

**U.S. Fish and Wildlife Serv., Interior****§ 21.150**

activities, including those of sub-permittees, carried out under the authority of the special permit, including the number of double-crested cormorants taken and their disposition. Any other species of bird taken incidentally to double-crested cormorant management activities under this permit, along with the numbers of birds taken of those species, also must be reported. The State or Tribe must submit an annual report (FWS Form 3-202-56) detailing activities and purpose for take, including the date birds were taken, numbers, and locations and life stage of birds, eggs, and nests taken and nonlethal techniques utilized, by January 31 for activities conducted during the preceding calendar year. The State or Tribe must submit the annual report to the appropriate Migratory Bird Permit Office (see § 2.2 of this subchapter).

(7) *What are the limitations of this permit?* The following limitations apply:

(i) Nothing in this section applies to any Federal land within a State's or Tribe's boundaries without written permission of the Federal agency with jurisdiction.

(ii) We will issue permits only to State and Tribal fish and wildlife agencies in the conterminous (i.e., contiguous 48) United States.

(iii) States and Tribes may designate subpermittees who must operate under the conditions of the permit. Subpermittees can be employees of State and Tribal fish and wildlife agencies, U.S. Department of Agriculture's Wildlife Services employees, employees of other Federal, State, or Tribal agencies, or private companies licensed to

conduct wildlife damage abatement and under direct control of the permittee.

(iv) A special double-crested cormorant permit issued or renewed under the regulations in this section expires on the date designated on the face of the permit unless it is amended or revoked, or at such time we determine that conflicts with cormorants within the bounds of the specific population of double-crested cormorants have been reduced to the point where lethal take is no longer necessary. In all cases, the term of the permit may not exceed 1 year from the date of issuance or renewal.

(v) We reserve the right to suspend or revoke any permit, as specified in §§ 13.27 and 13.28 of this subchapter.

(e) *What are the OMB information collection requirements of the permit program?* OMB has approved the information collection requirements of the permit and assigned OMB Control Number 1018-0175. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Direct comments regarding the burden estimate or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

[85 FR 85555, Dec. 29, 2020. Redesignated and amended at 87 FR 881, 882, Jan. 7, 2022]

**§ 21.150 Depredation order for blackbirds, cowbirds, crows, grackles, and magpies.**

(a) *Species covered.*

Blackbirds	Cowbirds	Crows	Grackles	Magpies
Brewer's ( <i>Euphagus cyanocephalus</i> )	Bronzed ( <i>Molothrus aeneus</i> )	American ( <i>Corvus brachyrhynchos</i> )	Boat-tailed ( <i>Quiscalus major</i> )	Black-billed ( <i>Pica hudsonia</i> )
Red-winged ( <i>Agelaius phoeniceus</i> )	Brown-headed ( <i>Molothrus ater</i> )	Fish ( <i>Corvus ossifragus</i> )	Common ( <i>Quiscalus quiscula</i> )	
Yellow-headed ( <i>Xanthocephalus xanthocephalus</i> )	Shiny ( <i>Molothrus bonariensis</i> )	Northwestern ( <i>Corvus caurinus</i> )	Great-tailed ( <i>Quiscalus mexicanus</i> )	
			Greater Antillean ( <i>Quiscalus niger</i> )	

(b) *Conditions under which control is allowed by private citizens.* You do not need a Federal permit to control the

species listed in paragraph (a) of this section in the following circumstances:

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(1) Where they are causing serious injuries to agricultural or horticultural crops or to livestock feed;

(2) When they cause a health hazard or structural property damage;

(3) To protect a species recognized by the Federal Government as an endangered, threatened, or candidate species in any county in which it occurs, as shown in the Service's Environmental Conservation Online System (<http://ecos.fws.gov>);

(4) To protect a species recognized by the Federal Government as an endangered or threatened species in designated critical habitat for the species; or

(5) To protect a species recognized by a State or Tribe as endangered, threatened, candidate, or of special concern if the control takes place within that State or on the lands of that tribe, respectively.

(6) Each calendar year, you must attempt to control depredation by species listed under this depredation order using nonlethal methods before you may use lethal control. Nonlethal control methods can include such measures as netting and flagging, the use of trained raptors, propane cannons, and recordings.

(c) *Conditions under which control is allowed by Federal, State, and Tribal employees.* You do not need a Federal permit to control the species listed in paragraph (a) of this section in the following circumstances:

(1) Where they are causing serious injuries to agricultural or horticultural crops or to livestock feed;

(2) When they cause a health hazard or structural property damage; or

(3) To protect a species recognized by the Federal Government, a State, or a Tribe as an endangered, threatened, or candidate species, or a species of special concern, including critical habitat for any listed species.

