods of control already employed successfully by TWSP and discussed here."* The comments received were incorporated into the final EA and sent out for public comment.

### **Public Involvement**

An EA was prepared and released to the public for a 37-day comment period. A Notice of Availability which included a link to view the EA, as well as an address and phone number to obtain a hard copy of the EA, was sent directly to 43 interested parties on National and State mailing lists compiled from direct requests for WS EAs and previous NEPA document mailings including Native American Tribes, cooperating agencies, interested groups, and individuals. A "Notice of Availability" of the predecisional EA was published in the Austin-American Statesman, the newspaper with statewide coverage, for 3 consecutive days, February 25-27, 2013. The EA was also made available for public review at the TWSP State Office at 5730 Northwest Parkway, Suite 700, San Antonio, TX 78249-3378 or from requests received by personal contact at the office or via telephone ((210) 472-5451), mail, or e-mail. No member of the public requested a copy of the EA as a result of the legal "Notice of Availability." in the Austin-American Statesman. The deadline for comments was March 29, 2013.

### **Public Comments**

No comments were received as a result of the public outreach effort.

## Major Issues

Cooperating agencies and the public have helped identify a variety of issues deemed relevant to the scope of this EA. These issues were consolidated into the following 4 primary issues that were considered in detail in the predecisional EA:

- Effects of BDM on Target Bird Species Populations
- Effects of BDM on Nontarget Species, Including Threatened and Endangered (T&E) Species
- Effects of BDM on Public and Pet Safety and the Environment
- Effects of BDM on Aesthetics

## Affected Environment

The proposed action was to continue conducting BDM where birds are causing damage to agriculture, property, natural resources or public health and safety to private, public, and Tribal properties and resources in Texas. BDM will only be conducted where the appropriate *Work Initiation Document* or *Work Plan* is in place allowing BDM methods to be used and at the request of private landowners, TDA, TPWD, USFWS, Tribe, or other agency that manages land or resources in need of protection. The current program's goal and responsibility is to provide service when requested within the constraints of available funding and manpower.

## Alternatives Analyzed in Detail

Four potential alternatives were developed to address the issues identified above. Six additional alternatives were given, but not analyzed in detail. A detailed discussion of the anticipated effects of the alternatives on the objectives and issues is described in Chapter 4 of the EA. The following summary provides a brief description of each alternative and its anticipated impacts.

**Alternative 1. Continue the Current Federal BDM Program (No Action/Proposed Action).** The "No Action" Alternative is a procedural NEPA requirement (40 CFR 1502.14(d)), and is a viable and reasonable alternative that could be selected. Consideration of the No Action alternative is required under 40 CFR 1502.14(d), and provides a baseline or the environmental *status quo* for comparing the potential effects with the other alternatives. In this EA, the No Action Alternative is consistent with CEQ's definition.

In the case of the BDM EA for Texas, the No Action Alternative was the equivalent of the Proposed Action Alternative and the Current Program. Alternative 1 was determined to benefit individual resource owners/managers, while resulting in only minimal levels of impact to target and nontarget wildlife populations including T&E species, very low risks to or conflicts with the public, pets, and the environment, minimal potential to disrupt the enjoyment of wildlife for the public, but positive improvements of the aesthetic values of properties and other resources damaged by birds. Current lethal methods available for use are highly selective for target species and appear to present a balanced approach to the issue of humaneness when all facets of the issue are considered. TWSP responds to requests for BDM to protect human health and safety, agricultural crops and resources, property, natural resources, T&E species, and forestry in Texas. To meet the goal, TWSP has the objective of responding to all requests from individual and corporate landowners, TDA, TPWD, USFWS, other public agencies, and Tribes for assistance with, at a minimum, technical assistance or self-help advice, or, where appropriate and where cooperative or congressional funding is available, direct damage management assistance with professional TWSP Specialists conducting damage management actions. An Integrated WDM approach would be implemented which allows the use of any legal technique or method, used singly or in combination, to meet the needs of requestors for resolving conflicts with birds. Agricultural producers and others requesting assistance would be provided with information

regarding the use of effective nonlethal and lethal techniques. In many situations, the implementation of nonlethal methods such as exclusion-type barriers would be the responsibility of the requestor to implement which means that, in those situations, the only function of TWSP would be to implement methods difficult for the requestor to implement, if determined to be necessary. BDM implemented by TWSP would be allowed in the State, when requested, on private property sites, public facilities or other locations where a need has been documented, upon completion of a *Work Initiation Document* or *Work Plan*. In addition, lethal management actions would require a bird take permit from USFWS or TPWD, depending on the species being controlled. All management actions would comply with appropriate Federal, state, and local laws.

