

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Parts 20 and 21**

RIN 1018-AI32

Migratory Bird Hunting and Permits; Regulations for Managing Resident Canada Goose Populations**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule and notice of record of decision.

SUMMARY: In recent years, the numbers of Canada geese that nest and/or reside predominantly within the conterminous United States (resident Canada geese) have undergone dramatic growth to levels that are increasingly coming into conflict with people and human activities and causing personal and public property damage, as well as public health concerns, in many parts of the country. In February 2002, the U.S. Fish and Wildlife Service (Service or “we”) completed a Draft Environmental Impact Statement (DEIS) on resident Canada goose management. In August 2003, we published a proposed rule to establish regulations to implement the DEIS proposed action, Alternative F. In November 2005, the notice of availability for a Final Environmental Impact Statement (FEIS) was published, followed by a 30-day public review period. This final rule sets forth regulations for implementing the FEIS preferred alternative, Alternative F, which would authorize State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. The Record of Decision (ROD) is also published here.

DATES: This final rule will go into effect on September 11, 2006.

ADDRESSES: The public may inspect comments received on the DEIS and the proposed rule during normal business hours in Room 4107, 4501 North Fairfax Drive, Arlington, Virginia. You may obtain copies of the FEIS from the above address or from the Division of Migratory Bird Management Web site at <http://migratorybirds.fws.gov>.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, or Ron Kokel (703) 358-1714 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:**Authority and Responsibility**

Migratory birds are protected under four bilateral migratory bird treaties the

United States entered into with Great Britain (for Canada in 1916 as amended in 1999), the United Mexican States (1936 as amended in 1972 and 1999), Japan (1972 as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703-711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Migratory Bird Treaty Act (Act), which implements the above-mentioned treaties, provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means it is compatible with the conventions to allow hunting, killing, and other forms of taking of migratory birds, their nests, and eggs. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are Federally protected by the Act by reason of the fact that they are listed as migratory birds in all four treaties. Because Canada geese are covered by all four treaties, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with Canada. We have prepared these regulations compatible with its terms, with particular reference to Articles VII, V, and II.

Each treaty not only permits sport hunting, but permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of “The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States” provides specific limitations on allowing the take of migratory birds for reasons other than sport hunting. Article VII authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Article V relates to the taking of nests and eggs, and Article II, paragraph 3, states that, in order to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with listed conservation principles.

The other treaties are less restrictive. The treaties with both Japan (Article III, paragraph 1, subparagraph (b)) and the

Soviet Union (Article II, paragraph 1, subparagraph (d)) provide specific exceptions to migratory bird take prohibitions for the purpose of protecting persons and property. The treaty with Mexico requires, with regard to migratory game birds, only that there be a “closed season” on hunting and that hunting be limited to 4 months in each year.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated in title 50, Code of Federal Regulations (CFR), parts 13 and 21, and issued by the Service. The Service annually promulgates regulations governing the take, possession, and transportation of migratory birds under sport hunting seasons in 50 CFR part 20.

Background

In recent years, numbers of Canada geese that nest and/or reside predominantly within the conterminous United States (resident Canada geese) have undergone dramatic growth to levels that are increasingly coming into conflict with people and causing personal and public property damage. We believe that resident Canada goose populations must be reduced, more effectively managed, and controlled to reduce goose-related damages. This rule would establish a new regulation authorizing State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. The intent of this rule is to allow State wildlife management agencies and the affected public sufficient flexibility to deal with problems caused by resident Canada geese and guide and direct resident Canada goose population growth and management activities in the conterminous United States when traditional and otherwise authorized management measures are unsuccessful in preventing injury to property, agricultural crops, public health, and other interests.

Population Delineation and Status

Waterfowl management activities frequently are based on the delineation of populations that are the target of management. Some goose populations are delineated according to where they winter, whereas others are delineated based on the location of their breeding grounds. For management purposes, populations can comprise one or more species of geese.

Canada geese (*Branta canadensis*) nesting within the conterminous United States are considered subspecies or

hybrids of the various subspecies originating in captivity and artificially introduced into numerous areas throughout the conterminous United States. Canada geese are highly philopatric to natal areas, and no evidence presently exists documenting breeding between Canada geese nesting within the conterminous United States and those subspecies nesting in northern Canada and Alaska. Canada geese nesting within the conterminous United States in the months of March, April, May, or June, or residing within the conterminous United States in the months of April, May, June, July, and August will be collectively referred to in this rule as "resident" Canada geese.

The recognized subspecies of Canada geese are distributed throughout the northern temperate and sub-arctic regions of North America (Delacour 1954; Bellrose 1976; Palmer 1976). Historically, breeding Canada geese are believed to have been restricted to areas north of 35 degrees and south of about 70 degrees latitude (Bent 1925; Delacour 1954; Bellrose 1976; Palmer 1976). Today, in the conterminous United States, Canada geese can be found nesting in every State, primarily due to translocations and introductions since the 1940s.

The majority of Canada geese still nest in localized aggregations throughout Canada and Alaska and migrate annually to the conterminous United States to winter, with a few reaching as far south as northern Mexico. However, the distribution of Canada geese has expanded southward and numbers have increased appreciably throughout the southern portions of the range during the past several decades (Rusch *et al.* 1995). The following is a brief description of the status and distribution of the major management populations of Canada geese covered by this rule. (We note that there are a number of various surveys that utilize different methodologies, and resulting estimates can vary quite significantly between the various surveys and years. However, we believe all of the various data, when taken together, reinforce our conclusions).

In the Atlantic Flyway, the resident population of Canada geese nests from Southern Quebec and the Maritime Provinces of Canada southward throughout the States of the Atlantic Flyway (Sheaffer and Malecki 1998; Johnson and Castelli 1998; Nelson and Oetting 1998). This population is believed to be of mixed subspecies (*B. c. canadensis*, *B. c. interior*, *B. c. moffitti*, and *B. c. maxima*) and is the result of purposeful introductions by management agencies, coupled with

released birds from private aviculturists and releases from captive decoy flocks after live decoys were outlawed for hunting in the 1930s. Following the Federal prohibition on the use of live decoys in 1935, Dill and Lee (1970) cited an estimate of more than 15,000 domesticated and semi-domesticated geese that were released from captive flocks. With the active restoration programs that occurred from the 1950s through the 1980s, the population grew to over 1 million birds and has increased an average of 2 percent per year since 1995 (Sheaffer and Malecki 1998; Atlantic Flyway Council 1999; U.S. Fish and Wildlife Service, 2004). In fact, 2005 spring surveys and estimates from the States of the Atlantic Flyway now total over 1.36 million geese, with a 3-year average of 1.32 million (U.S. Fish and Wildlife Service, unpublished data, 2006).

In the Mississippi Flyway, most resident Canada geese are giant Canada geese (*B. c. maxima*). Once believed to be extinct (Delacour 1954), Hanson (1965) rediscovered them in the early 1960s, and estimated the giant Canada goose population at about 63,000 birds in both Canada and the United States. In the nearly 40 years since their rediscovery, giant Canada geese have been reestablished or introduced in all Mississippi Flyway states. The breeding population of giant Canada geese in the Mississippi Flyway has exceeded 1.5 million individuals in recent years and has been growing at a rate of about 6 percent per year over the last 10 years (Rusch *et al.* 1996; Wood *et al.* 1996; Nelson and Oetting 1998; U.S. Fish and Wildlife Service, 2004). However, estimates resulting from spring breeding surveys have recessed slightly over the past 3 years and the latest 2005 spring surveys and estimates from the States of the Mississippi Flyway total about 1.25 million geese, with a 3-year average of 1.27 million (U.S. Fish and Wildlife Service, unpublished data, 2006).

In the Central Flyway, Canada geese that nest and/or reside in the States of the Flyway consist mainly of two populations, the Great Plains and Hi-Line. The Great Plains Population (Nelson 1962; Vaught and Kirsch 1966; Williams 1967) consists of geese (*B. c. maxima*/*B. c. moffitti*) that have been restored to previously occupied areas in Saskatchewan, North and South Dakota, Nebraska, Kansas, Oklahoma, and Texas. For management purposes, this population is often combined with the Western Prairie Population (composed of geese (*B. c. maxima*/*B. c. moffitti*/*B. c. interior*) that nest throughout the prairie regions of Manitoba and Saskatchewan) and winter together from the Missouri

River in South Dakota southward to Texas. The Hi-Line Population (Rutherford 1965; Grieb 1968, 1970) (*B. c. moffitti*) nests in southeastern Alberta, southwestern Saskatchewan and eastern Montana, Wyoming, and northcentral Colorado. The population winters from Wyoming to central New Mexico. Overall, these populations of large subspecies of Canada geese have increased tremendously over the last 30 years as the result of active restoration and management by Central Flyway States and Provinces. The current index for these populations in 2004 was over 837,000 birds, and has been growing at a rate of 7 percent (Great Plains and Western Prairie Populations) and 4 percent (Hi-Line Population), per year since 1995 (Gagb 2000; U.S. Fish and Wildlife Service, 2004). Looking at only the geese in the U.S. portion of these populations, the current 2005 spring estimate is approximately 590,000 with a 3-year average of 540,000 geese (U.S. Fish and Wildlife Service, unpublished data, 2006).

In the Pacific Flyway, two populations of the western Canada goose, the Rocky Mountain Population and the Pacific Population, are predominantly composed of Canada geese that nest and/or reside in the States of the Flyway. The Rocky Mountain Population (*B. c. moffitti*) nests from southwestern Alberta southward through the intermountain regions of western Montana, Utah, Idaho, Nevada, Colorado, and Wyoming. They winter southward from Montana to southern California, Nevada, and Arizona. Highly migratory, they have grown from a breeding population of about 14,000 in 1970 (Krohn and Bizeau 1980) to over 130,000 (Subcommittee on Rocky Mountain Canada Geese 2000). The 2004 estimated spring population was 152,000 and has increased 3 percent per year over the last 10 years; however, the mid-winter survey estimates have shown no apparent trend since 1995 (U.S. Fish and Wildlife Service, 2004). The Pacific Population (*B. c. moffitti*) nests from southern British Columbia southward and west of the Rockies in the States of Idaho, western Montana, Washington, Oregon, northern California, and northwestern Nevada (Krohn and Bizeau 1980; Ball *et al.* 1981). They are relatively nonmigratory and winter primarily in these same areas. Reliable survey estimates are not available.

Flyway Management Plans and Population Goals

The Atlantic, Mississippi, Central, and Pacific Flyway Councils are administrative bodies established to

cooperatively deliver migratory bird management under the flyway system. The Councils, which comprises representatives from each member State and Province, make recommendations to the Service on matters regarding migratory game birds. The Flyway Councils work with the Service and the Canadian Wildlife Service to manage populations of Canada geese that occur in their geographic areas. Since there are large numbers of resident Canada geese in each Flyway, the Councils developed and prepared cooperative Flyway management plans to address these populations and establish overall population goals and associated objectives/strategies. A common goal among the plans is the need to balance the positive aspects of resident Canada geese with the conflicts they can cause. While the Flyway Council system is cooperative in nature, the Service does not formally adopt Flyway management plans. However, because the Flyway Councils and States are the most knowledgeable sources regarding the establishment of goose population goals and objectives under their purview, we have attempted to incorporate the goals and objectives of the Flyways' resident Canada goose management plans and their associated objectives into this rule. A more detailed discussion of the Flyway management plans, their specific goals and objectives, is contained in the EIS described in the ADDRESSES section of this document.

As we stated earlier, the objective of this rule is to allow State wildlife management agencies, private and public landowners, and airports sufficient flexibility to deal with problems, conflicts, and damages caused by resident Canada geese and guide and direct resident Canada goose population growth and management

activities in the conterminous United State when traditional and otherwise authorized management measures are unsuccessful in preventing injury to property, agricultural crops, public health, and other interests. The goal of the program established by this rule will contribute to human health and safety, protect personal property and agricultural crops, protect other interests from injury, and allow resolution or prevention of injury to people, property, agricultural crops, or other interests from resident Canada geese. Further, the program established by this rule is intended to be in accordance with the mission of the Service, effective, environmentally sound, cost-effective, and flexible enough to meet the variety of management needs found throughout the flyways and will not threaten viable resident Canada goose populations as determined by each Flyway Council and our obligations under the Act. Formulating such a national management strategy to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages, safety, and public health concerns was a complex problem, and Flyway input was essential for incorporating regional differences and solutions.

As such, we note that the overall population objectives established by the Flyways were derived independently based on the States' respective management needs and capabilities, and in some cases, these objectives were an approximation of population levels from an earlier time when problems were less severe. In other cases, population objective levels were calculated from what was professionally judged to be a more desirable or acceptable density of geese with respect to conflicts. We

further note that these population sizes are only optimal in the sense that it was each Flyway's best attempt to balance the many competing considerations of both consumptive (*i.e.*, hunters) and nonconsumptive (*i.e.*, bird watchers) users and those suffering economic damage. As with any goal or objective, we believe that these population objectives should be periodically reviewed and/or revised in response to changes in resident Canada goose populations, damage levels, public input, or other factors. Current resident Canada goose population estimates and population objectives for each Flyway are shown in Table 1. We note that over the most recent 3 years with complete estimates (2003–05), the total number of temperate-nesting Canada geese, or resident Canada geese, has averaged approximately 3.34 million in the United States and 1.37 million in Canada for a total spring population of 4.71 million (U.S. Fish and Wildlife Service, unpublished data, 2006). These estimates represent an increase in the average of approximately 150,000 geese in the United States (from 3.19 million) and 200,000 geese in Canada (from 1.17 million) from the 2000–02 average of 4.36 million. In fact, over the last six years, we estimate that U.S. populations have increased at an annual growth rate of 1.14 percent and Canada populations at 4.15 percent, resulting in an overall growth rate of 1.99 percent annually. The largest increases continue to be experienced in the States and Provinces of Atlantic Flyway, which increased from an average of 1.37 million for 2000–02 (1.15 million in the United States and 0.21 million in Canada) to 1.60 million for 2003–05 (1.32 million in the United States and 0.28 million in Canada).

TABLE 1.—RECENT RESIDENT CANADA GOOSE POPULATION ESTIMATES (2003–05 AVERAGE) AND POPULATION OBJECTIVES ON A FLYWAY BASIS

Current resident Canada goose population ^a	Atlantic Flyway	Mississippi Flyway	Central Flyway	Pacific Flyway
United States	1,324,261	1,277,804	540,723	199,011
Canada	284,422	225,571	452,578	413,743
Total	1,608,683	1,503,375	993,301	612,754

Resident Canada goose population objective	Atlantic Flyway ^b	Mississippi Flyway	Central Flyway ^c	Pacific Flyway
United States	620,000	949,000	368,833–448,833	^d 54,840–90,900
Canada	30,000	180,000	^d 35,750–56,250
Total	650,000	1,132,000	^d 90,590–147,150

^a Moser and Caswell, 2004.

