

that indicates the date and number of birds killed and the date and number of nests and eggs taken under this authorization. The log must be maintained for a period of 3 years (and records for 3 previous years of takings must be maintained at all times thereafter). The log and any related records must be made available to Federal, State, or Tribal wildlife enforcement officers upon request during normal business hours.

(9) Nothing in this section authorizes the killing of resident Canada geese or the destruction of their nests and eggs contrary to the laws or regulations of any State or Tribe, and none of the privileges of this section may be exercised unless the agricultural producer possesses the appropriate State or Tribal permits, when required. Moreover, this regulation does not authorize the killing of any migratory bird species or destruction of their nests or eggs other than resident Canada geese.

(10) States and Tribes exercising the privileges granted by this section must submit an annual report summarizing activities, including the numbers and County of birds, nests, and eggs taken, by December 31 of each year to the Regional Migratory Bird Permit Office listed in § 2.2 of this subchapter.

(11) Nothing in this section applies to any Federal land without written permission of the Federal agency with jurisdiction.

(12) Authorized agricultural producers may not undertake any actions under this section if the activities adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act. Persons operating under this order must immediately report the take of any species protected under the Endangered Species Act to the Service. Further, to protect certain species from being adversely affected by management actions, agricultural producers must:

- (i) Follow the Federal-State Contingency Plan for the whooping crane;
- (ii) Conduct no activities within 300 meters of a whooping crane or Mississippi sandhill crane nest; and
- (iii) Follow all Regional (or National when available) Bald Eagle Nesting

Management guidelines for all management activities.

(e) *Can the depredation order be suspended?* We reserve the right to suspend or revoke a State, Tribal, or agricultural producer's authority under this program if we find that the terms and conditions specified in the depredation order have not been adhered to by that State or Tribe. Final decisions to revoke authority will be made by the appropriate Regional Director. The criteria and procedures for suspension, revocation, reconsideration, and appeal are outlined in §§ 13.27 through 13.29 of this subchapter. For the purposes of this section, "issuing officer" means the Regional Director and "permit" means the authority to act under this depredation order. For purposes of § 13.29(e), appeals must be made to the Director. Additionally, at such time that we determine that resident Canada geese populations no longer pose a threat to agricultural crops or no longer need to be reduced in order to resolve or prevent injury to agricultural crops or other agricultural interests, we may choose to terminate part or all of the depredation order by subsequent regulation. In all cases, we will annually review the necessity and effectiveness of the depredation order.

(f) *Has the Office of Management and Budget (OMB) approved the information collection requirements of the depredation order?* OMB has approved the information collection and recordkeeping requirements of the depredation order under OMB control number 1018–0133. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection and recordkeeping requirements to the Service's Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

[71 FR 45989, Aug. 10, 2006]

**§ 21.52 Public health control order for resident Canada geese.**

(a) *Which Canada geese are covered by this order?* This regulation addresses the control and management of resident Canada geese, as defined in § 21.3.

(b) *What is the public health control order for resident Canada geese, and what is its purpose?* The public health control order for resident Canada geese authorizes States, Tribes, and the District of Columbia, via the State or Tribal wildlife agency, to conduct resident Canada goose control and management activities including direct control strategies such as trapping and relocation, nest and egg destruction, gosling and adult trapping and culling programs, or other lethal and non-lethal wildlife damage-management strategies when resident Canada geese are posing a direct threat to human health.

(c) *What is a direct threat to human health?* A direct threat to human health is one where a Federal, State, Tribal, or local public health agency has determined that resident Canada geese pose a specific, immediate human health threat by creating conditions conducive to the transmission of human or zoonotic pathogens. The State or Tribe may not use this control order for situations in which resident Canada geese are merely causing a nuisance.

(d) *Who may participate in the program?* Only State and Tribal wildlife agencies in the lower 48 States and the District of Columbia (or their employees or agents) may conduct and implement the various components of the public health control order for resident Canada geese.

(e) *What are the restrictions of the public health depredation order for resident Canada geese?* The public health control order for resident Canada geese is subject to the following restrictions:

(1) Authorized State and Tribal wildlife agencies should use nonlethal goose management tools to the extent they deem appropriate.

