

DECISION AND FINDING OF NO SIGNIFICANT IMPACT

ENVIRONMENTAL ASSESSMENT: MANAGING DAMAGE AND THREATS OF DAMAGE CAUSED BY BIRDS IN THE STATE OF NORTH DAKOTA

I. INTRODUCTION

The mission of the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS) program is to provide federal leadership with managing the damage and threats of damage caused by wildlife. In North Dakota, WS has and continues to receive requests for assistance to reduce and prevent damage associated with several bird species. Table 1.1 in the EA shows the primary bird species associated with requests for assistance that WS could receive and the resource types those bird species could damage in North Dakota. Appendix D in the EA contains a list of bird species that WS could address in low numbers and/or infrequently when those species cause damage or pose a threat of damage. WS receives requests for assistance to manage damage to agricultural resources, property, and natural resources along with reducing threats to human health and safety. Many of the bird species discussed in Section 1.2 and Appendix D of the EA occur across the state and throughout the year in North Dakota. Birds are dynamic and mobile; therefore, damage and threats of damage caused by birds can occur wherever those bird species occur in the state. However, WS would only conduct activities after receiving a request from the appropriate property owner or property manager. Therefore, the property owner or manager would determine when assistance from WS was required (see Section 1.1 in the EA).

II. NEED FOR ACTION AND SCOPE OF ANALYSIS

Pursuant to the National Environmental Policy Act (NEPA), WS prepared an Environmental Assessment (EA) that documents alternative approaches to meeting the need for action and documents the potential environmental effects associated with implementing those alternative approaches. The EA provides evidence and analysis to determine whether the potential environmental effects to the human environment might be significant requiring the preparation of an Environmental Impact Statement (EIS). Therefore, the analyses in the EA helped inform agency decision-makers, including making an informed decision on whether the alternative approaches would require the preparation of an EIS or the EA process concludes with a Finding of No Significant Impact. This Decision document provides notification of WS' choice of an alternative approach and determination regarding the environmental effects of the chosen approach. The EA, along with this Decision, document WS' compliance with the NEPA, with the Council on Environmental Quality guidelines (see 40 CFR 1500), and with the implementing regulations for the NEPA of the USDA (7 CFR 1b) and the APHIS (see 7 CFR 372). WS developed the EA under the 1978 NEPA regulations and existing APHIS NEPA implementing procedures because WS initiated this EA prior to the NEPA revisions that went into effect on September 14, 2020.

Another major purpose of the NEPA is to include the public during the planning process to support informed decision-making. WS made the EA available to the public for review and comment through notices published in local media and through direct notification of interested parties. WS made the EA available in a legal notice published in the *Bismarck Tribune* newspaper from January 5, 2021 through January 7, 2021. WS made the EA available to the public for review and comment on the APHIS website on January 4, 2021 and on the federal e-rulemaking portal at the regulations.gov website beginning on December 29, 2020. WS also sent out direct mailings to local known stakeholders and an electronic notification to stakeholders registered through the APHIS Stakeholder Registry on December 30, 2020. The public involvement process ended on February 8, 2021.

During the public comment period, WS received four comment responses on the draft EA. Chapter 4 of the final EA summarizes the comments received and provides WS' responses to the comments. In addition, WS also updated Section 1.6.6 in the final EA to discuss the Final Environmental Impact Statement and Record of Decision the United States Fish and Wildlife Service (USFWS) issued for the management of conflicts associated with double-crested cormorants. WS also updated the analyses for golden eagles and bald eagles in Section 3.1.1 of the final EA to clarify that WS would work with the USFWS to determine when hazing an eagle requires a permit from the United States Fish and Wildlife Service pursuant to the Bald and Golden Eagle Protection Act. Based on further review of the draft EA, WS incorporated other minor editorial changes into the final EA. The update in Section 1.6.6, the clarification provided in Section 3.1.1 for eagles, and the minor editorial changes enhanced the understanding of the EA, but did not change the analysis provided in the EA.

III. ISSUES AND ALTERNATIVES

Issues are concerns regarding potential effects that might occur from a proposed activity (see Section 2.1 of the EA). Federal agencies must consider such issues during the decision-making process of the NEPA. WS identified several issues during the development of the EA. Section 2.1.1 of the EA describes the issues considered and evaluated by WS as part of the decision-making process. WS analyzed the environmental consequences of implementing the alternative approaches for each of the following issues.