^b Atlantic Flyway Council Section 1999.

^c Only U.S. States provided population objectives (Gabig 2000).

^dLower end of the Pacific Flyway population objective for the Pacific Population of Western Canada geese derived from "Restriction Level" and upper end derived from "Liberalization Level" as shown in *Management Plan for the Pacific Population of Western Canada Geese* (Subcommittee on Pacific Population of Western Canada Geese 2000). While the cited report refers to numbers of pairs, nests, and individual geese, the numbers shown here have been converted to numbers of individual geese.

Potential Causes of Population Growth and Past Attempts To Slow Growth

The rapid rise of resident Canada goose populations has been attributed to a number of factors. Most resident Canada geese live in temperate climates with relatively stable breeding habitat conditions and low numbers of predators, tolerate human and other disturbances, have a relative abundance of preferred habitat (especially those located in urban/suburban areas with current landscaping techniques), and fly relatively short distances to winter compared with other Canada goose populations. This combination of factors contributes to consistently high annual production and survival. Further, the virtual absence of waterfowl hunting in urban areas provides additional protection to those urban portions of the resident Canada goose population. Given these characteristics, most resident Canada goose populations are continuing to increase in both rural and urban areas.

In order to reduce injury from resident Canada geese, we have attempted to curb the growth of resident Canada goose populations by several means. Expansion of existing annual hunting season frameworks (special and regular seasons), the issuance of control permits on a case-by-case basis, and a Special Canada goose permit (see June 17, 1999, **Federal Register** (64 FR 32766) for further information) have all been used with varying degrees of success. While these approaches have provided relief in some areas, they have not completely addressed the problem.

Normally, complex Federal and State responsibilities are involved with Canada goose control activities. All control activities, except those intended to either scare geese out of, or preclude them from using, a specific area, such as harassment, habitat management, or repellants, require a Federal permit issued by the Service. Additionally, permits to alleviate migratory bird depredations are issued by the Service in coordination with the Wildlife Services program of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (Wildlife Services). Wildlife Services is the Federal agency with lead responsibility for dealing with wildlife damage complaints. In most instances, State permits are required as well.

Conflicts and Impacts

Conflicts between geese and people affect or damage several types of resources, including property, human health and safety, agriculture, and natural resources. Common problem areas include public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, athletic fields, amusement parks, cemeteries, hospitals, residential subdivisions, and along or between highways.

Property damage usually involves landscaping and walkways, most commonly on golf courses, parks, and waterfront property. In parks and other open areas near water, large goose flocks create local problems with their droppings and feather litter (Conover and Chasko, 1985). Surveys have found that, while most landowners like seeing some geese on their property, eventually, increasing numbers of geese and the associated accumulation of goose droppings on lawns, which results in a reduction of both the aesthetic value and recreational use of these areas, cause many landowners to view geese as a nuisance (Conover and Chasko, 1985).

Negative impacts on human health and safety occur in several ways. At airports, large numbers of geese can create a very serious threat to aviation. Resident Canada geese have been involved in a large number of aircraft strikes resulting in dangerous landing/take-off conditions, costly repairs, and loss of human life. As a result, many airports have active goose control programs. Excessive goose droppings are a disease concern for many people. Public beaches in several States have been closed by local health departments due to excessive fecal coliform levels that in some cases have been traced back to geese and other waterfowl. Additionally, during nesting and brood-rearing, aggressive geese have bitten and chased people and injuries have occurred due to people falling or being struck by wings.

Agricultural and natural resource impacts include losses to grain crops, overgrazing of pastures, and degrading water quality. In heavy concentrations, goose droppings can overfertilize lawns and degrade water quality, resulting in eutrophication of lakes and excessive algae growth (Manny et al., 1994).

Overall, complaints related to personal and public property damage, agricultural damage, public safety concerns, and other public conflicts have increased as resident Canada goose populations have increased.

We have further described the various impacts of resident Canada geese on natural resources, public and private property, and health and human safety in our EIS on resident Canada goose management. Due to the volume of technical information, we refer the reader to the EIS for specific details. Procedures for obtaining a copy of the EIS are described in the **ADDRESSES** section of this document.

Environmental Consequences of Taking No Action

We fully analyzed the No Action alternative with regard to resident Canada goose management in our EIS, to which we refer the reader (U.S. Fish and Wildlife Service 2005). In summary, we expect that resident Canada goose populations will continue to grow. Within 10 years, populations could approach 1.37 million in the Atlantic Flyway (using a population of around 1 million) and 1.8 million in the Mississippi Flyway. Within 5 years, populations could reach 1.07 million in the Central Flyway and 309,000 in the Pacific Flyway. Additionally, resident Canada goose problems and conflicts related to goose distribution are likely to continue and expand. Resident Canada geese will continue to impact public and private property, safety, and health, and impacts are likely to grow as goose populations increase. Lastly, both Federal and State workloads related to dealing with these increasing conflicts and populations will also increase.

Environmental Consequences of the Selected Action

We fully analyzed our selected action in the EIS on resident Canada goose management, to which we refer the reader for specific details (U.S. Fish and Wildlife Service 2005). In summary, under our preferred alternative, entitled "Integrated Damage Management and Population Reduction," we expect a reduction in resident Canada goose populations, especially in problem areas. We also expect significant reductions in conflicts caused by resident Canada geese; decreased impacts to property, safety, and health; and increased hunting opportunities. We expect some initial State and

Federal workload increases associated with implementation of the management strategies; however, over the long term, we expect that workloads would decrease. Lastly, we expect our action to maintain viable resident Canada goose populations.

Final Resident Canada Goose Regulations

Recently completed resident Canada goose modeling in Missouri (Coluccy 2000; Coluccy and Graber 2000), when extrapolated to the entire Mississippi Flyway, indicates that stabilization of the Mississippi Flyway's resident population at the current 1,582,200 geese would require one of several management actions: (1) The harvest of an additional 273,642 geese annually over that already occurring; (2) the take of 541,624 goslings per year; (3) a Flyway-wide nest removal of 338,630 nests annually; or (4) a combination of harvesting an additional 153,702 geese annually and the take of 203,719 goslings per year. Each of these management alternatives would be required annually for 10 years to overcome the current growth rates and stabilize the Flyway's population. Similar type numbers would be expected in the Atlantic and Central Flyway, while numbers would be correspondingly much smaller in the Pacific Flyway.

Thus, to merely stabilize the four Flyways' resident populations at the current level of approximately 3.68 million would require, at a minimum for the next 10 years, either the harvest of an additional 636,000 geese annually, the take of 1,258,000 goslings per year, a nation-wide nest removal of 787,000 nests annually, or a combination of the harvest of an additional 357,000 geese annually and the take of 473,000 goslings per year. While we realize that these numbers seem insurmountable and are simple extrapolations of one State-specific model (Missouri), we believe they are reliable enough to illustrate our point: The only way to possibly reduce injuries currently being caused by overabundant resident Canada geese is to utilize the abilities of airports, military airfields, private landowners, public land managers, agricultural producers, State wildlife agencies, and hunters and authorize them to address the problems and conflicts caused by resident Canada goose populations and to ultimately reduce populations. By addressing conflicts and population reductions on a wide number of available fronts, we believe the combination of various damage management strategies and population control strategies could

successfully reduce numbers of resident Canada geese in specific problem areas and reduce or stabilize growth rates on a wider population-level scale. Since the States are the most informed and knowledgeable local authorities on wildlife conflicts in their respective States, we believe it is logical and proper to authorize them particularly to take adult resident Canada geese that they determine are responsible for injuries.

To give States the needed flexibility to address the problems caused by resident Canada geese, this rule would establish regulations consisting of three main program components. The first component would consist of four specific control and depredation orders (Airports, Nests and Eggs, Agricultural, and Public Health) designed to address resident Canada goose depredation, damage, and conflict management. These actions could be conducted by the appropriate State wildlife agency, U.S. Fish and Wildlife Service or other official agent (such as the U.S. Department of Agriculture's Wildlife Services), or in some cases, landowners and airport managers. The control and depredation orders would be for resident Canada goose populations only and, as such, could only be implemented between April 1 and August 31, except for the take of nests and eggs which could be implemented in March.

The second component would provide expanded hunting methods and opportunities to increase the sport harvest of resident Canada geese above that which results from existing September special Canada goose seasons. This component would provide new regulatory options to State wildlife management agencies and Tribal entities by authorizing the use of additional hunting methods such as electronic calls, unplugged shotguns, and expanded shooting hours (one-half hour after sunset) during existing, operational September Canada goose seasons (i.e., September 1–15). Utilization of these additional hunting methods during any new special seasons or other existing, operational special seasons (i.e., September 15–30) could be approved by the Service and would require demonstration of a minimal impact to migrant Canada goose populations. These seasons would be authorized on a case-by-case basis through the normal migratory bird hunting regulatory process. All of these expanded hunting methods and opportunities under Special Canada goose hunting seasons would be in accordance with the existing Migratory Bird Treaty frameworks for sport

hunting seasons (i.e., 107-day limit from September 1 to March 10) and would be conducted outside of any other open waterfowl season (i.e., when all other waterfowl and crane hunting seasons were closed).

The third component would authorize the Director to implement a resident Canada goose population control program, or management take (defined as a special management action that is needed to reduce certain wildlife populations when traditional and otherwise authorized management measures are unsuccessful, not feasible for dealing with, or applicable, in preventing injury to property, agricultural crops, public health, and other interests from resident Canada geese). Following the conclusion of the first full operational year of this rule, any wildlife agency from a State or Tribe in the Atlantic, Mississippi, and Central Flyway could request approval for this population control program. A request must include a discussion of the State's or Tribe's efforts to address its injurious situations utilizing the methods approved in this rule or a discussion of the reasons why the methods authorized by these rules are not feasible for dealing with, or applicable to, the injurious situations that require further action. Discussions should be detailed and provide the Service with a clear understanding of the injuries that continue, why the authorized methods utilized have not worked, and why methods not utilized could not effectuate resolution of the injuries. We note that a State's request for approval may be for an area or areas smaller than the entire State. Following receipt and review of the State's request, the Director may or may not authorize implementation of a managed take program in the State in question.

Management take would enable States and Tribes to use hunters to harvest resident Canada geese, by way of shooting in a hunting manner, during the August 1 through August 31 period. The intent of the program is to reduce resident Canada goose populations in order to protect personal property and agricultural crops, protect other interests from injury, resolve or prevent injury to people, property, agricultural crops, or other interests from resident Canada geese, and contribute to potential concerns about human health when all other methods fail to address, or are not feasible for dealing with, or applicable to, the injuries caused by resident Canada geese. States and Tribes would be required to designate participants operating under the conditions of the management take program and keep annual records of

activities carried out under the authority of the program. Additionally, participating States and Tribes would be required to monitor the spring breeding population by providing an annual estimate of the breeding population and distribution of resident Canada geese in their State in order to assess population status.

We would annually assess the overall impact and effectiveness of the management take program on resident Canada goose populations to ensure compatibility with long-term conservation of the resource and its effect on injuries from resident Canada geese. If at any time evidence is presented that clearly demonstrates that a resident Canada goose population no longer needs to be reduced in order to allow resolution or prevention of injury to people, property, agricultural crops, or other interests, we would suspend the program for the resident Canada goose population in question. However, resumption of injuries caused by growth of the population in question and not otherwise addressable by the methods in this rule could warrant reinstatement of the program to control the population. Depending on the location of the injury or threat of injury, it is possible that a management take program could be in effect for one or more resident Canada goose populations, but not others.

Overall, the management take component, the expanded hunting methods and opportunities component, and the agricultural depredation order would be restricted to the States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Only State wildlife agencies and Tribal entities in these States could authorize the use of these components for resident Canada geese in the Atlantic, Central, and Mississippi Flyway portions of these States.

In addition to the three main new components, we would continue the use of special and regular hunting seasons, issued under 50 CFR part 20, and the issuance of depredation permits and special Canada goose permits, issued under 50 CFR 21.41 and 21.26, respectively.

Changes From the Proposed Rule

Administration and Organization of Proposed Action

To better relate the goals and objectives of the overall program, we separated the program into two main areas: depredation/damage/conflict management and population reduction/control. The depredation/damage/conflict management objective is addressed through the various specific depredation orders. The population reduction/control objective is addressed through the other two main components of the program: the increased hunting methods and opportunities and the managed take component. We believe this reorganization makes the entire program better understood and administratively better organized.

Further, we have clarified that the third component of the program, the management take component, is intended as a method to address injury from resident Canada geese when other methods have failed to do so (see further discussion below under *Population Control/Reduction Components*).

Airport Control Order

We have removed the Airport Control Order from under the State's direct control for implementation and made it a stand-alone control order, *i.e.*, under our direct control and supervision. The State would continue to have the legal ability to impose either further State restrictions on the program if they so wish or decline participation of airports in their State. As with all Federal regulations, the State may always be more restrictive. We believe the issues surrounding public safety at airports and military airfields warrant this administrative change. The State will not have to expend resources monitoring and administering this element of the program and the change further sets the stage for either adding additional species to the control order (should they be warranted) or doing an airport control order that encompasses all migratory bird species.

Second, we have added military airfields to the Airport Control Order. Military airfields are a significant component of the Nation's overall air traffic and warrant inclusion in any resident Canada goose airport control program.

Nests and Egg Depredation Order

Similar to the Airport Control Order, we have removed the Nest and Egg Depredation Order from under the State's direct control for implementation and made it a stand-alone depredation order, *i.e.*, under our direct control and

supervision. The State would continue to have the legal ability to impose either further State restrictions on the program if they so wish or decline participation of private landowners and public land managers in their State. As with all Federal regulations, the State may always be more restrictive. We believe the large number of existing nest and egg permits, the minimal amount of environmental review currently being conducted, and the potential increased burden of placing the administration of this program with the State warrant this administrative change. The State will not have to expend resources reviewing, monitoring, and administering this element of the program. Since significant numbers of comments both from the States and numerous nongovernmental organizations centered on the States having to assume control of this issue and possibly issue permits, our decision to make it a stand-alone depredation order under our direct control should alleviate those concerns.

