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Marketing and
Regulatory
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DECISION
AND
FINDING OF NO SIGNIFICANT IMPACT
FOR

BIRD DAMAGE MANAGEMENT IN WYOMING:
Reducing Human/Bird Conflicts Supplement

I. INTRODUCTION

The U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS), U.S. Fish and Wildlife Service (USFWS), Federal Aviation Administration (FAA), Wyoming Game and Fish Department (WGFD), Wyoming Department of Agriculture (WDA) and Wyoming Department of Health (WDH) released a "*Bird Damage Management in Wyoming*" Environmental Assessment (EA) in June 2007[1]. In 2010, a Summary Review and Supplement to the EA was prepared to examine the results of Wyoming WS' bird damage management activities during FY06 through FY09. The review, along with the EA Supplement, was distributed for public comment in June 2010; no comments were received. The EA and Supplement analyzed potential environmental impacts from resolving bird damage or potential damage and reducing human/bird conflicts in Wyoming. The WS program receives and responds to a variety of requests for assistance from individuals, organizations, and agencies experiencing damage and other problems related to wildlife. Wildlife damage management[2] (*e.g.*, reducing human/wildlife conflicts) is the alleviation of damage or other problems caused by or related to the presence of wildlife, and is recognized as an integral part of wildlife management (The Wildlife Society 1992). Ordinarily, individual WS damage management actions are categorically excluded and do not require an EA (7 CFR 372.5(c), 60 Fed. Reg. 6000-6003, 1995).

All bird damage management conducted by Wyoming WS has been conducted consistent with: 1) the Endangered Species Act of 1973, 2) the Migratory Bird Treaty Act (MBTA) (16 U.S.C. §§ 703-712, as amended), the Migratory Bird Reform Act of 2004, and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. Sec. 712), 3) Executive Order (EO) 13186[3], EO 13112[4] and MOUs between WS and USFWS, FAA, WGFD and WDA, and 4) Federal, State and local laws, regulations and policies. The analysis determined that the current program (*i.e.*, Proposed Alternative) is not having a significant impact, individually or cumulatively, on the quality of the human environment, and the affected environment remains essentially unchanged. This

[1] WS, USFWS, FAA, WGFD, WDA and WDH prepared the EA to: 1) evaluate and determine if there are any potentially significant or cumulative adverse effects from the proposed bird damage management program in Wyoming, 2) clearly communicate to the public the analysis of individual and cumulative impacts of program activities, and 3) facilitate planning, interagency coordination and streamline program management. The EA documented the need for reducing human/bird conflicts in Wyoming and assessed potential impacts of various alternatives to respond to bird damage and other related problems.

[2] Management is not based on punishing animals but as a means to reduce damage, with actions implemented using the WS Decision Model (Slate et al. 1992). The threat of damage or loss of resources is often sufficient for initiation of actions. The need for action is derived from threats to protected resources and WS' mission is to improve the coexistence of people and wildlife by providing leadership to reduce problems.

[3] Executive Order 13186 directs federal agencies to protect migratory birds and strengthen migratory bird conservation by identifying and implementing strategies that promote conservation and minimize the take of migratory birds through enhanced collaboration between WS and the USFWS, in coordination with state, tribal, and local governments. A National-level MOU between the USFWS and WS is being developed to facilitate the implementation of Executive Order 13186.

[4] Executive Order 13112 - Invasive Species: Authorized by President Clinton, establishes guidance to federal agencies to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts from invasive species.

Decision and Finding of No Significant Impact (FONSI) are based on the analysis in the EA and Supplement.

II. AGENCY AUTHORITIES

USDA is authorized and directed by law to protect American agriculture and other resources from damage associated with wildlife. The primary statutory authority for USDA is the *Act of March 2, 1931* and the *Rural Development, Agriculture, and Related Agencies Appropriations Act of 1988 (7 USC 426-426c; 46 Stat. 1468)*, as amended. Under these Acts, USDA-APHIS-WS may carry out wildlife damage management programs itself, or it may enter into cooperative agreements with states, local jurisdictions, individuals and public and private agencies whereby they may fund and assist in carrying out such programs. To fulfill this Congressional direction, WS conducts activities to prevent or reduce wildlife damage to agricultural, industrial and natural resources, property, and threats to public health and safety on private and public lands in cooperation with other Federal, state and local agencies, private organizations, and individuals. Id. These laws do not grant any regulatory authority; therefore, no regulations are promulgated under these statutes.