- **Issue 1 - Effects of Damage Management Activities on Target Bird Populations**
- **Issue 2 - Effects on the Populations of Non-target Wildlife Species, Including T&E Species**
- **Issue 3 - Effects of Damage Management Methods on Human Health and Safety**
- **Issue 4 - Humaneness and Animal Welfare Concerns of Methods**

Section 3.2 of the EA describes additional issues that WS considered but did not analyze in detail within the EA. The rationale for the decision not to analyze those issues in detail occurs in Section 3.2 of the EA.

The EA evaluated four alternative approaches to respond to the need for action discussed in Section 1.2 of the EA and the issues identified in Section 2.1 of the EA. Section 2.4.1 of the EA provides a description of the alternative approaches evaluated in detail. WS analyzed the environmental consequences associated with implementing the following alternative approaches.

- **Alternative 1 – WS would continue the current integrated methods approach to managing damage caused by birds in North Dakota (Proposed Action/No Action)**
- **Alternative 2 – WS would continue the current integrated methods approach to managing damage caused by birds in North Dakota using only non-lethal methods**
- **Alternative 3 – WS would recommend an integrated methods approach to managing bird damage in North Dakota through technical assistance only**
- **Alternative 4 – WS would not provide any assistance with managing damage caused by birds in North Dakota**

WS also considered additional alternatives; however, WS did not consider those alternatives in detail for the reasons provided in Section 2.4.2 of the EA.

IV. ENVIRONMENTAL CONSEQUENCES

Section 3.1 of the EA analyzes the environmental consequences of the four alternative approaches in comparison to determine the extent of actual or potential direct, indirect, and cumulative effects on the issues. Section 3.1 of the EA provides information needed to make informed decisions. Alternative 1 serves as the baseline for the analysis and the comparison of expected impacts among the alternative approaches. The discussion below provides a summary of the environmental consequences of the four alternative approaches for each of the issues analyzed in detail.

Issue 1 - Effects of Damage Management Activities on Target Bird Populations

Maintaining viable populations of native species is a concern of the public and of biologists within state, tribal, and federal wildlife and land management agencies, including WS. Therefore, a common concern is whether activities to manage damage caused by wildlife would adversely affect the population of a species. If WS implemented Alternative 1, Alternative 2, or Alternative 3, WS could provide direct operational assistance and/or technical assistance to entities requesting assistance; therefore, the activities WS could conduct and/or that WS could recommend could have direct, indirect, and/or cumulative effects on the population of a bird species. If WS implemented Alternative 4, WS would have no effect on the population of a bird species because WS would not provide any assistance when the request for assistance involved those bird species addressed in the EA.

If WS implemented Alternative 1, WS would incorporate non-lethal and lethal methods into an integrated methods approach in which WS' personnel could employ all or a combination of methods to resolve a request for assistance. Appendix B of the EA describes the methods that would be available for WS' personnel to use when addressing requests for assistance to manage bird damage. When addressing damage or the threat of damage associated with those bird species addressed in the EA, the use of non-lethal methods could capture, disperse, or exclude birds. The use of non-lethal methods would have minimal effects on the population of a bird species because birds would generally be unharmed. Non-lethal methods that disperse and/or exclude birds would not be employed over large geographical areas or applied at such intensity that essential resources (e.g., habitat, sources of food) would be unavailable for extended durations or over such a wide geographical scope that long-term adverse effects would occur to the population of a bird species. WS does not anticipate any adverse effects would occur to bird populations from the use of live-capture methods because WS could release captured birds unharmed. Therefore, if WS implemented Alternative 1, Alternative 2, or Alternative 3, the use of non-lethal methods would not have significant direct, indirect, and/or cumulative effects on the population of a bird species.

The Migratory Bird Treaty Act (MBTA) prohibits the take, possession, or transport of migratory birds. Most target bird species addressed in the EA are a migratory bird species protected by the MBTA (see 50 CFR 10.13), except native resident bird species (e.g., sharp-tailed grouse) and non-native species (e.g., domestic waterfowl, house sparrows, European starlings). The USFWS is responsible for managing and protecting migratory bird species pursuant to the MBTA. The USFWS can authorize people and entities to take, possess, and/or transport migratory birds protected by the MBTA (see Section 1.5.1, Section 1.7.1, and Section 2.2.5 in the EA). The take of those migratory bird species by WS that the MBTA protects would only occur after the USFWS authorized the take. Similarly, the NDGFD may also require authorization before conducting activities that lethally removes or captures a target bird species, including their nests and eggs (see Section 1.5.3, Section 1.7.2, and Section 2.2.6 in the EA). When addressing golden and bald eagles, WS would only use non-lethal hazing methods to disperse eagles to alleviate damage or threats of damage and WS would work with the USFWS to determine when the use of non-lethal hazing methods could constitute take and require a permit.