Public Health Control Order

Under the proposed Public Health Control Order, the authority to conduct management and control activities was entrusted with the State, County, municipal, or local public health agency if the State decided to implement the Public Health Control Order component. We realize that most authorized management activities would not be conducted by the public health agency but would likely be conducted by the State wildlife agency, Wildlife Services, or a private contractor. We have removed the public health agency as the primary implementing entity and have identified the State wildlife agency (or their agent) as the implementing entity as long as the State, County, or local health agency recommends management action.

Further, resident Canada geese eligible for management actions must pose a direct threat to human health. A direct threat to human health is defined as one where a Federal, State, or local public health agency has determined that resident Canada geese pose a specific, immediate human health threat because of conditions conducive to the transmission of human or zoonotic pathogens. Situations where resident Canada geese are merely causing a nuisance would not be eligible.

Population Control/Reduction Components

With the administrative reorganization of the overall program, the changes made to the control and depredation orders, and our

reevaluation of the existing Special Canada Goose Permit (50 CFR 21.26), we have eliminated the State agency population control component within the proposed rule. Our reason in doing so was our belief that this component, outside of the management take component, was largely duplicative of already authorized management activities contained in the existing Special Canada Goose Permit.

Currently 18 States are operating under the Special Canada Goose Permit (Colorado, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New York, North Dakota, Ohio, Oklahoma, South Dakota, Virginia, and Wyoming). The number of States operating under this permit has grown steadily since its inception in 1999. As recently as 2000, only five States were operating under the special permit (Michigan, Minnesota, Missouri, Ohio, and South Dakota) with no States in the Atlantic Flyway. The increased use of this permit, along with the some of the overlapping aspects of the Special Canada Goose Permit with our proposed rule's State population control component, confirm our belief that this component should be eliminated.

We have, however, retained the management take component with some modification and clarification as to when it takes effect or is implemented. Based on comments we received, there were some questions as to when this component could be implemented. The management take component is intended as a method to address injury from resident Canada geese only when other methods have failed to do so. Under this component as modified, the Director, after finding that traditional and otherwise authorized management measures are unsuccessful, not feasible for dealing with, or applicable, in preventing injury to property, agricultural crops, public health, and other interests from resident Canada geese may authorize States and Tribes to implement a managed take program to remedy these injuries by issuance of an Order. While the management take component is dependent on implementation and regulation by the State or Tribe, it is not solely a State-conducted management activity, like the State population control component was in the proposed rule. Further, the management take component remains dependent on State surveys and will be the first component to be eliminated once the population reaches a level that its use is no longer necessary to reduce injuries. We continue to believe that if a State desires to address injuries via management take, it should be

incumbent on them to provide additional population status information since this component is a more broad-based management action.

Pacific Flyway

We have dropped participation and applicability of States in the Pacific Flyway from some program components in the final rule. The Pacific Flyway Council and Pacific Flyway States have consistently commented that they do not wish to participate in any new regulations and that they do not have the same resident Canada goose problems that the rest of the country, in particular the eastern and Great Lakes regions of the United States, currently is experiencing. From a population status information standpoint, evidence warranting inclusion in the proposed alternative was somewhat ambiguous in the Pacific Flyway, other than specific localized instances. The Pacific Flyway generally lacks good resident goose breeding and population surveys, numbers of geese are not as significant as other parts of the country, and the problems/issues/conflicts are more isolated and localized. Thus, we have dropped the States of the Pacific Flyway from all components except the Nest and Egg Depredation Order, the Public Health Control Order, and the Airport Control Order. Based on comments and our analysis, we believe the agricultural depredation issue in the Pacific Flyway is primarily a migrant Canada goose issue, not a resident Canada goose issue.

Management Take in September

In the proposed rule, we had proposed the use of management take during the first 15 days of September. We have eliminated that provision in this final rule. Traditionally, we have used special Canada goose seasons in September to target resident goose populations and address some of the conflicts and problems caused by overabundant resident Canada geese. The primary issue with extending a management take type action into September is that we know some migrant geese in some areas will be taken. In particular, areas in the upper midwest (Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, and Montana) would have some level of migrant geese taken. Our information is based on studies these States conducted on their existing September special Canada goose seasons. However, we note that all areas in question fall within the existing special September Canada goose season criteria of less than 10 percent migrant geese. Since the management take component, as is the entire scope of the rule, is specifically

directed at resident Canada geese, we cannot reliably extend this component into September.

Tribal Entities

Beginning with the 1985–86 hunting season, we have employed guidelines to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. These guidelines were developed in response to tribal requests for recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where Tribes have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation. Because of the ongoing relationship we enjoy with the participating tribes (approximately 30 annually), and their full wildlife management authority on tribal lands, we have decided to include their participation in several of the program components. More specifically, tribal eligibility under the specific depredation and control orders and the management take component is included in this rule. Currently, there are approximately 13 tribes participating in the Atlantic, Mississippi, and Central Flyways.

References

A complete list of citation references is available upon request from the Division of Migratory Bird Management (see **ADDRESSES**).

Public Comments and Responses to Significant Comments

On March 1, 2002 (67 FR 9448), the Environmental Protection Agency published a Notice of Availability of our DEIS. On March 7, 2002 (67 FR 10431), we published our own Notice of Availability of the DEIS. We published a Notice of Meetings on the DEIS on March 26, 2002 (67 FR 13792). Initial comments were accepted until May 30, 2002. We subsequently published another Notice of Availability reopening the comment period on August 21, 2003 (68 FR 50546). Also on August 21, 2003,

we published a proposed rule regarding control and management of resident Canada goose populations (68 FR 50496). Comments were accepted on both the DEIS and the proposed rule until October 20, 2003.

We received public comments on the DEIS from 2,657 private individuals, 33 State wildlife resource agencies, 37 nongovernmental organizations, 29 local governments, 5 Federal or State legislators, 4 Flyway Councils, 4 Federal agencies, 3 tribes, 3 businesses, and 2 State agricultural agencies. Of the 2,657 comments received from private individuals, 56 percent opposed the preferred alternative and supported only nonlethal control and management alternatives, while 40 percent supported either the proposed alternative or a general depredation order.

We received 2,973 public comments on the proposed rule from 2,925 private individuals, 17 State wildlife resource agencies, 15 nongovernmental organizations, 4 Flyway Councils, 1 Federal agency, 8 agricultural interests, and 3 others. Of the 2,925 comments received from private individuals, 95 percent supported the use of nonlethal control and management alternatives. Sixty-eight percent supported the use of lethal methods where nonlethal methods have failed or where "true" human safety threats exist. Most of the comments from individuals were either submitted via email or computer-generated form letters.

We considered all comments. Below, we provide our responses to comments on the proposed rule. Further, because of the highly interrelated public processes with the DEIS, FEIS, and the proposed rule, as an aid to the reader, we have in large part replicated comments we received on the DEIS and our responses contained in the November 2005 FEIS. In some instances to avoid duplicative answers, we refer the reader to previous responses.

Comments on the DEIS

(1) Why didn't the Service select Alternative A (No Action) as the preferred alternative/proposed action?

In recent years, it has become clear from public and professional feedback that the status quo is not adequately resolving resident Canada goose conflicts for many stakeholders or reducing the population. Furthermore, our environmental analysis indicated that growth rates were more likely to be reduced and conflicts were more likely to be resolved under other options than under Alternative A.

(2) Why didn't the Service select Alternative B (nonlethal control and management) as the preferred alternative/proposed action?

In the wildlife management field, the control of birds through the use of humane, but lethal, techniques can be an effective means of alleviating resource damages, preventing further damages, and/or enhancing nonlethal techniques. It would be unrealistic and overly restrictive to limit a resource manager's damage management methods to nonlethal techniques, even if "nonlethal" included nest destruction and/or egg oiling. Lethal control techniques are an important, and in many cases necessary, part of a resource manager's toolbox. Further, in this instance, our analysis indicates that the use of only non-lethal control and management techniques would not result in reaching our overall objectives.

(3) Why didn't the Service select Alternative C (nonlethal control and management with permitted activities) as the preferred alternative/proposed action?

Our analysis indicated that under Alternative C population growth would continue and be more pronounced than under the No Action alternative. Further, our analysis indicated no real appreciable advantage of this alternative over Alternative B (nonlethal control and management) other than the permitted take of nests and eggs.

(4) Why didn't the Service select Alternative D (expanded hunting methods and opportunities) as the preferred alternative/proposed action?

We did select Alternative D, only we combined the components of Alternative D with other components into our selected Alternative F. Selecting only Alternative D would not have resulted in meeting our overall objectives.

(5) Why didn't the Service select Alternative E (control and depredation order management) as the preferred alternative/proposed action?

We did select Alternative E, only we combined the components of Alternative E with other components into our proposed Alternative F. Selecting only Alternative E would not have resulted in meeting our overall objectives.

(6) Why didn't the Service select Alternative G (general depredation order) as the preferred alternative/proposed action?

Environmentally, the impacts under Alternative G were similar to those

under our selected alternative, Alternative F. However, practically and administratively the impacts are much different. Under Alternative G, the State would not be a primary decision maker regarding resident Canada goose management in their State, unless they decided on their own to become involved. We continue to believe that this alternative would not be in the best interest of either the resource or the affected entities. Management of resident Canada geese should be a cooperative effort on the part of Federal, State, and local entities, especially those decisions involving the potential take of adult geese. These decisions, regardless of population status, should not be taken lightly. Further, these actions warrant adequate oversight and monitoring from all levels to ensure the long-term conservation of the resource. To do otherwise, we believe, would be an abrogation of our and the State's responsibility.

(7) In the DEIS, did the Service consider a range of reasonable alternatives?

Yes. We selected the seven alternatives in the DEIS based on the public scoping period and NEPA requirements. The alternatives adequately reflected the range of public comments and represented what we considered to be all reasonable alternatives. Alternatives we considered but eliminated from analysis are discussed in the EIS. Comments received during scoping are discussed in "Scoping/Public Participation Report for Environmental Impact Statement on Resident Canada Goose Management" (Appendix 8 of the FEIS).

(8) Why didn't the Service more fully consider the option of removing resident Canada geese from the list of birds protected under the Migratory Bird Treaty Act?

In our view, this is not a "reasonable alternative." Canada geese have been protected under the MBTA since the original treaty was signed with Canada in 1916. Seeking to remove resident Canada geese from MBTA protection would not only be contrary to the intent and purpose of the original treaties, but would require amendment of the original treaties—a lengthy process requiring approval of the U.S. Senate and President and subsequent amendments to each treaty by each signatory nation. At this time, there appears to be adequate leeway for managing resident Canada goose conflicts within the context of their MBTA protection, retaining MBTA protection for this component of the overall population. We believe this

approach is neither practical nor in the best interest of the migratory bird resource.

(9) Why doesn't the Service just allow resident Canada goose populations to regulate themselves?

Available information indicates that goose populations would continue to grow in most areas until they reach, or exceed, the carrying capacity of the environment. Further, given the relative abundance and stability of breeding habitat conditions, the birds' tolerance of human disturbance, their ability to utilize a wide range of habitats, and their willingness to nest in close proximity to other goose pairs, we believe it likely that resident Canada geese will remain significantly below their carrying capacity. While we generally agree that, at some future point, it is possible that density-dependent regulation of the population would occur, the timing, likelihood, and scale of a population decline of this nature is unpredictable. Thus, conflicts are likely not only to continue, but increase, under the No Action alternative. Therefore, because the injuries from geese in an ever-expanding population would increase in occurrence, we do not believe that we, the States, the affected parties, or the general public, can afford to allow resident Canada goose populations to regulate themselves.

(10) Doesn't the selected alternative violate the Migratory Bird Treaty Act by abrogating the Federal role in managing migratory birds?

No, it is an exercise of the authority of the MBTA. First of all, Alternative F (the preferred alternative) by no means puts an end to the Federal role in migratory bird management. The conservation of migratory bird populations is and will remain the Service's responsibility. Second, while the MBTA gives the Federal Government (as opposed to individual States) the chief responsibility for ensuring the conservation of migratory birds, this role does not preclude State involvement in management efforts. Bean (1983) described the Federal/State relationship as such:

It is clear that the Constitution, in its treaty, property, and commerce clauses, contains ample support for the development of a comprehensive body of federal wildlife law and that, to the extent such law conflicts with state law, it takes precedence over the latter. That narrow conclusion, however, does not automatically divest the states of any role in the regulation of wildlife or imply any preference for a particular allocation of responsibilities between the states and the federal government. It does affirm, however,

that such an allocation can be designed without serious fear of constitutional hindrance. In designing such a system, for reasons of policy, pragmatism, and political comity, it is clear that the states will continue to play an important role either as a result of federal forbearance or through the creation of opportunities to share in the implementation of federal wildlife programs.

Nowhere in the MBTA is the implementation of migratory bird management activities limited to the Federal Government. In fact, the statute specifically gives the Secretary of the Interior the authority to determine when take of migratory birds may be allowed and to adopt regulations for this purpose. In accordance with the Act, we are adopting regulations that are compatible with the applicable Conventions (Treaty).

(11) Is the level of analysis conducted in the DEIS sufficient according to the requirements of the National Environmental Policy Act? Did the Service properly evaluate the environmental impacts of the selected action?

Yes on both counts. The analysis included, as required by NEPA, a discussion of the environmental impacts associated with the various alternatives, unavoidable adverse environmental effects associated with the selected action, the relationship between short-term uses and long-term productivity, and any irreversible or irretrievable commitments of resources associated with the selected action. New information since publication of the DEIS was used to augment the discussion in the FEIS.

(12) In violation of the National Environmental Policy Act, has the Service "failed to justify the purpose and need for action"?

No. NEPA does not require "justification," but instead requires that the purpose and need for the action be identified. As stated in 43 CFR 1502.1, the purpose of an EIS is "to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government." We are confident that we fulfilled this purpose in the DEIS and FEIS.

(13) Did the Service fail to disclose or evaluate the environmental impacts of the selected action on threatened or endangered species?

No. In the DEIS, the Service listed species that "may be affected" by resident Canada goose management as a precursor to its completion of the Section 7 consultation. The consultation

evaluated any impacts on listed species and was completed for the FEIS.

(14) Isn't the selected alternative essentially an "unfunded mandate" for the States?

No. The selected alternative is not a requirement being forced upon the States (or any other agency) by the Federal Government. The decision ultimately lies with individual States to choose whether or not to act under the authorizations in the regulations. It will be up to them to decide whether resident Canada goose control and population reduction is a high enough priority within their budget allocation processes.

(15) Were public comments fairly and completely considered?

Yes. As documented in the public scoping report, all comments, written and verbal, received during the scoping period were fully considered in determining the scope of issues and the range of alternatives addressed in the DEIS. We also fully considered all the comments received on the DEIS and responded to them in the FEIS.