(2)(i) Methods of take for the control of resident Canada geese are at the State's and Tribe's discretion from among the following:

- (A) Egg oiling,
- (B) Egg and nest destruction,
- (C) Shotguns,
- (D) Lethal and live traps,
- (E) Nets,
- (F) Registered animal drugs, pesticides, and repellants,
- (G) Cervical dislocation, and
- (H) CO<sub>2</sub> asphyxiation.

(ii) Birds caught live may be euthanized or transported and relocated to another site approved by the State or Tribal wildlife agency, if required.

(iii) All techniques used must be in accordance with other Federal, State, Tribal, and local laws, and their use must comply with any labeling restrictions.

(iv) Persons using shotguns must use nontoxic shot, as listed in §20.21(j) of this subchapter.

(v) Persons using egg oiling must use 100 percent corn oil, a substance exempted from regulation by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act.

(3) Authorized State and Tribal wildlife agencies and their employees and agents may conduct management and control activities, involving the take of resident Canada geese, under this section between April 1 and August 31. The destruction of resident Canada goose nests and eggs may take place between March 1 and June 30.

(4) Authorized State and Tribal wildlife agencies and their employees and agents may possess, transport, and otherwise dispose of resident Canada geese taken under this section. Disposal of birds taken under this order may be by donation to public museums or public institutions for scientific or educational purposes, processing for human consumption and subsequent distribution free of charge to charitable organizations, or burial or incineration. States, their employees, and designated agents may not sell, offer for sale, barter, or ship for the purpose of sale or barter any resident Canada geese taken under this section, nor their plumage or eggs. Any specimens needed for scientific purposes as determined by the Regional Director must not be destroyed, and information on birds carrying metal leg bands must be submitted to the Bird Banding Laboratory by means of a toll-free telephone number at 1-800-327-BAND (or 2263).

(5) Resident Canada geese may be taken only within the specified area of the direct threat to human health.

(6) Authorized State and Tribal wildlife agencies, and their employees and agents operating under the provisions

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of this section may not use decoys, calls, or other devices to lure birds within gun range.

(7) No person conducting activities under this section should construe the program as authorizing the killing of resident Canada geese or destruction of their nests and eggs contrary to any State law or regulation, nor may any control activities be conducted on any Federal land without specific authorization by the responsible management agency. No person may exercise the privileges granted under this section unless they possess any permits required for such activities by any State or Federal land manager.

(8) Any State or Tribal employee or designated agent authorized to carry out activities under this section must have a copy of the State's or Tribal authorization and designation in their possession when carrying out any activities. If the State or Tribe is conducting operations on private property, the State or Tribe must also require the property owner or occupant on whose premises resident Canada goose activities are being conducted to allow, at all reasonable times, including during actual operations, free and unrestricted access to any Service special agent or refuge officer, State or Tribal wildlife or deputy wildlife agent, warden, protector, or other wildlife law enforcement officer on the premises where they are, or were, conducting activities. Furthermore, any State or Tribal employee or designated agent conducting such activities must promptly furnish whatever information is required concerning such activities to any such wildlife officer.

(9) States and Tribes exercising the privileges granted by this section must submit an annual report summarizing activities, including the numbers and County of birds taken, by December 31 of each year to the Regional Migratory Bird Permit Office listed in § 2.2 of this subchapter.

(10) Authorized State and Tribal wildlife agencies may not undertake any actions under this section if the activities adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act. Persons operating under this order

must immediately report the take of any species protected under the Endangered Species Act to the Service. Further, to protect certain species from being adversely affected by management actions, State and Tribal wildlife agencies must:

(i) Follow the Federal-State Contingency Plan for the whooping crane;

(ii) Conduct no activities within 300 meters of a whooping crane or Mississippi sandhill crane nest;

(iii) Follow all Regional (or National when available) Bald Eagle Nesting Management guidelines for all management activities;

(iv) Contact the Arizona Fish and Wildlife Service Ecological Services Office (for the Colorado River and Arizona sites) or the Carlsbad Fish and Wildlife Office (for Salton Sea sites) if control activities are proposed in or around occupied habitats (cattail or cattail bulrush marshes) to discuss the proposed activity and ensure that implementation will not adversely affect clapper rails or their habitats; and

(v) In California, any control activities of resident Canada geese in areas used by the following species listed under the Endangered Species Act must be done in coordination with the appropriate local FWS field office and in accordance with standard local operating procedures for avoiding adverse effects to the species or its critical habitat:

(A) *Birds*: Light-footed clapper rail, California clapper rail, Yuma clapper rail, California least tern, southwestern willow flycatcher, least Bell's vireo, western snowy plover, California gnatcatcher.