Therefore, WS' activities would only occur when authorized by the USFWS and/or the NDGFD, when required, and take would not exceed the levels authorized. Many non-native species, such as rock pigeons, European starlings, and house sparrows, do not require authorization from the USFWS or the NDGFD to use lethal methods or live-capture methods. In general, the use of non-lethal methods to disperse and/or exclude birds does not require a depredation permit from the USFWS or the NDGFD because dispersing and/or excluding birds using non-lethal methods does not meet the definition of take.

Lethal methods can remove specific birds that WS' personnel have identified as causing damage or posing a threat to human health and safety. The number of birds removed from a population by WS using lethal methods would be dependent on the number of requests for assistance received. In addition, the number of birds removed would be dependent on the number of birds involved with the associated damage or threat, the efficacy of methods employed, and the number of individual birds the USFWS and/or the NDGFD authorizes WS to remove, when required. The analyses in the Section 3.1.1 of the EA and Appendix D of the EA include WS' anticipated annual take level for each species, which WS based on previous requests for assistance associated with the species and in anticipation of future requests for assistance. WS' anticipated annual take level for each species is not a prescribed take level but is a maximum take level that WS anticipates could occur annually to alleviate damage. Based on those quantitative and qualitative parameters addressed in the EA, the anticipated number of birds that WS could lethally remove annually to address requests for assistance under Alternative 1 would be of low magnitude when compared to population trend data, population estimates, and/or harvest data (see Section 3.1.1).

WS would submit activity reports to the USFWS and/or the NDGFD, when required, so the USFWS and/or the NDGFD have the opportunity to evaluate WS' activities and the cumulative take occurring for bird species. Conducting activities only when authorized and providing activity reports would ensure the USFWS and/or the NDGFD have the opportunity to incorporate any activities WS' conducts into population objectives established for bird populations in the state.

The lack of WS' direct involvement does not preclude the lethal removal of birds by those persons experiencing damage or seeking assistance from other entities. Those people experiencing damage or threats could remove birds themselves or seek assistance with removal from other entities under any of the alternatives when the USFWS and/or the NDGFD authorize the removal, when authorization is required. In some cases, a landowner or their designee can lethally remove individual birds of certain species at any time they cause damage without the need to have specific authorization from the USFWS (*e.g.*, depredation orders, control orders, unprotected species) or the NDGFD. In addition, a resource owner could seek assistance from private businesses to remove birds causing damage or they could remove certain bird species (*e.g.*, waterfowl) during the regulated hunting seasons in the state. Therefore, WS' involvement in the lethal removal of those birds under Alternative 1 would not be additive to the number of birds that could be removed by other entities in the absence of WS' involvement. The number of birds lethally removed annually would likely be similar across the alternatives because the removal of birds could occur even if WS implemented Alternative 2, Alternative 3, or Alternative 4. WS does not have the authority to regulate the number of birds lethally removed annually by other entities.

An indirect effect of using lethal methods when targeting waterfowl and other bird species that people can harvest in the state, is the potential effect on the ability of people to harvest those species. The magnitude of lethal removal addressed under Alternative 1 of harvestable bird species (*e.g.*, waterfowl, sharp-tailed grouse) would be low when compared to the mortality of those bird species from all known sources. Based on the limited removal proposed by WS and the oversight by the USFWS and/or the NDGFD, annual removal by WS would have no effect on the ability of those persons interested to harvest certain bird species during the regulated harvest season. Similarly, WS would have no impact on the ability to harvest those species during the annual hunting seasons under Alternative 2, Alternative 3, or Alternative

4 because WS would have limited or no involvement with managing damage associated with those species. However, resource/property owners and other entities could remove birds resulting in impacts similar to Alternative 1 if WS implemented Alternative 2, Alternative 3, or Alternative 4. The USFWS and/or the NDGFD could continue to regulate bird populations through adjustments in allowed removal during the regulated harvest season and through permits or authorizations to manage damage or threats of damage.