(16) Is there sufficient evidence to justify the selected action?

What constitutes "sufficient" evidence to justify resident Canada goose control is, to a certain extent, a question of values. Among all stakeholders concerned with resident Canada goose management, we can safely say that there is considerable disagreement over whether or not the selected action is justified (with many even arguing that the selected action does not go far enough). The Service and Wildlife Services, as the lead and cooperating agencies in the EIS process, jointly agree that we have sufficient evidence to justify the selected action of impacts from goose/human conflicts and the probability that these impacts would continue to increase.

(17) Will the Service remain the lead agency in overseeing resident Canada goose control and management efforts?

Certainly. We fully understand the necessity and legal obligation to retain national control of resident Canada goose populations and, therefore, of any resident Canada goose management program, especially one that authorizes States, other agencies, and public and private entities to conduct control activities without a Federal permit. While the selected alternative gives States and other entities more authority to decide when to conduct resident Canada goose control, we will retain our oversight role in order to keep track of

resident Canada goose management activities, their effectiveness, and their continuing need in light of Canada goose population management from a national perspective. The selected alternative is by no means intended to inhibit regional or national coordination of resident Canada goose management activities.

(18) Will the Service provide funding to agencies that carry out resident Canada goose management under the selected alternative?

We currently have no plans to fund other agencies or entities. However, in our Congressional budget request, we have asked for increased financial resources to implement the selected action. This figure specifically includes money that could be used in cooperative efforts with States and other agencies to conduct resident Canada goose management, research, and monitoring.

(19) How will the Service ensure that resident Canada goose populations remain healthy and sustainable?

There are a number of methods that, collectively, the Service can use to keep track of the status of resident Canada goose populations. Population monitoring is the best means for understanding changes in a species population over time. Along with the various State wildlife agencies and the Canadian Wildlife Service, the Service annually monitors resident Canada goose populations. In addition, the Service will be able to estimate both take and harvest, via reporting requirements, and will keep track of how many resident Canada geese are taken under authority of the various control and depredation orders. We will also continue to support and be involved in research efforts. The Service will use the information it develops and receives to make decisions regarding the need to make changes to the take authorizations.

(20) Will the Service provide more detail in the FEIS on monitoring and population survey requirements? Will the Service establish guidelines for agencies to use in population monitoring?

No, because we do not believe that this level of detail is necessary. While we understand the importance of uniformity in data collection, we have to consider other factors as well. We want agencies to monitor populations and adequately report results from management actions on resident Canada geese, but we don't want the requirements to do so to be cost prohibitive or burdensome. They only

need to be sufficient to allow us to conduct proper oversight. In addition, because resident Canada geese are a game species, the Service and the States already have in place annual monitoring programs (in particular, nationwide harvest monitoring and widespread population monitoring) that provide both a historical data base as well as future annual data.

(21) What does the Service plan to do to educate the public about resident Canada geese?

We have prepared fact sheets for public distribution. Information about resident Canada geese is available at our Web site <http://migratorybirds.fws.gov/issues>. Our intention is to distribute fact sheets on the various control and depredation orders and the other components of the selected alternative in the near future.

(22) Will agencies or other entities acting under the various control and depredation orders in the selected alternative be authorized to designate agents?

Yes, as long as the "agents" abide by the purpose, terms, and conditions of the order.

(23) Will State oversight be preserved under the selected alternative?

Yes, in addition to complying with the Federal rules, any agency or agent acting under the selected alternative must follow all applicable State laws. For example, if a State permit is required to authorize a particular control activity, such permit must be obtained before that activity can be conducted.

(24) Will the Service more clearly describe allowable control activities in the FEIS/final rule?

Yes. Management activities authorized under the selected action are clearly stated in this rule.

(25) Will the Service clarify the procedures by which an agency's or other entity's authority to act under the selected alternative would be revoked?

Yes, this rule reflects this clarification.

(26) Is the selected action the most cost effective management alternative?

In selecting the preferred alternative, we based our decision on many considerations, only one of which was cost effectiveness. However, this is a cost-effective alternative, although probably not significantly more or less so than other alternatives.

(27) How can the Service be sure that increased control under the selected action will result in alleviation of conflicts?

No one can predict with 100 percent accuracy that the selected action will alleviate all conflicts; indeed, we don't expect the selected action to alleviate all conflicts. Our analysis indicates that the selected action is highly likely to alleviate many of the impacts associated with resident Canada geese, especially over the long-term.

(28) How will the Service keep track of geese killed under the selected alternative?

Recording and reporting requirements are directly tied to the various control and depredation order components and the other components of the selected action. The Service will prepare reports on a regular basis summarizing activities under the selected alternative.

(29) Does the Service have the resources to properly implement the selected action?

The selected action is not particularly resource intensive as far as the Service itself is concerned. We anticipate that current staff in the migratory bird program will be able to handle the activities associated with the selected action.

(30) Has the Service based its management decisions on scientific evidence? Does the selected action have a sound scientific foundation?

Yes. We believe that we have sufficient biological and economic evidence regarding the injuries caused by resident Canada geese to support this method of addressing the problem and to support this action.

(31) Is the Service authorizing greater control just to appease public outcry?

No, we are authorizing greater control to try to minimize resident Canada goose conflicts, prevent injury, and address their impacts more effectively, to reduce population growth rates and populations, and to allow other agencies and entities more flexibility in dealing with goose conflicts.

(32) Is it right to kill birds that may have come to be a problem due to human activities (e.g., destruction of habitat, reintroduction of species, current habitat management practices, etc.)?

Right or wrong, in this case, appears to be a matter of perspective. Attitudes about the ethics of wildlife damage management, however, vary widely, often depending on the individual's proximity to the problem. Our role is to

address injuries caused by geese while ensuring that resident Canada goose populations remain healthy.

(33) Is the role of Wildlife Services as a "cooperating agency" appropriate?

Yes. As explained in the FEIS, Wildlife Services plays an important role in the management of resident Canada goose damages, especially to agricultural resources, airports and military airfields, and suburban/urban areas. The Council on Environmental Quality NEPA guidelines state that "any other Federal agency which has special expertise with respect to any environmental issue may be a cooperating agency."

(34) Isn't the selected action merely an attempt on the part of the Service to "pass the buck" of resident Canada goose management on to the States?

No. As we were considering options for addressing resident Canada goose injuries and population management more effectively, it became clear that, since many conflicts tend to be localized in nature, a sensible and flexible solution was to authorize local agencies more authority to take action to control resident Canada geese when circumstances warrant it. States are major contributors to the conservation of American fish and wildlife resources. Further, in this final rule, in large response to comments from State agencies, we have lessened the impact of the selected alternative on the States by removing the airport and nest and egg control and depredation orders from their responsibility and by removing the Pacific Flyway States from the agricultural depredation order, the expanded hunting methods component, and the management take component of the proposed alternative.

(35) By controlling resident Canada geese, isn't the Service dealing with a symptom rather than the underlying causes?

Numerous deterrents, including both legal and logistical, prevent us from changing the entire American landscape to make it less desirable for resident Canada geese. We do acknowledge that controlling resident geese while their environmental needs (*e.g.*, food and habitat) remain abundant might be seen by some as being a "bandage" approach. However, we are also implementing other program components designed to reduce resident Canada goose populations on a larger scale in addition to focusing on the alleviation of local damages.

(36) Isn't it archaic to allow the killing of a species simply because certain people find it to be a nuisance?

We allow killing of resident Canada geese only when they are associated with a specific problem, not because they are considered a pest or a nuisance.

(37) Isn't the real problem here humans and, therefore, it is people who are in need of "management," not resident Canada geese?

The answer depends on what exactly is meant by "people management." Certainly, among the broad range of stakeholders, there is a need to promote a better understanding of the biological and sociological complexities associated with resident Canada goose management.

(38) Resident Canada goose population reduction is necessary.

We agree. Current populations, especially in the Atlantic and Mississippi Flyways, are well above Flyway-established population goals and continue to grow. While we acknowledge that growth rates have subsided in recent years, total population numbers are such that conflicts and injuries continue to occur and show little likelihood of lessening on their own accord.

(39) States should not be given authority to manage resident Canada geese.

We disagree. The Service is authorizing States and other affected publics to take geese in certain circumstances but retains the authority and management responsibility. Certainly, States, because of their intimate knowledge of local conflicts, issues, and problems, are the logical choice to make specific, local-based decisions on resident Canada goose management activities within the requirements and limitations in the regulation. The Service will maintain primary authority over nests and egg removal activities and airport activities and will maintain oversight authority on all other activities that participating States decide to implement.

(40) Reducing goose populations is not the same as reducing damages.

We agree, and we have attempted to address the overall problem on several fronts. The selected alternative addresses the depredation/damage/conflict management issue through the first component of the alternative—the various control and depredation orders contained in Alternative E—Control and Depredation Order Management. The population reduction/control objective is addressed through the other two main

components of the alternative to justify the selected action: the increased hunting methods available in Alternative D and the management take component. In concert, we believe that the various components will serve both objectives.

(41) The Flyway Council's population objectives are arbitrary.

We disagree. The Atlantic, Mississippi, Central, and Pacific Flyway Councils are administrative units for migratory bird management in the flyway system and comprise representatives from member States and Provinces. The Flyway Councils work cooperatively with the Service and the Canadian Wildlife Service to manage populations of Canada geese that occur in their geographic areas. As such, it should be remembered that the overall population objectives established by the Flyways were derived independently based on the States' respective management needs and capabilities, and in some cases, their objectives are an approximation of population levels from an earlier time when problems were less severe. In other cases, objectives are calculated from what is professionally judged to be a more desirable or acceptable density of geese. We further note that these population sizes are only optimal in the sense that it is each Flyway's best attempt to balance the many competing considerations of both consumptive (*i.e.*, hunters) and nonconsumptive (*i.e.*, bird watchers) users and those suffering injuries. However, a commonality among the various plans' goals is the need to balance the positive aspects of resident Canada geese with the injuries they can cause. Thus, we have incorporated Flyway population objectives into the FEIS to help define our objectives for acceptable management measures.

(42) The Service should develop a more integrated, community-based, scientifically sound approach to managing goose problems.

We believe that our selected alternative is integrated (three main components), community-based (local-based decision in large part), and scientifically sound (preponderance of available evidence).

(43) Goose conflicts are primarily an aesthetic concern.

We disagree. To those agricultural producers experiencing depredation from resident Canada geese and those airports experiencing goose-aircraft strikes, the injuries are very real and substantial. Further, in those areas where excessive numbers of geese have

caused substantial economic damages, the injuries are very real. Lastly, in those areas where the public has substantial concerns over potential health threats, the injuries are real. While we recognize that many people do not experience any impacts from resident Canada geese, substantial numbers of people and other entities are experiencing very real problems.

(44) Using human health as an excuse to kill geese is unsubstantiated.

Although the human health and safety risks associated with resident Canada geese are controversial and difficult to quantify, we believe that available data clearly indicates the raised level of public concern and the potential health issues associated with resident Canada geese.

While we agree that the risk to human health from pathogens originating from geese is currently believed to be low, we are only beginning to understand these risks. There is a general perception among the public and a concern among resource management personnel that resident Canada geese do have the ability to transmit diseases to humans, but a direct link is difficult to establish due to the expense of testing and the difficulty of tracing the disease back to Canada geese. Studies have confirmed the presence of human pathogens in goose feces, so the presence of these feces in water or on the ground where humans may come into contact with them is a legitimate health concern. The Service and the various State natural resource agencies do not have the expertise to deal with the myriad human health/disease questions surrounding resident Canada geese in every specific instance, and therefore, must rely on other more pertinent agencies. We acknowledge that additional research is needed to assist in the quantification and understanding of these issues and concerns. However, we believe that increasingly large populations of geese, especially in high concentration areas, only serve to increase the uncertainty associated with these risks. Given the wide divergence of opinion within the public health community, the Service and Wildlife Services have recognized and deferred to the authority and expertise of local and State health officials in determining what does or does not constitute a direct threat to public health. We believe this is appropriate.

(45) The killing of Canada geese is philosophically wrong and is "inhumane" treatment of these birds. Further, nonlethal solutions to all resident Canada goose/human conflicts are preferred and people need to be more tolerant of wildlife. Removal of geese under these management actions is only a short-term solution.

We are also opposed to the inhumane treatment of any birds, but do not believe the capture and relocation, or processing for human consumption, of resident Canada geese from human conflict areas is by definition "inhumane." Over the past few years, States have rounded up thousands of problem resident Canada geese and relocated them to unoccupied sites. However, few, if any, such unoccupied sites remain. Therefore, we believe that humane lethal control of geese is an appropriate part of an integrated resident Canada goose damage and control management program and ultimately a population reduction program.

We also prefer nonlethal control activities, such as habitat modification, as the first means of eliminating resident Canada goose conflict and damage problems and have specified language to this effect in this final rule. However, habitat modification and other harassment tactics do not always work satisfactorily and lethal methods are oftentimes necessary to increase the effectiveness of nonlethal management methods.

There are many situations where resident Canada geese have created injurious situations and damage problems that few people would accept if they had to deal directly with the problem situation. We continue to encourage State wildlife management agencies to work with not only the local citizens impacted by the management actions but all citizens. While it is unlikely that all resident Canada goose/human conflicts can be eliminated in all urban settings, implementation of broad-scale, integrated resident Canada goose management activities should result in an overall reduced need for other management actions, such as large-scale goose round-ups and lethal control.

(46) The rule will make individual States more vulnerable to legal challenges.

We disagree. The conservation of migratory bird populations is and will remain the Service's responsibility. Under the selected alternative, the Service would maintain primary authority for the management of

resident Canada geese, but the individual States would be authorized to implement certain provisions of the alternative within guidelines established by the Service.

(47) The Service should take the lead role in resident Canada goose management. The proposed rule removes the Service as a full partner in goose management and establishes it as an enforcement agency.

The Service will retain the lead role in resident Canada goose management. We disagree with the assertion that our selected alternative removes the Service as a full partner in goose management and merely establishes us as an enforcement agency. We fully understand the necessity of retaining national oversight of resident Canada goose populations. While the selected alternative authorizes States and other entities to conduct resident Canada goose control when certain circumstances occur, we will retain our oversight role in order to keep track of resident Canada goose management activities from a national perspective. However, since the States are the most informed and knowledgeable local authorities on wildlife conflicts in their respective States, we believe it is logical to place some of the responsibilities and decisions of the program with them, in particular those portions of the program that involve the take of adult geese. We do not see this as the removal of the Service as a "full partner."

(48) The Service should hold additional public meetings.