The USFWS is the primary Federal agency responsible for conserving, protecting, and enhancing the nation's fish and wildlife resources and their habitats. These responsibilities are shared with other Federal, state, tribal, and local entities; however, the USFWS has specific responsibilities for threatened and endangered (T/E) species, migratory birds, inter-jurisdictional fish, and certain marine mammals, as well as for lands and waters they administer for the management and protection of these resources. The USFWS regulates the taking of migratory birds under the MBTA, the Migratory Bird Reform Act of 2004, and the Fish and Wildlife Improvement Act of 1978. The Acts authorize and direct the Secretary of the Interior to allow hunting, taking, and killing of migratory birds subject to the provisions of, and to carry out the purposes of the Acts.

The FAA is the Federal agency responsible for developing and enforcing air transportation safety regulations and is authorized to reduce wildlife hazards at commercial and non-commercial airports. Many of these regulations are codified in the Federal aviation regulations. The FAA is responsible for setting and enforcing the Federal aviation regulations and policies to enhance public safety. For commercial airports, 14CFR, Part 139.337 (Wildlife Hazard Management) directs the airport sponsor to conduct a wildlife hazard assessment if an air carrier aircraft experiences multiple wildlife strikes or an air carrier aircraft experiences hazards to aircraft or threats to public safety by the presence of wildlife. At non-commercial airports, the FAA also expects that the airport be aware of wildlife hazards in and around the respective airport and take corrective action if warranted; the FAA uses Advisory Circular 150/5200-33 to guide their decision-making process. An MOU was developed in 1998 and revised in 2005 between the FAA and WS established a cooperative relationship between the two agencies to resolve wildlife hazards to aviation.

The WGFD has the responsibility to manage all protected and classified wildlife in Wyoming, except federally listed T/E species, regardless of the land class on which the animals are found (Wyoming State Statute (WSS) §23-1-103, 302). By Wyoming statute and policy, the state provides for the conservation of lands, protection of natural resources, wildlife and public lands (WSS §11-16-103). WGFD is also authorized to cooperate with WS and the WDA for controlling predatory animals (WSS §11-6-104, 107, 108). The Chapter 56 permit process authorizes the WGFD Chief Game Warden or his designee to take (kill) any wildlife in Wyoming when, in his judgment, the taking is necessary due to substantial damage to property or the creation of a human health and safety hazard. This regulation is promulgated by authority of WSS §23-1-302(a)(viii)and(xxii).

The WDH's mission is to promote, protect, and enhance the health of all Wyoming citizens. The WDH is the primary state agency for providing health and human services (WSS Title 35). WDH administers

programs to preserve the health and safety of all citizens of Wyoming and its primary approach to solving health problems is prevention. The WDH is empowered and directed to promulgate rules and regulations necessary for carrying out the provisions of Title 35. All regulations shall be binding upon all persons affected by Title 35.

The WDA is authorized to enter into cooperative agreements with WS and local entities for reducing damage caused by predatory animals or to administer such programs (WSS §11-6-104). The WDA currently has an MOU, cooperative agreement, and work plan with WS. These documents establish a cooperative relationship between WS and WDA, outline responsibilities, and set forth annual objectives and goals of each agency for resolving wildlife damage in Wyoming.

III. MAJOR ISSUES ANALYZED IN THE EA and SUPPLEMENT

The EA describes the alternatives considered and evaluated. The following issues were identified as important to the scope of the analysis (40 CFR 1508.25)

- Cumulative Effects of WS Bird Damage Management on Target Species Populations Effects of WS Bird Damage Management on Non-target Species Populations, Including T/E Species
- Risks Posed by WS Bird Damage Management Methods to the Public and Domestic Animals
- Efficacy of WS Bird Damage Management Methods

IV. ALTERNATIVES ANALYZED IN THE EA and SUPPLEMENT IN DETAIL

The following alternatives were developed to analyze and respond to issues. Four (4) additional alternatives were considered but not analyzed in detail. A detailed discussion of the effects of the alternatives in relation to the issues is analyzed in detail in the EA; below is a summary of the alternatives.