(B) *Amphibians*: California red-legged frog and California tiger salamander.

(C) *Insects*: Valley elderberry longhorn beetle and delta green ground beetle.

(D) *Crustaceans*: Vernal pool fairy shrimp, conservancy fairy shrimp, longhorn fairy shrimp, vernal pool tadpole shrimp, San Diego fairy shrimp, and Riverside fairy shrimp.

(E) *Plants*: Butte County meadowfoam, large-flowered wooly meadowfoam, Cook's lomatium, Contra Costa goldfields, Hoover's spurge, fleshy owl's clover, Colusa grass, hairy Orcutt grass, Solano grass, Greene's

tuctoria, Sacramento Valley Orcutt grass, San Joaquin Valley Orcutt grass, slender Orcutt grass, California Orcutt grass, spreading navarretia, and San Jacinto Valley crownscale.

(f) *Can the control order be suspended?* We reserve the right to suspend or revoke a State's or Tribe's authority under this program if we find that the terms and conditions specified in the depredation order have not been adhered to by that agency. Final decisions to revoke authority will be made by the appropriate Regional Director. The criteria and procedures for suspension, revocation, reconsideration, and appeal are outlined in §§13.27 through 13.29 of this subchapter. For the purposes of this section, "issuing officer" means the Regional Director and "permit" means the authority to act under this control order. For purposes of §13.29(e), appeals must be made to the Director. Additionally, at such time that we determine that resident Canada geese populations no longer pose direct threats to human health, we may choose to terminate part or all of the control order by subsequent regulation. In all cases, we will annually review the necessity and effectiveness of the control order.

(g) *Has the Office of Management and Budget (OMB) approved the information collection requirements of the control order?* OMB has approved the information collection and recordkeeping requirements of the control order under OMB control number 1018-0133. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection and recordkeeping requirements to the Service's Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222-ARLSQ, 1849 C Street, NW., Washington, DC 20240.

[71 FR 45990, Aug. 10, 2006]

#### **§21.53 Control order for purple swamphens.**

(a) *Control of purple swamphens.* Federal, State, Tribal, and local wildlife management agencies, and their tenants, employees, or agents may remove or destroy purple swamphens

(*Porphyrio porphyrio*) or their nests or eggs at any time when they find them anywhere in the contiguous United States, Hawaii, Alaska, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands. Any authorized agency personnel may temporarily possess, transport, and dispose of purple swamphens, subject to the restrictions in paragraph (c) of this section. No permit is necessary to engage in these actions.

(b) *Disposal of purple swamphens.* If you are authorized to control purple swamphens, you may dispose of purple swamphens by the following methods: You may donate purple swamphens taken under this order to public museums or public institutions for scientific or educational purposes; you may dispose of the carcasses by burial or incineration; or, if the carcasses are not readily retrievable, you may leave them in place. No one may retain for personal use, offer for sale, or sell a purple swamphen removed under this section.

(c) *Other provisions.* (1) You may not remove or destroy purple swamphens or their nests or eggs if doing so is contrary to any State, territorial, tribal, or local laws or regulations.

(2) You may not remove or destroy purple swamphens or their nests or eggs if doing so will adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act. In particular, the purple swamphen resembles the native purple gallinule (*Porphyryula martinica*). Authorized persons must take special care not to take purple gallinules or their nests or eggs when conducting purple swamphen control activities. Certain persons may take purple gallinules without a permit on rice-producing property in Louisiana according to the terms of a separate depredation order (see §21.45).

(3) If you use firearms to control purple swamphens under this regulation, you may use only nontoxic shot or nontoxic bullets for the control.

(4) If, while operating under this regulation, an authorized person takes any other species protected under the Endangered Species Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act, that person