We held 9 public scoping meetings and 11 public comment meetings on the DEIS across the country. We believe that we have adequately fulfilled our responsibilities under NEPA.

(49) The selected alternative is too heavily focused on lethal management. Nonlethal methods combined with public education can resolve goose problems as workable nonlethal solutions exist.

We disagree. As we stated in our response to question #2, the control of birds through the use of humane, but lethal, techniques can be an effective means of alleviating resource damages, preventing further damages, and/or enhancing nonlethal techniques. We reiterate that it would be unrealistic and overly restrictive to limit a resource manager's damage management methods to nonlethal techniques, even if "nonlethal" included nest destruction and/or egg oiling. Lethal control techniques are an important, and in many cases necessary, part of a resource

manager's tool box. Further, our analysis indicated that under a nonlethal alternative (such as Alternative B or C), population growth would continue and be more pronounced than under the No Action alternative.

(50) The FEIS should maintain the Flyway system of population management of resident Canada geese, allowing cooperative Flyway actions. Populations should not be dealt with on a State-by-State basis.

We believe the FEIS's selected alternative does maintain and respect the Flyway system of population management. It uses the Flyways' established goals and objectives for resident Canada geese as the determining basis for population targets. However, because the overwhelming majority of resident Canada goose conflicts occur within the State in which the geese reside (rather than a State they may be migrating through or into), the logical place both to deal with these conflicts and direct population reduction activities is within the residing State. Thus, a State-by-State approach, integrated within the overall Flyway approach, is needed.

(51) Problems with local resident Canada goose flocks may require control measures regardless of the status of a State's flock or the Flyway population.

We agree that, regardless of the overall population status, conflicts will likely continue to occur at some level in some areas. Thus, the various control and depredation orders contained in Alternative F are not strictly driven by the population status but are subject to annual review and determination of continued need in order to resolve or prevent injury to people, property, agricultural crops, or other interests.

(52) There needs to be more discussion of Wildlife Services' role in managing resident Canada geese.

The Wildlife Services program is directed by law to protect American agriculture and other resources from damage associated with wildlife. Wildlife Services' mission is to "provide leadership in wildlife damage management in the protection of America's agricultural, industrial and natural resources, and to safeguard public health and safety." As such, Wildlife Services is the lead Federal agency on matters relating to wildlife damage management, and their role in the management of resident Canada geese relates primarily to damage management, including damage abatement. We rely on Wildlife

Services' expertise to evaluate the various damage management strategies analyzed in the FEIS and to make recommendations on the specific deployment of the selected alternative. Further, we envision that Wildlife Services will be an integral and valuable cooperator, given their expertise, with participating State agencies, airports, agricultural producers, public health agencies, private landowners, and public land managers on the actual on-the-ground implementation of the selected alternative. The role of Wildlife Services should not be confused with the Services' role of monitoring the status of the various resident Canada goose populations to ensure the long-term conservation of the resource.

(53) The first level of population control for resident Canada geese should be through sport harvest. Thus, allowing the greatest amount of latitude for States to use hunters to help manage State flocks should be a primary objective.

We agree and, to date we have largely relied on that premise to address growing populations of resident Canada geese through the use of special early and late seasons. However, it has become readily apparent that sport harvest alone has not been able to adequately control resident Canada goose populations. We believe that, by implementation of a management take program and by expanding hunting methods during special early seasons, we are utilizing hunters to help reduce populations of resident Canada geese and allowing the States sufficient latitude to do so.

(54) The September 15 framework end date for the Management Take Program should be later, and expanded hunting methods should be allowed anytime in September.

We disagree. First, as we discussed in the FEIS, traditionally we have used special Canada goose seasons in September to specifically target resident goose populations and address some of the conflicts and problems caused by overabundant resident Canada geese. The primary issue with extending a management-take type action into September is that we know some migrant geese in some areas would be taken. In particular, areas in the upper midwest (Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, and Montana) would have some level of migrant geese taken. Since the management take component, as with the entire scope of the EIS, is specifically directed at resident Canada geese, we cannot reliably extend this component into September. Second, the

needs of this management problem require that extraordinary measures be implemented. However, we believe that caution should be exercised to ensure that other migratory game bird populations are not impacted by such measures. As such, we have eliminated the management take component from any portion of the open Treaty period (after August 31) and limited the use of expanded hunting methods to September 1 to 15. Based on data from the numerous experimental September Canada goose seasons conducted in the early implementation of these seasons, we know that the period after September 15 is highly temporally and spatially variable on whether or not a specific area contains migrant geese (either appreciable numbers or an appreciable percentage). Because of the potential for these expanded methods to significantly affect harvest, we believe that the use of these methods of take (*i.e.*, electronic calls, unplugged shotguns, and the allowance of shooting hours to one-half hour after sunset) should be limited to the extent possible to those areas that are relatively "free" of migrant geese. Thus, initially, we will restrict the use of these new methods to the September 1 to 15 period and review their use after September 15 on a case-by-case basis.

(55) Each Flyway Council (not the Service) should determine the appropriate dates for the Management Take program.

If the Flyway Councils wish to make recommendations to their member States on the Flyway-appropriate dates for the management take component, we have no issue with that process. However, as the agency responsible for the management of resident Canada geese under the MBTA, the Service is the appropriate entity for establishing when this may be utilized and the outer frameworks (August 1 to 31) for this new action.

(56) Language in the final rule should clarify that days available for use in the Management Take Program are outside of and in addition to the 107 days allowed by the Migratory Bird Treaty.

Since the management take program, if authorized by the Director, can occur only from August 1 to 31, before the Treaty's established sport hunting season, any days under the management take program are outside the Treaty's allowance of a maximum 107-day sport hunting season.

(57) The study requirements for extending the management take program past September 15 should be eliminated for mid-latitude and southern States since evidence already exists that few migrant geese are present.

Following initial implementation of the selected alternative and the associated expanded hunting methods during the September special seasons (September 1 to 15), we will evaluate the September 15 restriction on a case-by-case basis. We realize that some mid-latitude and southern areas are relatively free of migrant geese well past September 15. However, we believe that caution is the prudent path.

Regarding the management take program, we have decided to restrict that program to the month of August.

(58) Alternative methods of take within the management take frameworks should be allowed including the use of snares, nets, and entanglement devices.

Since the management take program would use hunters as the primary designated agents, we do not believe it is appropriate to allow the use of non-traditional hunter-based harvest tools (e.g., nets, snares, etc.) during this period. However, States are generally free to use these management tools under the existing Special Canada Goose Permit, and Wildlife Services normally uses such methods under their permits. Further, any entity could continue to apply for a permit to use such methods in management activities. Such requests would be evaluated on a case-by-case basis.

(59) Any consideration of suspending the Management Take option should occur at the statewide level (not at a finer scale).

We agree to a point. Any evaluation of the management take program will occur on a Statewide level at a minimum. We believe it is highly unlikely we would be able to evaluate on a finer scale. However, we believe it is highly likely that there may be instances where certain program components, including the management take component, would be utilized in some areas of a State and not others.

(60) The FEIS should not authorize electronic calls, unplugged shotguns, and longer shooting hours.

We disagree. The objective of reducing the resident Canada goose population to levels more in-line with the Flyway Councils' established goals and objectives requires extraordinary measures. Currently available harvest and population data clearly indicate that current harvest is not able to

significantly impact resident Canada goose population growth rates on other than a local scale. We estimate that the additional use of these methods during the September special seasons could increase harvest by at least 25 percent, or an additional 140,000 geese annually. We believe that implementation of these new hunting methods will help contribute to the overall program's objective of stabilizing and reducing resident Canada goose populations.

(61) Individuals should be allowed to dispose of birds so that human consumption of geese will be maximized instead of birds being wasted.

We agree and have clarified the restrictions regarding the disposal of birds in this final rule.

(62) The DEIS underestimates cost and personnel needs of States to implement the proposed program, as such the FEIS should attempt to quantify projected costs of implementing the rule's provisions and identify federal sources of funding to offset those costs. The proposed program is a huge financial burden for the States.

We have revised the FEIS to reflect both updated costs and administrative changes to the selected alternative since the DEIS. We believe they are an accurate reflection of anticipated costs.

(63) The selected alternative mostly just transfers the permitting and reporting paperwork to the States. The Service should allow States the latitude to address their problems as needed, without creation of an immense workload.

We are not obligating States to participate in this new program or to impose new restrictions to gain regulatory authority of a Federally authorized activity (i.e., nest and egg removal). States may continue to handle injurious goose situations with the current permitting system on a case-by-case basis or they may opt to participate in any component of the new program. The decision is entirely up to individual States.

(64) The requirement for States to conduct annual estimates of the breeding population and statewide distribution is unnecessary and also redundant to existing monitoring and evaluation tools currently in place. States should not have to conduct highly precise population estimates. Trend data should be adequate.

We disagree. The take of resident Canada geese under the management take component of the overall program

is an extraordinary step in the effort to control and reduce resident Canada goose populations in order to ultimately reduce injuries. Thus, we believe it is incumbent upon those participating States to carefully monitor both goose populations and take of geese under the program.

(65) Given the overabundance of resident Canada geese, micromanagement and detailed reporting of authorized activities is not necessary. The final rule should have less recordkeeping conditions for States and other agencies.

We do not believe our required recordkeeping and reporting constitute micromanagement. Information specific to the management activities conducted under the selected alternative is vital to the overall evaluation of the program. However, we have scaled-back, reduced, or eliminated many aspects of the activity reporting. For instance, most of the control and depredation order participants will operate under a logbook requirement with reduced information rather than requiring a specific instance report. The reporting requirements are essential for us to be able to monitor actions and assess possible impacts to the population.

(66) The Service should provide resources to expand the May Breeding Waterfowl Survey to States that don't currently participate.

We have requested additional funding to help States implement surveys.

(67) Airport operations should not have to consider nonlethal harassment methods first as such methods dangerously put geese in flight.

Nonlethal harassment methods are an integral part of any integrated damage management program. As such, we have clarified in the final rule that airports, as other authorized entities, should use nonlethal goose management tools to the extent they deem appropriate (given the specific circumstances). Further, to minimize lethal take, authorized entities will have to implement all appropriate nonlethal management techniques in conjunction with authorized take.

(68) We see little need for different date restrictions for the different management components.

The removal of nests and eggs is a much different management activity than the removal of adult geese. Resident Canada geese are nesting in some areas of the country in March with most nesting occurring in April. Migrant geese, however, are still present in many areas of the country in March and linger

in northern areas until April. Because of this nesting activity and because of the potential take of migrant geese, we have decided to establish differential time constraints on the various control and depredation orders. We view these constraints as necessary safeguards for migrant populations.

(69) A component that combines Management Take with a General Depredation Order is needed.

As we discuss in Question #6, environmentally, the impacts under the Alternative G—General Depredation Order were similar to those under our selected alternative, Alternative F. However, practically and administratively the impacts are much different. Under Alternative G, the State would be virtually eliminated from decisions regarding resident Canada goose management, unless they decided on their own to become involved. We believe that this alternative would not be in the best interest of either the resource or the affected entities. Management of resident Canada geese should be a cooperative effort on the part of Federal, State, and local entities, especially those decisions involving the potential take of adult geese. Further, these actions warrant adequate oversight and monitoring from all levels to ensure the long-term conservation of the resource. A “management take” component would not be consistent with the general workings of Alternative G.

(70) Other hunting should be allowed to continue during the resident Canada goose management take provision and the expanded hunting methods period, especially if the State opts not to allow expanded methods during the management take period.

Like the light goose conservation order, the needs of this management problem require that extraordinary measures be implemented and caution be exercised to ensure that other migratory game bird populations are not impacted by such measures. As such, we have eliminated the management take component from any portion of the open season Treaty period (after August 31). Thus, allowing other migratory bird hunting seasons to be open during the management take period is now a moot point. Further, closure of crane and other waterfowl hunting seasons during the expanded hunting methods period (September 1 to 15) will eliminate or greatly reduce the possibility of increased harvest due to the use of new methods of take, such as electronic calls, unplugged shotguns, and the allowance of shooting hours to one-half

hour after sunset. Although some harvest opportunity on other species will be lost in some instances (because of this need to have other seasons closed during these special expanded hunting methods period), we believe that the need to reduce the resident Canada goose population outweighs this loss.

(71) The stringent oversight and reporting requirements of the management take component (formerly known as the conservation order in the DEIS) are an unnecessary burden on States choosing to participate. Harvest estimates should be derived from the Harvest Information Program (HIP).

Information on hunter participation, methods used, and resident Canada goose harvest is critical for conducting a proper evaluation of the effectiveness of the management take program. There are several reasons why HIP cannot be utilized to estimate these parameters. In order to utilize HIP to estimate resident Canada goose harvest before September 1, the duration of the HIP sampling period would need to be greatly expanded. By doing so, response rates from all migratory game bird hunters will decrease, and memory bias will increase. This will negatively impact the precision and accuracy of not only resident Canada goose estimates, but estimates for all migratory game bird species, including ducks and other goose species. We do not believe the substantial negative impact to HIP estimates of duck and other goose harvest can be justified for the sake of obtaining information on management take harvest. To avoid negative impacts to HIP estimates of other migratory game bird species, a separate resident Canada goose harvest survey could be conducted. However, the current HIP sampling frame is very large and a separate Federal survey would require large sample sizes to ensure that adequate numbers of management take participants were contacted, which is cost-prohibitive. A solution would be to implement a separate Federal resident Canada goose permit to create a sampling frame that would be used to generate harvest estimates. However, the permit would have to be enforced in order to ensure that the sample frame contained all participants. If the sample frame was incomplete, the management take estimates would be biased low. Enforcement and administration of a uniform Federal permit would be difficult. For example, States that participate in the light goose conservation order either have implemented their own permit, or they sample State duck stamp purchasers in order to obtain harvest estimates. We

believe States are better equipped to develop harvest surveys tailored specifically to the management take program in their State.

(72) Tribes should be treated the same as State wildlife agencies under the selected alternative.

We have added Tribes as specifically being eligible to conduct resident Canada goose management activities under the selected alternative's management take component, the expanded hunting opportunities component, and the agricultural depredation order. They are ineligible, as are State wildlife agencies, under the airport control order. Under the nest and egg depredation order, Tribes are treated the same as all other entities. Under the public health control order, we will continue to rely on the public health agency to make the determination that there is a direct threat to public health.

(73) Under the Service's Native American Policy and Executive Orders of the President of the United States, the Service is compelled to consult with Tribal governments on a government-to-government basis.