Alternative 1 – Continue the Current WS Adaptive Integrated Bird Damage Management Program (No Action[5]/Proposed Action).

The current program is an adaptive integrated bird damage management program for the protection of public health and safety, property, agricultural, aquaculture and natural resources in Wyoming. It is anticipated, based on historical information, that the majority of Wyoming WS bird damage management will be conducted at buildings occupied by, or in proximity to, people with the purpose of reducing disease risks and property damage. Other important objectives of the Wyoming WS bird damage management program include reduction of potential livestock health risks, livestock food consumption and contamination, reduction of public health and safety risks associated with aircraft/bird strikes at airports, and disease monitoring.

A major goal of the program is to minimize bird-related losses. To meet this goal, WS would continue to respond to requests for assistance with, at a minimum, technical assistance, or where appropriate when permitted by the USFWS and WGFD, and when cooperative funding is available, operational damage management whereby WS personnel would conduct bird damage management actions. City managers, airport managers, agricultural producers, property owners and others requesting assistance would be provided information regarding the use of non-lethal and lethal techniques, as appropriate. Non-lethal methods include, but are not limited to: localized habitat/behavior modification, decoy and other cage traps, exclusionary devices, nest destruction, hazing/frightening devices, chemical repellents, and the tranquilizer alpha-chloralose (AC). Lethal methods considered by WS include: shooting, egg

[5] The No Action alternative is a procedural NEPA requirement (40 CFR 1502), is a viable and reasonable alternative that could be selected, and serves as a baseline for comparison with the other alternatives. The No Action alternative, as defined here, is consistent with the CEQ's (1981) definition.

addling/destruction/oiling, snap traps, DRC-1339, and American Veterinary Medical Association-approved euthanasia techniques, such as CO_2. WS may recommend hunting or USFWS depredation permits to resource owners when these methods are deemed appropriate for specific bird damage problems. A coordinated bird damage management program would be allowed in the State when: 1) requested on private or public property, 2) a need has been documented, 3) an *Agreement for Control* or other comparable document has been completed, and 4) funding is available. All management actions would comply with appropriate laws, orders, policies, and regulations.

Alternative 2 - Technical Assistance Only Program.

This alternative would not allow for operational bird damage management in Wyoming by WS. WS would only provide technical assistance and make recommendations when requested. Resource and property owners or others could conduct bird damage management using traps, shooting, Avitrol[6,7], or any non-lethal method that is legal.

This "*technical assistance only*" alternative would place the immediate burden of operational damage management on State agencies, individuals and requesters. Individuals experiencing a human/bird conflict would, independently or with WS recommendations, carry out and fund damage management activities. Individual producers could implement bird damage management as part of the cost of doing business, or a State or other Federal agency could assume a more active role in providing operational damage management assistance.

Alternative 3 - No WS Bird Damage Management Program

This alternative would terminate the WS bird damage management program (operational and technical assistance) on all land classes in Wyoming. However, other Federal, State and county agencies and private individuals could conduct bird damage management, but requesters of WS' services would not have WS input. WS would not be available to provide technical assistance or make recommendations to airport and landfill managers, property owners, agricultural producers or others requesting assistance. In addition, DRC-1339 (technical grade) and AC are available only for use by WS employees. Therefore, use of these products by private individuals would be illegal; however, Avitrol could be used by any state-certified restricted-use pesticide applicator. With no WS bird damage management program, the USFWS would likely be shouldered with additional complaints, stretching existing agency resources. In some cases, damage management methods applied by non-WS personnel could be used contrary to their intended or legal use.

V. ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL IN THE EA

Several alternatives were considered but not analyzed in detail. These include:

- Compensation for Bird Damage Losses
- Bounties
- Short Term Eradication and Long Term Population Suppression
- Bird Damage Management Should Be Conducted Using Only Non-lethal Methods

VI. MONITORING

WS' current/proposed action is to reduce or minimize human/bird conflicts and to protect public health and safety, property, and agricultural, aquaculture and natural resources. The Wyoming WS program, in

[6] Avitrol could only be used by state certified pesticide applicators in Wyoming.

[7] Currently, DRC-1339 (technical grade) and AC are available only for use by WS personnel, therefore, use of these avicides by private individuals would be illegal.

cooperation with the USFWS, FAA, WGFD, WDA and WDH monitors and reports the WS take of birds annually to help ensure no adverse impact on the viability of any bird species. Wyoming WS will use the Management Information System data to track their bird removal and USFWS and WGFD expertise will be used to determine the impact on bird populations.