Issue 2 - Effects on the Populations of Non-target Wildlife Species, Including T&E Species

WS' personnel have experience with managing animal damage and receive training in the use of methods. If WS implemented Alternative 1, Alternative 2, or Alternative 3, WS' employees would use the WS Decision Model to select the most appropriate methods to address damage caused by birds and to reduce the risks to non-target animals. Despite efforts by WS to minimize risks to non-target animals, the potential for WS to live-capture, exclude, disperse, or lethally remove non-target animals exists when applying both non-lethal and lethal methods to manage damage or reduce threats to safety. The use of most methods would require WS' personnel be present on-site during their use (e.g., pyrotechnics, firearms, nets). Although the use of non-lethal methods could exclude, disperse, or capture non-target animals, long-term adverse effects would not occur to a species' population because WS would not employ non-lethal methods over large geographical areas or at such intensity levels that resources (e.g., food sources, habitat) would be unavailable for extended durations or over a wide geographical scope. Similarly, the use of low-flying aircraft or unmanned aerial vehicles to conduct surveys or disperse target bird species would not occur at such magnitude, frequency, or over a wide geographical extent that significant adverse effects would occur. The use of non-lethal methods would have minimal impacts on overall populations of animals because those methods would not cause mortality.

Most of the methods discussed in Appendix B of the EA would be available under all the alternatives analyzed. Impacts to non-target animals from the use of those methods would be similar to the use of those methods under any of the alternatives. If people or other entities use those methods available as intended, risks to non-target animals would be similar to those risks described for Alternative 1. If other entities apply methods available incorrectly or apply those methods without knowledge of animal behavior, risks to non-target animals could be higher under any of the alternatives. If frustration from the lack of available assistance causes those persons experiencing bird damage to take illegal actions, risks to non-target animals could be higher. Risks to non-target animals could be higher because those entities would likely have no regard for potential impacts of their actions on non-target animals. No take of non-target animals has occurred by WS during prior activities to manage bird damage in North Dakota.

During the development of the EA, WS reviewed the current list of species designated as threatened or endangered in North Dakota as determined by the USFWS. For several species listed within the state, WS has determined that the proposed activities "*may affect*" those species but those effects would be solely beneficial, insignificant, or discountable, which would warrant a "*not likely to adversely affect*" determination (see Appendix C in the EA). Based on those determinations, WS initiated informal consultation with the USFWS for those species that a "*may affect, not likely to adversely affect*" determination was made. The USFWS concurred with WS' determination that activities conducted pursuant to the proposed action would not likely adversely affect those species in a concurrence letter dated April 18, 2020.

In addition, WS has made a no effect determination for one species currently listed in the state based on those methods currently available and based on current life history information for that species. WS also determined the implementation of Alternative 1 would have no effect on any designated critical habitat listed in the state (see Appendix C in the EA).

Issue 3 - Effects of Damage Management Methods on Human Health and Safety

The threats to human safety from methods would be similar across the alternative approaches because most of the methods would be available for use. If people used methods incorrectly or without regard for human safety, risks to human safety would increase under any of the alternatives that people employed those methods. The expertise of WS' employees in using the methods available would likely reduce threats to human safety because WS' employees would receive training and would be knowledgeable in the use of methods. In addition, WS' personnel would use the WS Decision Model when assessing a request for assistance (see WS Directive 2.201). As part of the WS Decision Model, WS' personnel consider risks to human health and safety when evaluating the methods available to manage the damage or threat of damage associated with a request for assistance. WS' personnel must also adhere to WS' directives when conducting activities (see WS Directive 1.101) and many of the directives address safety or relate to the safe use of methods (e.g., see WS Directive 2.401, WS Directive 2.430, WS Directive 2.450, WS Directive 2.601, WS Directive 2.615, WS Directive 2.620, WS Directive 2.625, WS Directive 2.627, WS Directive 2.630, WS Directive 2.635). Although risks do occur from the use of those methods available, when people use those methods in consideration of human safety, the use of those methods would pose minimal risk to human health and safety. No adverse effects to human health or safety occurred from the use of methods by WS to alleviate bird damage in the state from FY 2015 through FY 2019. Based on the use patterns of methods available to address damage caused by birds and the experience/training that WS' personnel receive, the implementation of the alternative approaches would comply with Executive Order 12898 and Executive Order 13045.

Issue 4 - Humaneness and Animal Welfare Concerns of Methods

WS also identified the humaneness of available methods and animal welfare as an issue. Because most methods addressed in Appendix B of the EA would be available under all the alternatives, the issue of method humaneness and animal welfare would be similar for those methods across all the alternatives. The ability of WS to provide direct operational assistance under Alternative 1 and Alternative 2 would ensure WS' personnel employed methods as humanely as possible (see WS Directive 1.301, WS Directive 2.505). Under the other alternatives, other entities could use methods inhumanely if used inappropriately or without consideration of bird behavior. However, the skill and knowledge of the person implementing methods to resolve damage would determine the efficacy and humaneness of methods. A lack of understanding of the behavior of birds or improperly identifying the damage caused by birds along with inadequate knowledge and skill in using methodologies to resolve the damage or threat could lead to incidents with a greater probability of other people perceiving the action as inhumane under Alternative 3 and Alternative 4. Despite the lack of involvement by WS under Alternative 4 and WS' limited involvement under Alternative 3, many of those methods perceived as inhumane by certain individuals and groups would still be available for others to use to resolve damage and threats caused by birds.