The Service has a long history of working with Native American governments in managing fish and wildlife resources (USFWS 1994). A list of Native American tribal governments was obtained through our Tribal liaison and was used to distribute the DEIS to tribal governments for formal review and comment.

(74) It is unfortunate that the Service is entirely dependent on revenues from the sale of hunting permits and hunting paraphernalia. The resulting extreme bias of this agency is therefore obvious to anyone who cares to take a closer look.

The Service operates its programs with funds appropriated by Congress. It does not receive operational funds from the sale of hunting permits or licenses or hunting paraphernalia. There is no Federal hunting permit that is sold to generate revenues upon which the Service relies. Revenue from sales of State hunting permits goes to State fish and wildlife agencies and not the Service. Furthermore, the Service is not dependent on revenues of hunting paraphernalia. Federal excise taxes collected on the sale of hunting equipment under the Federal Aid in Wildlife Restoration Act is returned to State fish and wildlife agencies in the form of grants to undertake projects that benefit a variety of wildlife species and receipts from the sale of Federal duck

stamps is used to acquire land for wildlife. Therefore, the Service has not developed an extreme bias towards hunting interests due to a dependency on hunting permit revenues.

(75) The Service reports that six times as many people participate in non-hunting activities related to migratory birds as compared to hunting them. Times have changed and so must the Service and wildlife agencies.

First of all, this is not a hunting program, it is a wildlife management action designed to minimize impacts from these birds. We examined socioeconomic considerations in the FEIS and reported that more citizens participate in non-hunting than hunting activities related to migratory birds. However, the impacts of resident Canada goose populations negatively affect a variety of entities, including non-hunters as well as hunters. Furthermore, the fact that many citizens do not hunt does not negate the fact that hunting and take by hunters is a legitimate wildlife management tool.

(76) Clearly the best option is to have the sportsmen harvest the overabundance of resident Canada geese. This method will come at no cost to the taxpayers, is extremely effective, and will help reduce the population.

One component of our preferred alternative established regulations that will allow citizens to increase their harvest of resident Canada geese.

(77) The entire concept and definition of "resident" Canada geese is invalid.

We disagree. Data clearly points out that Canada goose populations do nest in parts of the conterminous United States during the spring and summer and that these birds are increasingly causing injury to people and property. Furthermore, we are not redefining what is or is not a migratory bird under the Treaties and the MBTA. Canada geese are clearly protected by the Treaties and the MBTA and will continue to be. We are using the term "resident" to identify those commonly injurious Canada geese that will be the subject of permitted control activities within the scope of the Treaties and the MBTA.

Comments on the Proposed Rule

(1) Resident goose management action needs to be taken.

We agree. See our response to DEIS comment #38.

(2) Do not transfer management authority to the States. Maintain federal responsibility and leadership or actions will be open to legal challenges.

We are not transferring management authority to the States. However, States, because of their intimate knowledge of local conflicts, issues, and problems, are the logical choice to take specific, local-based actions on resident Canada goose management activities within the requirements and limitations in the regulation. The Service will maintain primary authority over nest and egg removal activities and airport activities and will maintain oversight authority on all other activities that participating States decide to implement.

Regarding legal challenges, the conservation of migratory bird populations is and will remain the Service's responsibility. Under the program, the Service will maintain primary authority for the management of resident Canada geese, but the individual States would be authorized to implement certain actions within our guidelines.

(3) Proposed options result in too much record keeping and reporting requirements for the States. Further, the overall process is too burdensome.

We disagree. See our response to DEIS comment #65.

(4) No additional surveys are needed as there is enough survey data already available. HIP or other existing data can be used.

See our response to DEIS comments #64, #65, and #71 and Proposed Rule (PR) comment #2.

(5) We agree with giving States authority to manage geese, but the Service must stay involved as a full federal partner with lead responsibility.

See our response to DEIS comment #47.

(6) The provisions of the proposed rule results in an unfunded mandate, therefore, the Service should provide funding support to the States to implement the proposal.

We disagree. See our response to DEIS comment #14.

(7) Amend the provision to extend sport harvest to end of September.

See our response to DEIS comment #54.

(8) Allow States to make the maximum use of hunters, by expanding all sport harvest methods and opportunities. Further, remove all restrictions to the use of decoys, calls, etc.

We largely agree and have attempted to remove those restrictions we view as an impediment to increasing the harvest of resident Canada geese during special seasons. However, we do not believe that it would be prudent, wise, or in the best interest of the migratory bird resource, to remove all hunting restrictions. See our response to DEIS comment #53.

(9) Adjust the different management options available so that they all have the same beginning and ending dates.

We have established what we believe are the most liberal timeframes available for all the various management actions given other resources (i.e., other Federally-protected species) and public concerns. See our response to DEIS comment #68.

(10) Set no date restriction for egg/nest destruction, allow year-round opportunity.

We see no reason for year-round egg and nest removal and destruction, as resident Canada geese only nest once per year.

(11) Amend language to maximize geese taken to be used for human consumption, not burying/incinerating.

See our response to DEIS comment #61.

(12) Base resident goose management on Flyway programs.

We believe the final rule does maintain the Flyway system of population management. It utilizes the Flyways' established goals and objectives for resident Canada geese as the determining basis for population targets. However, because the overwhelming majority of resident Canada goose injuries occur within the State the geese reside in (rather than a State they may be migrating through or into), the logical place to both deal with these conflicts and direct population reduction activities is within the residing State. Thus, a State-by-State approach, integrated within the overall Flyway approach, is needed.

(13) Streamline the process by merging the various depredation orders into a single Federal Depredation Order. As written, the menu of options cannot be implemented by the States without agreeing to implement the first option.

We have changed the final rule to streamline the process. Based on

comments we received, States are no longer responsible for implementation of the nest and egg depredation order or the airport control order unless they choose to do so. Further, we have removed the requirement in question.

(14) Nonlethal techniques should be emphasized to the maximum extent possible and use of lethal tools minimized.

See our response to DEIS comment #45.

(15) Develop more educational material.

We believe educational materials have their place, and we will continue to develop and distribute them to those that desire. However, educational materials are only one tool available, and their contribution can vary widely given the particulars of the individual situation or problem.

(16) Extend special late seasons to mid/late February.

The Flyway Councils and Service have developed criteria for special late seasons. However, given the time and spatial mixing of the various resident and migrant Canada goose populations, extension of special late Canada goose seasons is not always possible or advisable. We will continue to review requests for such on a case-by-case basis.

(17) Don't hold the southern and mid-latitude States (where there are no migrant geese) to the same time period requirements as northern States.

See our response to DEIS comment #57.

(18) Do not expand hunting into September.

We agree and have eliminated the Management Take component from the month of September. See our response to DEIS comment #54.

(19) Lethal methods should be emphasized for airport work.

See our response to DEIS comment #67.

(20) Extend the time period for implementing the airport depredation order and the 3-mile limit.

Since the scope of this assessment and final rule only covers resident Canada geese, we do not believe it is appropriate to expand either the time period or scope of the airport control order. Goose problems and conflicts outside the scope of the FEIS and final rule will continue to be handled by the current permitting process.

(21) The 1-year recordkeeping of requirement for the agriculture depredation order should be expanded to 3 years.

We agree, and this final rule reflects a 3-year timeframe.

(22) The term "adversely affect" used in § 21.61(e) in the proposed rule needs to be clearly defined.

We have further detailed the restrictions pertaining to endangered or threatened species within each regulatory section.

(23) The regulatory language does not address subpopulations.

We have separated the various populations into the smallest units we believe necessary to address the various goose conflicts and issues. We realize, however, that there will always be instances where these regulations may not be the best solution for the problem, such as that involving an isolated conflict. In those instances, the use of Federal permits would be advisable.

(24) Restrict the use of allowable hunting methods such as calls, unplugged guns, etc.

We realize that there are those who believe that we have unnecessarily liberalized the allowable hunting methods, and therefore sacrificed hunting ethics in our perceived shortsightedness. However, given the extraordinary circumstances of these populations, the many challenges of reducing the populations on a national scale, and the Flyways' and our long-range population goals, we have expanded the allowable hunting methods to the extent we believe necessary to help assist in reducing resident Canada goose populations. Once we have attained these objectives, we will initiate action to rescind these liberalizations. See also our response to DEIS comment #60.

(25) The rulemaking violates both the spirit and the letter of the MBTA. The Service is seeking to abrogate their responsibility under the MBTA by giving too much authority to the States and creating de facto unregulated take.

We disagree. See our response to DEIS comment #10.

(26) The rule is arbitrary and capricious.

We disagree. Data clearly points out that the Canada goose populations in question are increasingly causing injury to people and property. Furthermore, Canada geese are clearly protected by the Treaties and the MBTA and will continue to be under this final rule. We are merely implementing a range of

management actions to help reduce the current population to more manageable levels and to help alleviate injurious situations caused by resident Canada geese.

(27) Any long-term solutions to the goose problem must be ecologically based, not as currently proposed.

Barring all other factors and considerations, a strictly ecologically-based solution would be best. However, we cannot overlook the important sociological aspects of the issue and injuries. Further, we believe that our actions are integral to reducing the populations to a more ecologically and socially balanced level.

(28) The use of integrated nonlethal management methods have proved successful and should be emphasized.

We agree. However, we believe that our selected alternative is integrated (three main components). Further, we believe that both lethal and nonlethal control of geese are appropriate parts of an integrated resident Canada goose damage and control management program and ultimately a population reduction program. While we also prefer nonlethal control activities, such as habitat modification, as the first means of eliminating resident Canada goose conflict and damage problems, habitat modification and other harassment tactics do not always work satisfactorily and lethal methods are oftentimes necessary to increase the effectiveness of nonlethal management methods.

There are many situations where resident Canada geese have created injurious situations and damage problems that few people would accept if they had to deal directly with the problem situation. We will continue to encourage State wildlife management agencies to work with not only the local citizens impacted by the management actions but all citizens. While it is unlikely that all resident Canada goose/human conflicts can be eliminated in all urban settings, implementation of broad-scale, integrated resident Canada goose management activities should result in an overall reduced need for other management actions, such as large-scale goose round-ups and lethal control.

(29) There is no scientific support for the health hazard attributed to geese.

See our response to DEIS comment #44.

(30) There are no studies that show that complaints are valid or that killing/reducing resident geese populations would address those complaints.

We disagree. We realize that there is considerable disagreement over whether or not this action is justified, but many have argued that this action does not go far enough. However, the Service and Wildlife Services, as the lead and cooperating agencies in the EIS process, jointly agree that there is sufficient evidence of impacts from goose/human conflicts and the probability these impacts will continue to increase to justify the selected action. Further, no one can predict with 100 percent accuracy that the selected action will alleviate all impacts or injuries, but our analysis indicates that this action is highly likely to alleviate many of the impacts associated with resident Canada geese, especially over the long-term.

(31) The Service is unable to distinguish between a migrant goose or a resident goose.

See our response to DEIS comment #77.

(32) The rulemaking fails to establish the criteria for designating "seriously injurious."

We disagree. The FEIS contains sufficient biological and economic evidence regarding the injuries to justify resident Canada goose control and to support this action.

(33) The regulatory process and content contained no mechanism for input from citizens.

We disagree. We held 9 public scoping meetings and 11 public comment meetings on the DEIS across the country. Further, we received 2,777 public comments on the DEIS and 2,973 public comments on the proposed rule. We believe we have adequately fulfilled our responsibilities under NEPA.

(34) Killing methods allowed by this rulemaking are inhumane.

See our response to DEIS comment #45.

(35) The DEIS inadequately supports the proposed regulations.

We disagree. See our responses to DEIS comments #11, #12, and #16.

(36) The monitoring and reporting requirements described are lacking in content and adequacy.

We disagree. All the monitoring and reporting requirements are designed to supply us with the level of information necessary to manage these populations.

(37) The depredation orders for airports, public health, and agriculture are adequate for good management.

We agree. However, we believe they are only one component of an overall strategy.

(38) Flyway Council population objectives for use in establishing management goals are arbitrary.

We disagree. See our response to DEIS comment #41.

(39) The States lack funding to implement the provisions suggested by the Service.

See our responses to DEIS comments #14 and #18.

(40) The population estimates used by the Service for resident geese are not based on good science.

We disagree. We realize that a number of surveys use different methodologies and resulting estimates can vary quite significantly between the surveys and years. However, we believe all of the data, when taken together, not only reinforce our position that resident populations are continuing to grow, but provide strong evidence that these populations need to be reduced.

(41) The take of goslings should not be allowed, only the take of eggs.

While we realize some consider the take of nests and eggs as nonlethal management, we view the take of goslings as no different than the take of adults, and technically, the take of eggs. All are prohibited by the various treaties and the MBTA, unless specifically allowed through regulation or permit.

(42) The Service should set statewide management objectives.

Statewide management objectives are contained in the various Flyway management plans. We do not believe it is within our purview to establish these individual State management goals, but the Flyways established the overall population based on the States' respective management needs and capabilities. In some cases, objectives were calculated from what was professionally judged to be a more desirable or acceptable density of geese. These population sizes are only optimal in the sense that it is each Flyway's best attempt to balance the many competing considerations of both consumptive and nonconsumptive users.

(43) Lethal methods should be used where nonlethal methods have failed or where a "true" human safety threat exists.

We agree in large part and note that the use of nonlethal methods have failed on a wide geographic front as these populations continue to expand and increase.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR parts 1500–1508), we published the availability of a DEIS on March 7, 2002 (67 FR 10431), followed by a 91-day comment period. We subsequently reopened the comment period for 60 additional days (68 FR 50546, August 21, 2003). On November 18, 2005, both the Service and the Environmental Protection Agency published notices of availability for the FEIS in the **Federal Register** (70 FR 69966 and 70 FR 69985). This FEIS is available to the public (see **ADDRESSES**).

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 1543; 87 Stat. 884) provides that "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." We completed a biological evaluation and informal consultation (both available upon request; see **ADDRESSES**) under section 7 of the ESA for the action described in this final rule. In the letter of concurrence between the Division of Migratory Bird Management and the Division of Endangered Species, we concluded that the inclusion of specific conservation measures in the final rule satisfies concerns about certain species. Therefore, the action is not likely to adversely affect any threatened, endangered, or candidate species.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for actions that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental

jurisdictions. The economic impacts of this rule will fall primarily on State and local governments and Wildlife Services because of the structure of wildlife damage management. Data are not available to estimate the exact number of governments affected, but it is unlikely to be a substantial number on a national scale. We estimate that implementation of new resident Canada goose management regulations will help alleviate local public health and safety concerns, decrease economic damage caused by excessive numbers of geese, and increase the quality of life for those people experiencing goose conflicts. Implementation of new resident Canada goose regulations will also help reduce agricultural losses caused by these geese. Our rule gives State fish and wildlife agencies significantly more latitude to manage resident Canada goose populations. Goose populations may be reduced to levels that local communities can support, and agricultural damages from resident Canada geese may be reduced. We have determined that a Regulatory Flexibility Act analysis is not required.