(4) Each calendar year, you must attempt to control depredation by species listed under this depredation order using nonlethal methods before you may use lethal control. Nonlethal control methods can include such measures as netting and flagging, the use of trained raptors, propane cannons, and recordings. However, this requirement does not apply to Federal, State, or

Tribal employees conducting brown-headed cowbird trapping to protect a species recognized by the Federal Government, a State, or a Tribe as endangered, threatened, candidate, or of special concern.

(d) *Ammunition.* In most cases, if you use a firearm to kill migratory birds under the provisions of this section, you must use nontoxic shot or nontoxic bullets to do so. See §20.21(j) of this chapter for a listing of approved nontoxic shot types. However, this prohibition does not apply if you use an air rifle or an air pistol for control of depredating birds.

(e) *Access to control efforts.* If you exercise any of the privileges granted by this section, you must allow any Federal, State, tribal, or territorial wildlife law enforcement officer unrestricted access at all reasonable times (including during actual operations) over the premises on which you are conducting the control. You must furnish the officer whatever information he or she may require about your control operations.

(f) *Trapping conditions.* You must comply with the following conditions if you attempt to trap any species under this order.

(1) You may possess, transport, and use a lure bird or birds of the species listed in paragraph (a) that you wish to trap.

(2) You must check each trap at least once every day it is deployed.

(3) At temperatures above 80 °Fahrenheit, the traps must provide shade for captured birds.

(4) Each trap must contain adequate food and water.

(5) You must promptly release all healthy nontarget birds that you capture.

(6) If a federally permitted wildlife rehabilitator is within 1 hour or less of your capture efforts, you must send injured or debilitated nontarget federally protected migratory birds to the rehabilitator. If no rehabilitator is closer than 1 hour away, you may euthanize an injured or debilitated bird of a nontarget species unless the species is federally listed as an endangered, threatened, or candidate species, in which case you must deliver it to a rehabilitator and report the take to

the nearest U.S. Fish and Wildlife Service Field Office or Special Agent.

(7) You must report captures of non-target federally protected migratory birds in your annual report (see paragraph (i) of this section).

(g) *Euthanasia.* Captured birds and wounded or injured birds of the species listed in paragraph (a) may only be killed by carbon monoxide or carbon dioxide inhalation, or by cervical dislocation performed by well-trained personnel who are regularly monitored to ensure proficiency.

(h) *Disposition of birds and parts.* You may not sell, or offer to sell, any bird, or any part thereof, killed under this section, but you may possess, transport, and otherwise dispose of the bird or its parts, including transferring them to authorized research or educational institutions. If not transferred, the bird and its parts must either be burned, or buried at least 1 mile from the nesting area of any migratory bird species recognized by the Federal Government, the State, or a Tribe as an endangered or threatened species.

(i) *Annual report.* Any person, business, organization, or government official acting under this depredation order must provide an annual report using FWS Form 3-2436 to the appropriate Regional Migratory Bird Permit Office. The addresses for the Regional Migratory Bird Permit Offices are provided at 50 CFR 2.2, and are on the form. The report is due by January 31st of the following year and must include the information requested on the form.

(j) *Compliance with other laws.* You may trap and kill birds under this order only in a way that complies with all State, tribal, or territorial laws or regulations. You must have any State, tribal, or territorial permit required to conduct the activity.

(k) *Information collection requirements.* The Office of Management and Budget (OMB) has approved the information collection requirements associated with this depredation order and assigned OMB Control Number 1018-0146. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Direct comments

regarding the burden estimate or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

[79 FR 65601, Nov. 5, 2014. Redesignated and amended at 87 FR 882, Jan. 7, 2022]

**§ 21.153 Depredation order for horned larks, house finches, and white-crowned sparrows in California.**

Horned larks (*Eremophila alpestris*), house finches (*Haemorhous mexicanus*), and white-crowned sparrows (*Zonotrichia leucophrys*) may be taken in Fresno, Merced, Napa, and Sonoma Counties in California if they are depredating on agricultural or horticultural crops. Take of birds under this order must be done under the supervision of the county agriculture commissioner. You do not need a Federal permit for this depredation control as long as you meet the conditions below, but a depredation permit (see § 21.100 in this subpart) is required for take of other migratory bird species, or for take of horned larks or white-crowned sparrows from May 1 through October 31.

(a) *When is take allowed under this depredation order?*

(1) Horned larks and white-crowned sparrows may be controlled from November 1 through April 30.

(2) House finches may be controlled at any time.

(b) *Use of nonlethal control.* Each season, before lethal control may be undertaken, the landowner must attempt to use nonlethal control of migratory bird depredation as recommended by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services. The county agriculture commissioner must confirm that nonlethal measures have been undertaken to control or eliminate the problem prior to the landowner using lethal control.

(c) *Ammunition.* Except when using an air rifle or an air pistol, if firearms are used to kill migratory birds under the provisions of this regulation, the shooter must use nontoxic shot or nontoxic bullets to do so. See § 20.21(j) of this chapter for a listing of approved nontoxic shot types.