**Alternative 2. Nonlethal BDM by TWSP Only.** Under this alternative, TWSP would use only nonlethal methods to reduce damage by birds. Private landowners and state agencies would still have the option of implementing their own lethal control measures with the appropriate USFWS or TPWD permit. Risks to or conflicts with target species would be about the same as Alternative 1. Risks to public and pet safety, the environment, and nontarget and T&E species, on the whole, including private efforts at BDM, would probably be somewhat greater than Alternative 1, but slightly less than or about the same as Alternative 3 or 4 because TWSP would provide some assistance. Aesthetics would only be minimally affected under this alternative, but would only be slightly positive for resolving damage problems that affect aesthetics, less than under Alternative 1. The hypothetical use of illegal methods could occur as under Alternative 4, but be similar or slightly higher than under Alternative 1.

**Alternative 3. TWSP Provides Technical Assistance Only for BDM.** Under this alternative, TWSP would not provide any direct control assistance to persons experiencing bird damage problems, but would instead provide advice, recommendations, and limited technical supplies and equipment. Lethal BDM would still occur, but would likely be conducted by persons with little or no experience and training, and with little oversight or supervision. Most persons conducting lethal BDM could obtain bird take permits from USFWS or TPWD. It is likely that BDM impacts on the target species, birds would be about the same as under Alternative 1. Risks to public and pet safety, the environment, and nontarget and T&E species would probably be more than Alternative 1, but only slightly more than or about the same as Alternative 2. The effects of BDM on the enjoyment of wildlife would probably be similar to the proposed action, but aesthetic values of resources damaged by birds would be more negatively affected this alternative than Alternative 1. Finally as discussed above, frustrated resource owners that have endured recurring losses may resort to the use of illegal or inappropriate techniques that could result in unknown consequences.

**Alternative 4. No Federal TWSP BDM.** This alternative would consist of no federal involvement in BDM in Texas. Neither direct operational BDM nor technical assistance on BDM techniques would be available from TWSP. The majority of the formerly federal BDM assistance would be borne by TDA or TPWD. Private individuals could increase their efforts if TDA or TPWD were unable to respond adequately which means more BDM would be conducted by persons with less experience and training, and with little oversight or supervision. Risks to the public, pets, nontarget and T&E species, and the environment would probably be greater than under Alternative 1. The enjoyment of wildlife would likely be only minimally affected under this alternative, but aesthetic values of resources damaged by birds would be the most negatively affected under this alternative than any of the other alternatives. Target species take would likely be less, but similar to the Proposed Action Alternative. Lastly, frustrated resource owners that have endured recurring losses may resort to the use of illegal or inappropriate techniques that could result in unknown consequences, and would likely be highest under this alternative.

### **Alternatives Considered, but Not Analyzed in Detail**

1. Compensation for Bird Damage Losses
2. Short Term Eradication and Long Term Population Suppression
3. Use of Bird-Proof Feeders in Lieu of Lethal Control at Dairies and Cattle Feeding Facilities
4. Lethal BDM Only by TWSP
5. Relocation Rather Than Killing Problem Wildlife
6. Biological Control

### **Finding of No Significant Impact**

The February 2013 Texas BDM EA is accepted as the final EA as all concerns have been addressed. The EA analyzed higher levels of take than those taken by TWSP and found that even at higher levels bird populations would not be significantly impacted by TWSP BDM. Thus, lower levels of take as is currently occurring would not result in significant impacts. Thus, I hereby accept this as the Final EA for BDM in Texas. The analysis in the EA indicated that there will not be a significant impact, individually or cumulatively, on the quality of the human environment as a result of the proposed action. I agree with this conclusion and therefore find that an Environmental Impact Statement need not be prepared. This determination is based on the following factors:

1. BDM, as conducted by TWSP, is not regional or national in scope. It is a statewide program in Texas and the scope was discussed in the EA. Under the proposed action, TWSP would continue to assist individuals and entities with bird damage as necessary. Even if TWSP were not involved, under state law most BDM would be conducted by private individuals or entities, or state and local government that are not subject to compliance with NEPA.
2. The proposed action would pose minimal risk to public and pet safety. No injuries to any member of the public are known to have resulted from TWSP BDM activities. In addition, a risk assessment has analyzed the use of BDM methods used by TWSP (USDA 1997, Appendix P) and these were found to pose only minimal risks to the public, pets, and nontarget wildlife species. This issue was addressed in the EA and the Proposed Action Alternative was found to have the least impacts.
3. There are no unique characteristics such as park lands, prime farm lands, wetlands, wild and scenic areas, or ecologically critical areas that would be significantly affected except positively.
4. The effects on the quality of the human environment are not highly controversial. Although there is some opposition to bird control, this action is not highly controversial in terms of size, nature, or effect.
5. Based on the analysis documented in the EA, the effects of the proposed BDM program on the human environment would not be significant. The effects of the activities under the proposed action are not highly uncertain and do not involve unique or unknown risks. If TWSP were unable to respond adequately under the other alternatives, a potential exists that could involve unique and unknown risks by non-professionals implementing BDM and frustrated property owners that have been ineffective with BDM methods resorting to the illegal or unwise use of BDM methods such as chemicals.
6. The proposed action would not establish a precedent for any future action with significant effects. All issues under the proposed action were discussed thoroughly, and these would not add cumulatively to any known future actions that would result in significant effects.
7. No significant cumulative effects on the quality of the human environment were identified through the EA.

8. The proposed BDM activities would not affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, nor would they likely cause any loss or destruction of significant scientific, cultural, or historical resources. If anything, the proposed action would have beneficial effects on these resources.

9. This action will have no adverse effect on T&E species as supported a Section 7 consultation between WS and USFWS (1992). TWSP reviewed the current list of T&E species to ensure that these findings were still valid. TWSP believes that BDM will have no effect on T&E species in Texas following the standard operating procedures given in Section 3.5.2.2 of the EA.

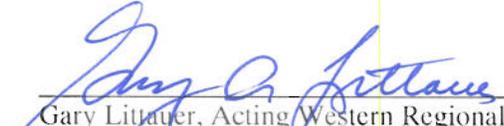
10. The proposed action would be in compliance with all federal, state, and local laws imposed for the protection of the environment. The proposed activity does not violate the Endangered Species Act or any other law. As allowed by state and federal law, BDM could be conducted by private individuals or entities, or state and local agencies that are not subject to compliance with NEPA if TWSP were not involved.

11. There were no irreversible or irretrievable resource commitments identified in this EA, except for a minor consumption of fossil fuels for routine operations.

### Decision

I have carefully reviewed the EA, interagency comments, and lack of public input resulting from the public involvement process. I believe the issues and objectives identified in the EA would be best addressed through implementation of Alternative 1 (the Proposed or No Action Alternative to continue the current program). Alternative 1 is therefore selected because (1) it offers the greatest chance at maximizing effectiveness and benefits to affected resource owners and managers within current program funding constraints; (2) it will maximize selectivity of methods available; (3) it offers a balanced approach to the issue of aesthetics when all facets of the issue are considered; (4) it will continue to minimize risk to or conflicts with the public and pets; and (5) it will minimize risks to nontarget and T&E species. TWSP will continue to use an IWDM approach in compliance with all the applicable standard operating procedures listed in Chapter 3 of the EA.

For additional information regarding this decision, please contact Mike Bodenchuk, USDA-APHIS-TWSP, P.O. Box 690170, San Antonio, TX 78269-0710, (210) 472-5451, FAX: (210) 561-3846.

  
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5/6/13  
 Date

### Literature Cited

- U.S. Department of Agriculture (USDA). 1997. Animal Damage Control Program Final Environmental Impact Statement. (Revised) USDA-APHIS-WS, Operational Support Staff, 4700 River Rd., Unit 87, Room 2D-07.3, Riverdale, MD 20737-1234. 314 pp + App.
- U.S. Fish and Wildlife Service (USFWS). 1992. Section 7 formal consultation for wildlife damage management effects on T&E species nationally between USFWS and USDA-APHIS-Animal Damage Control (WS): Concurrence and Biological Opinion. From Acting Director USFWS, R. N. Smith, to Director USDA-APHIS. R. Melland. July 28. 69 pp.