VII. PUBLIC INVOLVEMENT

As part of this process, and as required by the Council on Environmental Quality and APHIS National Environmental Policy Act implementing regulations, the Supplement and this Decision were made available through "Notices of Availability" (NOA) published in local media with circulation throughout the State and through the APHIS website; one (1) letter was mailed to a previous commenter announcing that the supplement was available. No comments were received from review of the Supplement from the public. The analysis and supporting documentation are available for review at the USDA-APHIS-WS State Office, P.O. Box 59, Casper, WY 82602.

VIII. DECISION and RATIONALE

I have carefully reviewed the EA and Supplement and believe the issues identified in the EA are best addressed by continuing with Alternative 1 *Continue the Current WS Adaptive Integrated Bird Damage Management Program* and applying the associated minimization measures, standard operating procedures and monitoring discussed in the EA and Supplement. Alternative 1 provides the best range of damage management methods considered practical and effective, addresses the issues, and accomplishes the Congressionally-directed activities of WS and its cooperating agencies. WS policies and social considerations, including humane issues, will be considered while conducting bird damage management. While Alternative 1 does not require non-lethal methods to be used, WS will continue to provide information and encourage the use of practical and effective non-lethal methods (WS Directive 2.101).

The analyses in the EA and Supplement demonstrate that Alternative 1 provides WS the best opportunity to address the issues and had low impacts on target and non-target species and the human environment. Alternative 1: 1) best addresses the issues identified in the EA and provides the safeguards for public safety, and 2) allows WS to meet its obligations to the USFWS, FAA, WGFD, WDA and WDH and cooperating counties and residents of Wyoming. Alternative 1 provides a mixture of technical assistance, as well as non-lethal and lethal methods to most effectively resolve human/bird conflicts. As part of this FONSI, the Wyoming WS program will continue to provide biological information and other information on non-lethal management techniques that could resolve conflicts. Furthermore, through this FONSI, WS recognizes and incorporates by reference the applicable findings identified in cited literature in Appendix A of the EA and USDA (1997).

FINDING OF NO SIGNIFICANT IMPACT

The EA and Supplement indicate that there will not be a significant impact, individually or cumulatively, on the quality of the human environment, and that these actions do not constitute a major Federal action. I agree with this conclusion and therefore determine that an EIS will not be necessary or prepared. This determination is based on the following factors:

1. Reducing human/bird conflicts, as conducted in Wyoming, is not regional or national in scope.

2. The proposed action will not have an impact on unique characteristics of the areas, such as historical or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecological critical areas.

3. The proposed action will not significantly affect public health and safety. No accidents associated with WS bird damage management are known to have occurred in Wyoming.

4. The effects on the quality of the human environment are not highly controversial. Although there is opposition to WS damage management, this action is not controversial in relation to scope, nature or effects.

5. Minimization measures and standard operating procedures adopted as part of the proposed action lessen risks to the public and prevent adverse effects on the human environment and reduce uncertainty and risks.

6. The proposed action does not establish a precedent for future actions with significant effects. This action would not set precedence for additional WS damage management that may be implemented or planned in Wyoming.

7. The number of animals taken (both target and non-target) by WS annually is small in comparison to total populations. Adverse effects on wildlife or wildlife habitats would be minimal.

8. No significant cumulative effects were identified by this assessment or other actions implemented or planned within the area.

9. The proposed action does not affect districts, sites, highways, structures or objects listed in or eligible for listing in the National Register of Historic Places, nor will it cause a loss or destruction of significant scientific, cultural, or historical resources, including interference with American Indian traditional uses or sacred sites.

10. An evaluation of the proposed action and its effects on T/E species determined that no significant adverse effects would be created for these species. The proposed action will fully comply with the Endangered Species Act of 1973, as amended. Consultations with the USFWS and the WGFD have taken place and this input was used as part of the minimization development process.

11. This action would be in compliance with Federal, State and local laws or requirements for damage management and environmental protection.

For additional information regarding this decision, please contact Rodney Krischke, State Director, P.O. Box 59, Casper, WY 82602, or telephone (307) 261-5336.

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8/16/10
Date

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