V. DECISION AND FINDING OF NO SIGNIFICANT IMPACT

I have carefully reviewed the final EA prepared to meet the need for action and input resulting from the public involvement process. I find the proposed action/no action alternative (Alternative 1) to be environmentally acceptable, addressing the issues and needs while balancing the environmental concerns of management agencies, landowners, advocacy groups, and the public. The analyses in the EA adequately address the identified issues, which reasonably confirm that no significant impact, individually or cumulatively, to animal populations or the quality of the human environment are likely to occur from implementing Alternative 1, nor does implementing Alternative 1 constitute a major federal action. Therefore, the analyses in the EA do not warrant the completion of an Environmental Impact Statement.

Based on the analyses in the EA, implementation of Alternative 1 would best address the issues identified in Section 2.1 of the EA. Alternative 1 successfully addresses managing damage using a combination of the most effective methods and does not adversely impact the environment, property, human health and safety, target species, and/or non-target species, including threatened or endangered species. Alternative 1 offers the greatest chance of maximizing effectiveness and benefits to resource owners and managers and implementation of Alternative 1 presents the greatest chance of maximizing net benefits while minimizing adverse impacts to public health and safety. Implementing Alternative 1 would offer a balanced approach to the issues of humaneness, animal welfare, and esthetics when considering all facets of those issues. Changes that broaden the scope of damage management activities in the state, changes that affect the natural or human environment, or changes from the issuance of new environmental regulations would trigger further analysis. Therefore, it is my decision to implement Alternative 1 as described in the final EA.

Finding of No Significant Impact

Based on the analyses provided in the final EA, there are no indications that implementing Alternative 1 would have a significant impact, individually or cumulatively, on the quality of the human environment. I agree with this conclusion and therefore, find that an Environmental Impact Statement should not be prepared. I base this determination on the following factors:

1. WS' activities to manage bird damage in the state under Alternative 1 would not be regional or national in scope (see Section 1.4).
2. Based on the analyses in the EA, the methods available under Alternative 1 would not adversely affect human safety based on their use patterns (see Section 3.1.3).
3. Alternative 1 would not significantly affect unique characteristics, such as parklands, prime farmlands, wetlands, wild and scenic areas, or ecologically critical areas. WS' adherence to applicable laws and regulations would further ensure that activities conducted under Alternative 1 would not harm the environment (see Section 3.2.1).
4. The effects on the quality of the human environment under Alternative 1 are not highly controversial. Although some people are opposed to aspects of managing bird damage, the failure of any particular special interest group to agree with every act of a federal agency does not result in a controversy. Methods and impacts of implementation of Alternative 1 are not controversial among experts in the field of managing conflicts caused by wildlife (see Section 1.3, Section 1.5, Section 1.7, Section 2.2.5, Section 2.2.6).
5. Based on the analysis documented in the EA, the effects of implementing Alternative 1 on the quality of the human environment are not highly uncertain and do not involve unique or unknown risks (see Section 1.3, Section 3.1, Section 2.2.5, Section 2.2.6).
6. Alternative 1 would not establish a precedent for any future action with significant effects or represent a decision in principle about future considerations.
7. The EA did not identify significant cumulative effects associated with implementing Alternative 1. The EA analyzed cumulative effects and concluded that such impacts were not significant for this or other anticipated actions to be implemented or planned within the State of North Dakota (see Section 3.1).

8. Alternative 1 would not affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, nor would Alternative 1 likely cause any loss or destruction of significant scientific, cultural, or historical resources (see Section 1.7.1, Section 3.2.4).
9. WS has consulted with the USFWS pursuant to Section 7 of the Endangered Species Act and the USFWS has concurred with WS' effects determination (see Section 3.1.2).
10. WS' activities conducted under Alternative 1 would comply with all applicable federal, state, and local laws (see Section 1.7 and WS Directive 2.210).

I based this decision on several considerations. This decision takes into account public comments, social/political and economic concerns, public health and safety, and the best available science. The foremost considerations are that 1) WS would only conduct activities at the request of landowners/managers, 2) management actions would be consistent with applicable laws, regulations, policies and orders, and 3) the analysis did not identify significant effects to the human environment. As a part of this Decision, WS would continue to provide effective and practical technical assistance and direct management techniques that reduce damage and threats of damage in North Dakota.

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