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this action is not a significant regulatory action subject to Office of Management and Budget (OMB) review. This rule will not have an annual economic effect of \$100 million or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost benefit economic analysis is not required. This action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. The Federal agency most interested in this action is Wildlife Services. The action is consistent with the policies and guidelines of other Department of the Interior bureaus. This action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This action will not raise novel legal or policy issues because we have previously managed resident Canada geese under the Migratory Bird Treaty Act.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of \$100 million or more; nor will it cause a major increase in costs or prices for consumers, individual

industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act and Information Collection

These regulations contain information collection and recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) and which OMB has approved and assigned control number 1018-0133, which expires on August 31, 2009. Public reporting burden associated with: (1) The Airport Control Order averages 1.5 hours per annual report; (2) the Nest and Egg Depredation Order averages 0.5 hours per registration and 0.5 hours per annual report; (3) the Agriculture Depredation Order averages 0.5 hours for recordkeeping and 8 hours per annual report; (4) the Public Health Control Order averages 1 hour per annual report; and (5) the Population Control component averages 24 hours for the approval request and annual report and 160 hours per population survey. These burden estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. The purpose of the act is to strengthen the partnership between the Federal Government and State, local, and tribal governments and to end the imposition, in the absence of full consideration by Congress, of Federal mandates on these governments without adequate Federal funding, in a manner that may displace other essential governmental priorities. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this action will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of \$100 million or more in any given year on local or State government or private entities. Therefore, this action is not a

"significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

In promulgating this rule, we have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this action, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this action will help alleviate private and public property damage and concerns related to public health and safety and allow the exercise of otherwise unavailable privileges.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. While legally this responsibility rests solely with the Federal Government, it is in the best interest of the migratory bird resource for us to work cooperatively with the Flyway Councils and States to develop and implement the various migratory bird management plans and strategies.

For example, in the establishment of migratory game bird hunting regulations, we annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Frameworks are developed in a cooperative process with the States and the Flyway Councils and any State or Tribe may be more restrictive than the Federal frameworks. This allows States

to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

The rulemaking was developed following extensive input from the Flyway Councils, States, and Wildlife Services. Individual Flyway management plans were developed and approved by the four Flyway Councils, and States actively participated in the scoping process for the DEIS. This final rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. The rule allows States the latitude to develop and implement their own resident Canada goose management action plan within the frameworks of the selected alternative. Therefore, in accordance with Executive Order 13132, this rule does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that this rule has no effects on Federally-recognized Indian tribes. Specifically, Tribes were sent copies of our August 19, 1999, Notice of Intent (64 FR 45269) that outlined the proposed action in the Draft Environmental Impact Statement on Resident Canada Goose Management. In addition, Tribes were sent our December 30, 1999, Notice of Meetings (64 FR 73570), which provided the public additional opportunity to comment on the DEIS process. No known Native American tribes depend on this resource for sustenance or religious purposes.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866 and is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Record of Decision

The Record of Decision for management of resident Canada geese, prepared pursuant to National Environmental Policy Act (NEPA) regulations at 40 CFR 1505.2, is herein published in its entirety.

This Record of Decision (ROD) has been developed by the U.S. Fish and Wildlife Service (Service) in compliance with the agency decision-making requirements of NEPA. The purpose of this ROD is to document the Service's decision for the selection of an alternative for strategies to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages. Alternatives have been fully described and evaluated in the November 2005 Final Environmental Impact Statement (FEIS) on resident Canada goose management.

This ROD is intended to: (a) State the Service's decision, present the rationale for its selection, and describe its implementation; (b) identify the alternatives considered in reaching the decision; and (c) state whether all means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted (40 CFR 1505.2).

Project Description

In recent years, Canada geese that nest and/or reside predominantly within the conterminous United States have undergone dramatic population growth and are increasingly coming into conflict with people and causing personal and public property damage. In 1999, in response to urging from the public and from State and Federal wildlife agencies, the Service decided to prepare a programmatic EIS, in cooperation with the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS WS), to evaluate strategies to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages.

Key Issues

Public involvement occurred throughout the EIS and rulemaking process. From 1999 to 2005, we held 20 public meetings over the course of more than 11 months of total public comment. Through public scoping (the first stage of public comment) and agency discussions, key issues were identified. In the EIS environmental analysis, alternatives were analyzed with regard to their potential impacts on

resident Canada geese, other wildlife species, natural resources, special status species, socioeconomic, historical resources, and cultural resources. We also considered the alternatives in terms of their ability to fulfill the purpose and objective of the proposed action: to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages, and to provide a regulatory mechanism that would allow State and local agencies, other Federal agencies, and groups and individuals to respond to damage complaints or damages by resident Canada geese.

Alternatives

Since the FEIS is a programmatic document, the alternatives reflect general management strategies to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages. The EIS examined seven alternatives: (A) No Action, (B) Increase Use of Nonlethal Control and Management (no currently permitted activities); (C) Increase Use of Nonlethal Control and Management (continued permitting of those activities generally considered nonlethal); (D) Expanded Hunting Methods and Opportunities; (E) Depredation Order Management (consisting of an Airport Depredation Order, a Nest and Egg Depredation Order, an Agricultural Depredation Order, and a Public Health Depredation Order); (F) Integrated Damage Management and Population Control (Selected Action); and (G) General Depredation Order.

Alternative A

Under the No Action Alternative, the status quo would be maintained. All methods of nonlethal harassment would continue to be allowed. The use of special and regular hunting seasons and the issuance of depredation permits and special Canada goose permits would continue. Those conflicts not eligible for inclusion under the special Canada goose permit would continue to be dealt with on a case-by-case basis, requiring a separate Federal permit for every locality and occurrence within a State.

Alternative B

Under this alternative, the Service and Wildlife Services would actively promote (*i.e.*, either provide staffing and/or funding) the use of nonlethal management tools, such as habitat manipulation and management and goose harassment techniques, and cease the issuance of all Federal permits for the management and control of resident Canada geese. Only those management

techniques not currently requiring a Federal permit would be continued under this alternative. Management activities such as trapping and relocation of geese or egg addling would not be allowed or permitted since all permit issuance would cease under this alternative. Permits under existing regulations allowing the take of either goslings or adults would not be issued, and special hunting seasons primarily directed at resident Canada geese would be discontinued.

Alternative C

Under this alternative, the Service and Wildlife Services would actively promote (*i.e.*, either provide staffing and/or funding) the use of nonlethal management tools, such as habitat manipulation and management and goose harassment techniques. Management activities such as trapping and relocation of geese or egg addling would be allowed with a Federal permit. However, permits under existing regulations, including the Special Canada goose permit, allowing the take of either goslings or adults would not be issued. Special hunting seasons primarily targeted at resident Canada geese would be continued.

Alternative D

This alternative would provide new regulatory options to State wildlife management agencies and Tribal entities potentially to increase the harvest of resident Canada geese. This approach would authorize the use of additional hunting methods such as electronic calls, unplugged shotguns, and expanded shooting hours (one-half hour after sunset) during existing, operational, special September Canada goose seasons (*i.e.*, September 1–15). Utilization of these additional hunting methods during any new special seasons or other existing, operational special seasons (*i.e.*, September 15–30) would be experimental and require demonstration of a minimal impact to migrant Canada goose populations. These experimental seasons would be authorized on a case-by-case basis through the normal migratory bird hunting regulatory process. All expanded hunting methods and opportunities would be conducted outside of any other open waterfowl season (*i.e.*, when all other waterfowl and crane hunting seasons were closed) and restricted to States (or portions of States) in the Atlantic, Central, and Mississippi Flyway. Only State wildlife agencies and Tribal entities in these States could authorize the use of the additional hunting methods for resident Canada geese.

In addition, we would continue the issuance of depredation permits and special Canada goose permits, issued under 50 CFR 21.41 and 21.26, respectively. Annual spring breeding population monitoring would be used to assess population status and provide for the long-term conservation of the resource.

Alternative E

This alternative consists of four separate Control and Depredation Orders. The Orders would allow management activities for resident Canada goose populations generally between March 1 and August 31. In addition to these specific strategies, we would continue the use of special and regular hunting seasons, issued under 50 CFR part 20, and the issuance of depredation permits and special Canada goose permits, issued under 50 CFR 21.41 and 21.26, respectively.

Airport Control Order

This option would establish a control order authorizing airport managers at commercial, public, and private airports and military air operation facilities to establish and implement a resident Canada goose control and management program when necessary to protect public safety and allow resolution or prevention of airport and military airfield safety threats from resident Canada geese. Control and management activities would include indirect and/or direct control strategies such as trapping and relocation, nest and egg destruction, gosling and adult trapping and culling programs, or other control strategies. The intent of this alternative is to significantly reduce resident Canada goose populations at airports, where there is a demonstrated threat to human safety and aircraft.

Airports and military airfields could conduct management and control activities between April 1 and September 15. The destruction of resident Canada goose nests and eggs could take place between March 1 and June 30.

Nest and Egg Depredation Order

This option would establish a depredation order authorizing private landowners and managers of public lands to destroy resident Canada goose nests and take resident Canada goose eggs on property under their jurisdiction when necessary to resolve or prevent injury to people, property, agricultural crops, or other interests. The goal of this program would be to stabilize resident Canada goose breeding populations, not directly reduce populations, and thus prevent an increase in long-term

conflicts between geese and people. Landowners could conduct resident Canada goose nest and egg destruction activities between March 1 and June 30.

Agricultural Depredation Order

This option would establish a depredation order at agricultural facilities by authorizing States, via the State wildlife agency, to implement a program to allow landowners, operators, and tenants actively engaged in commercial agriculture to conduct direct damage management actions such as nest and egg destruction, gosling and adult trapping and culling programs, or other wildlife-damage management strategies on resident Canada geese when the geese are committing depredations to agricultural crops and when necessary to resolve or prevent injury to agricultural crops or other agricultural interests from resident Canada geese. The program would be restricted to the States in the Atlantic, Central, and Mississippi Flyways. Authorized agricultural producers could conduct management and control activities between May 1 and August 31. The destruction of resident Canada goose nests and eggs could take place between March 1 and June 30. All management actions would have to occur on the premises of the depredation area.

Public Health Control Order

This option would establish a control order authorizing States, via the State wildlife agency, to conduct resident Canada goose control and management activities including direct control strategies when resident Canada geese are posing a direct threat to human health. A direct threat to human health is one where a Federal, State, or local public health agency recommends removal of resident Canada geese that the agency has determined pose a specific, immediate human health threat by creating conditions conducive to the transmission of human or zoonotic pathogens. The State could not use this control order for situations in which resident Canada geese were merely causing a nuisance. Management and control activities could only be conducted between April 1 and August 31. The destruction of resident Canada goose nests and eggs could take place between March 1 and June 30. Resident Canada geese could be taken only within the specified area of the direct threat to human health.

Alternative F

This alternative would establish a new regulation with three main program components. The first component

would consist of Alternative E—Control and Depredation Order Management and would be targeted to address resident Canada goose depredation, damage, and conflict management.

The second component would consist of Alternative D—Expanded Hunting Methods and Opportunities and would be targeted to increase the sport harvest of resident Canada geese above that which results from existing September special Canada goose seasons.

The third component would consist of a resident Canada goose population control program, or management take. Management take is defined as a special management action needed to reduce certain wildlife populations when traditional management programs are unsuccessful in preventing injuries from overabundance of the population. The management take program would authorize the Director to enable States to use hunters to harvest resident Canada geese, by way of shooting in a hunting manner, during the August 1 through August 31 period using additional methods of taking resident Canada geese, *i.e.*, allow shooting hours to extend to one-half hour after sunset and remove daily bag limits for resident Canada geese. The intent of the program is to reduce resident Canada goose populations in order to protect personal property and agricultural crops, protect other interests from injury, resolve or prevent injury to people, property, agricultural crops, or other interests from resident Canada geese, and contribute to potential concerns about human health when traditional and otherwise authorized management measures are unsuccessful in preventing injuries. Like Alternative D, the management take component would be restricted to the States in the Atlantic, Central, and Mississippi Flyways.

States participating in the management take program component would be required to annually monitor the spring breeding population in their State in order to assess population status. We would annually assess the overall impact and effectiveness of the management take program on resident Canada goose populations to ensure compatibility with long-term conservation of the resource.

In addition to the three main new components, we would continue the use of special and regular hunting seasons, issued under 50 CFR part 20, and the issuance of depredation permits and special Canada goose permits, issued under 50 CFR 21.41 and 21.26, respectively.

Alternative G

This alternative would establish a general depredation order, allowing any authorized person to conduct damage management activities on resident Canada goose populations either posing a threat to health and human safety or causing damage to personal or public property. The intent of this alternative would be to significantly reduce resident Canada goose populations in areas where conflicts are occurring. The general depredation order could only be implemented between April 1 and August 31, except for the take of nests and eggs which would be additionally allowed in March. This alternative would also include all components of Alternative D—Expanded Hunting Methods and Opportunities. In addition, we would continue the use of special and regular hunting seasons, issued under 50 CFR part 20, and the issuance of depredation permits and special Canada goose permits, issued under 50 CFR 21.41 and 21.26, respectively.

Under this alternative, unlike Alternative Integrated Damage Management and Population Control, the authorization for management activities, would come directly from the Service via this depredation order and the authorized person or entity could implement the provisions of this alternative within the guidelines established by the Service. Persons authorized by the Service under the Depredation Order would not need to obtain authority from the State unless required to do so under State law.

Decision

The Service's decision is to implement the preferred alternative, Alternative F, as it is presented in the final rule. This decision is based on a thorough review of the alternatives and their environmental consequences.

Other Agency Decisions

A Record of Decision will be produced by APHIS/WS. The responsible officials at APHIS/WS will adopt the FEIS.

Rationale for Decision

As stated in the CEQ regulations, "the agency's preferred alternative is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors." The preferred alternative has been selected for implementation based on consideration of a number of environmental, regulatory, and social factors. Based on our analysis, the preferred alternative would be more effective than the current program; is

environmentally sound, cost effective, and flexible enough to meet different management needs around the country; and does not threaten the long-term sustainability of resident Canada goose populations or populations of any other natural resource.

Alternative F (Integrated Damage Management and Population Control) was selected because increased lethal and nonlethal activities would be expected to significantly decrease the number of injurious resident Canada geese in specific localized areas, especially airports and military airfields, agricultural areas, urban/suburban areas subjected to nest and egg removal, and public health threat areas. Further, expanded hunting opportunities inside the existing hunting frameworks and additional management take outside the sport hunting frameworks would help decrease populations and injuries on a more regional and statewide scale, compared to site-specific management activities. Regionally and nationally, we expect resident Canada goose populations would gradually return to levels that we, the Flyway Councils, and the States believe are more compatible with human activities, especially in those high-conflict areas related to public health and safety, agricultural depredation, and urban and suburban areas. The long-term viability of goose populations and other Federally-protected species would not be affected.

We did not select the No Action Alternative (Alternative A) because in recent years it has become clear from public and professional feedback that the status quo is not adequately resolving resident Canada goose conflicts for many stakeholders or reducing the population. Furthermore, our environmental analysis indicated that growth rates were more likely to be reduced and conflicts were more likely to be resolved under other options than under the No Action Alternative. Alternatives that were either strictly, or largely, nonlethal control and management (Alternatives B and C) were not selected because our analysis indicated that population growth and resultant injury would continue and be more pronounced than under the No Action alternative. We did not select the General Depredation Order Alternative (G) because, while environmentally the impacts were similar to those under our selected alternative, practically and administratively the impacts were much different. Under the General Depredation Order Alternative, the State's role would be significantly diminished in decisions regarding resident Canada goose management,

unless they decided on their own to become involved, and we believe this would not be in the best interest of either the resource or the affected entities.

We did select the Expanded Hunting Methods and Opportunities Alternative (D) and the Control and Depredation Order Management Alternative (E), but we combined the components of both alternatives with other components into our selected Alternative F.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby amend parts 20 and 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

1. The authority citation for part 20 is revised to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Amend § 20.11 by adding paragraph (n) to read as follows:

§ 20.11 What terms do I need to understand?

(n) Resident Canada geese means Canada geese that nest within the lower 48 States in the months of March, April, May, or June, or reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August.

3. Revise paragraphs (b) and (g) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. However, this restriction does not apply during:

(1) A light-geese-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri,

Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) A season only for Canada geese during the period of September 1 to September 15 when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. However, this restriction does not apply during:

(1) A light-geese-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) A season only for Canada geese during the period of September 1 to September 15 when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

PART 21—[AMENDED]

4. The authority citation for part 21 is revised to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

5. Amend § 21.3 by revising the definition for "Resident Canada geese" to read as follows:

§ 21.3 Definitions.

Resident Canada geese means Canada geese that nest within the lower 48 States in the months of March, April, May, or June, or reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August.

6. Amend subpart D by revising the title to read as follows:

Subpart D—Control of Depredating and Otherwise Injurious Birds

7. Add § 21.49 to subpart D to read as follows:

§ 21.49 Control order for resident Canada geese at airports and military airfields.

(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 control order for resident Canada geese at airports, and what is its purpose? The airport control order authorizes managers at commercial, public, and private airports (airports) (and their employees or their agents) and military air operation facilities (military airfields) (and their employees or their agents) to establish and implement a control and management program when necessary to resolve or prevent threats to public safety from resident Canada geese. Control and management activities include indirect and/or 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 control strategies.

(c) Who may participate in the program? To be designated as an airport that is authorized to participate in this program, an airport must be part of the National Plan of Integrated Airport Systems and have received Federal grant-in-aid assistance, or a military airfield, meaning an airfield or air station that is under the jurisdiction, custody, or control of the Secretary of a

military department. Only airports and military airfields in the lower 48 States and the District of Columbia are eligible to conduct and implement the various resident Canada goose control and management program components.

(d) *What are the restrictions of the control order for resident Canada geese at airports and military airfields?* The airport control order for resident Canada geese is subject to the following restrictions:

(1) Airports and military airfields should use nonlethal goose management tools to the extent they deem appropriate. To minimize lethal take, airports and military airfields should follow this procedure:

(i) Assess the problem to determine its extent or magnitude, its impact on current operations, and the appropriate control method to be used.

(ii) Base control methods on sound biological, environmental, social, and cultural factors.

(iii) Formulate appropriate methods into a control strategy that uses several control techniques rather than relying on a single method.

(iv) Implement all appropriate nonlethal management techniques (such as harassment and habitat modification) in conjunction with take authorized under this order.

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

- (A) Egg oiling,
- (B) Egg and nest destruction,
- (C) Shooting,
- (D) Lethal and live traps,
- (E) Nets,
- (F) Registered animal drugs, pesticides, and repellants,
- (G) Cervical dislocation, and
- (H) CO₂ 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, 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) Airports and military airfields may conduct management and control activities, involving the take of resident Canada geese, under this section between April 1 and September 15. The

destruction of resident Canada goose nests and eggs may take place between March 1 and June 30.

(4) Airports and military airfields 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. Airports/military airfields, 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 a 3-mile radius of the airport or military airfield. Airports and military airfields or their agents must first obtain all necessary authorizations from landowners for all management activities conducted outside the airport or military airfield's boundaries and be in compliance with all State and local laws and regulations.

(6) Nothing in this section authorizes the killing of resident Canada geese or 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 airport or military airfield possesses the appropriate State or Tribal authorization or other permits required by the State or Tribe. Moreover, this section does not authorize the killing of any migratory bird species or destruction of their nest or eggs other than resident Canada geese.

(7) Authorized airports and military airfields, and their employees and agents operating under the provisions of this section may not use decoys, calls, or other devices to lure birds within gun range.

(8) Airports and military airfields exercising the privileges granted by this section must submit an annual report summarizing activities, including the date and numbers and location 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.

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

(10) Airports and military airfields 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, airports and military airfields 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 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 woolly 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.

(e) *Can the control order be suspended?* We reserve the right to suspend or revoke an airport's or military airfield's authority under this control order if we find that the terms and conditions specified in the control order have not been adhered to by that airport or military airfield. 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.

(f) *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.

■ 8. Add § 21.50 to subpart D to read as follows:

§ 21.50 Depredation order for resident Canada geese nests and eggs.

(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 depredation order for resident Canada geese nests and eggs, and what is its purpose?* The nest and egg depredation order for resident Canada geese authorizes private landowners and managers of public lands (landowners) (and their employees or their agents) to destroy resident Canada goose nests and eggs on property under their jurisdiction when necessary to resolve or prevent injury to people, property, agricultural crops, or other interests.

(c) *Who may participate in the depredation order?* Only landowners

(and their employees or their agents) in the lower 48 States and the District of Columbia are eligible to implement the resident Canada goose nest and egg depredation order.

(d) *What are the restrictions of the depredation order for resident Canada goose nests and eggs?* The resident Canada goose nest and egg depredation order is subject to the following restrictions:

(1) Before any management actions can be taken, landowners must register with the Service at <http://www.fws.gov/permits/mbpermits/gooseeggregistration.html>. Landowners must also register each employee or agent working on their behalf. Once registered, landowners or their agents will be authorized to act under the depredation order.

(2) Landowners authorized to operate under the depredation order must use nonlethal goose management techniques to the extent they deem appropriate in an effort to minimize take.

(3) Methods of nest destruction or take are at the landowner's discretion from among the following:

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

(ii) Removal and disposal of eggs and nest material.

(4) Landowners authorized to operate under the depredation order may conduct resident Canada goose nest and egg destruction activities between March 1 and June 30.

(5) Landowners authorized to operate under the depredation order may possess, transport, and dispose of resident Canada goose nests and eggs taken under this section. Landowners authorized to operate under the program may not sell, offer for sale, barter, or ship for the purpose of sale or barter any resident Canada goose nest or egg taken under this section.

(6) Landowners exercising the privileges granted by this section must complete an annual report summarizing activities, including the date, numbers, and location of nests and eggs taken by October 31 of each year at <http://www.fws.gov/permits/mbpermits/gooseeggregistration/report.html> before any subsequent registration for the following year.

(7) Nothing in this section authorizes the destruction of resident Canada goose nests or the take of resident Canada goose 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 landowner

is authorized to operate under the program and possesses the appropriate State or Tribal permits, when required. Moreover, this section does not authorize the killing of any migratory bird species or destruction of their nest or eggs other than resident Canada geese.

(8) Landowners 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, landowners 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 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 woolly 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.

(e) *Can the depredation order be suspended?* We reserve the right to suspend or revoke this authorization for a particular landowner if we find that the landowner has not adhered to the terms and conditions specified in the depredation order. 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 goose populations no longer need to be reduced in order to resolve or prevent injury to people, property, agricultural crops, or other 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.

■ 9. Add § 21.51 to subpart D to read as follows:

§ 21.51 Depredation order for resident Canada geese at agricultural facilities.

(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 depredation order for resident Canada geese at agricultural*

facilities, and what is its purpose? The depredation order for resident Canada geese at agricultural facilities authorizes States and Tribes, via the State or Tribal wildlife agency, to implement a program to allow landowners, operators, and tenants actively engaged in commercial agriculture (agricultural producers) (or their employees or agents) to conduct direct damage management actions such as nest and egg destruction, gosling and adult trapping and culling programs, or other lethal and non-lethal wildlife-damage management strategies on resident Canada geese when the geese are committing depredations to agricultural crops and when necessary to resolve or prevent injury to agricultural crops or other agricultural interests from resident Canada geese.

(c) *Who may participate in the depredation order?* State and Tribal wildlife agencies in the following States may authorize agricultural producers (or their employees or agents) to conduct and implement various components of the depredation order at agricultural facilities in the Atlantic, Central, and Mississippi Flyway portions of these States: Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

(d) *What are the restrictions of the depredation order for resident Canada geese at agricultural facilities?* The depredation order for resident Canada geese at agricultural facilities is subject to the following restrictions:

(1) Only landowners, operators, and tenants (or their employees or agents) actively engaged in commercial activities (agricultural producers) so designated by the States may act under this order.

(2) Authorized agricultural producers should use nonlethal goose management tools to the extent they deem appropriate. To minimize lethal take, agricultural producers should adhere to the following procedure:

(i) Assess the problem to determine its extent or magnitude, its impact to current operations, and the appropriate control method to be used.

(ii) Base control methods on sound biological, environmental, social, and cultural factors.

(iii) Formulate appropriate methods into a control strategy that uses the approach/concept that encourages the use of several control techniques rather than relying on a single method.

(iv) Implement all appropriate nonlethal management techniques (such as harassment and habitat modification) in conjunction with take authorized under this order.

(3)(i) Methods of take for the control of resident Canada geese are at the State's or Tribe's discretion 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) CO₂ 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.

(4) Authorized agricultural producers and their employees and agents may conduct management and control activities, involving the take of resident Canada geese, under this section between May 1 and August 31. The destruction of resident Canada goose nests and eggs may take place between March 1 and June 30.

(5) Authorized agricultural producers 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. Agricultural producers, 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 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).

(6) Resident Canada geese may be taken only on land which an authorized agricultural producer personally controls and where geese are committing depredations to agricultural crops.

(7) Authorized agricultural producers, and their employees and agents, operating under the provisions of this section may not use decoys, calls, or other devices to lure birds within gun range.

(8) Any authorized agricultural producer exercising the privileges of this section must keep and maintain a log 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.

■ 10. Add § 21.52 to subpart D to read as follows:

§ 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) CO₂ 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 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 woolly 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.

■ 11. Add § 21.61 to subpart E to read as follows:

§ 21.61 Population control of resident Canada geese.

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

(b) *What is the resident Canada goose population control program, and what is its purpose?* The resident Canada goose population control program is a managed take program implemented under the authority of the Migratory Bird Treaty Act to reduce and stabilize resident Canada goose populations when traditional and otherwise authorized management measures are unsuccessful, not feasible for dealing with, or applicable, in preventing injury to property, agricultural crops, public health, and other interests from resident Canada geese. The Director is authorized to allow States and Tribes to implement a population control, or managed take, program to remedy these injuries. When authorized by the Director, managed take allows additional methods of taking resident Canada geese, allows shooting hours for resident Canada geese to extend to one-half hour after sunset, and removes daily bag limits for resident Canada geese inside or outside the migratory bird hunting season frameworks as described in this section. The intent of the program is to reduce resident Canada goose populations in order to protect personal property and agricultural crops and other interests from injury and to resolve potential concerns about human health. The management and control activities allowed or conducted under the program are intended to relieve or prevent damage and injurious situations. No person should construe this program as opening, reopening, or extending any hunting season contrary to any regulations established under

section 3 of the Migratory Bird Treaty Act.

(c) *What areas are eligible to participate in the program?* When approved by the Director, the State and Tribal wildlife agencies of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming may implement the resident Canada goose population control program components in the Atlantic, Central, and Mississippi Flyway portions of these States.

(d) *What is required in order for State governments to participate in a managed take program?* Following the conclusion of the first full operational year of §§ 21.49 through 21.52 of this part, any wildlife agency from a State listed in 21.61(c) may request approval for the population control program. A request must include a discussion of the State's or Tribe's efforts to address its injurious situations utilizing the methods approved in this rule or a discussion of the reasons why the methods authorized by these rules are not feasible for dealing with, or applicable to, the injurious situations that require further action. Discussions should be detailed and provide the Service with a clear understanding of the injuries that continue, why the authorized methods utilized have not worked, and why methods not utilized could not effectuate resolution of the injuries. A State's request for approval may be for an area or areas smaller than the entire State. Upon written approval by the Director, any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, resident Canada geese under the following conditions:

(1) Activities conducted under the managed take program may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities may be conducted under this section only between August 1 and August 30.

(3) Control measures employed through this section may be implemented only between the hours of one-half hour before sunrise to one-half hour after sunset.

(4) Nothing in the program may limit or initiate management actions on Federal land without concurrence of the Federal agency with jurisdiction.

(5) States and Tribes must designate participants who must operate under the conditions of the managed take program.

(6) States and Tribes must inform participants of the requirements/conditions of the program that apply.

(7) States and Tribes must keep annual records of activities carried out under the authority of the program. Specifically, information must be collected on:

(i) The number of individuals participating in the program;

(ii) The number of days individuals participated in the program;

(iii) The total number of resident Canada geese shot and retrieved during the program; and

(iv) The number of resident Canada geese shot but not retrieved. The States and Tribes must submit an annual report summarizing activities conducted under the program and an assessment of the continuation of the injuries on or before June 1 of each year to the Chief, Division of Migratory Bird Management, 4401 North Fairfax Drive, ms-MBSP-4107, Arlington, Virginia 22203.

(e) *What is required for individuals to participate in the program?* Individual participants in State and Tribal programs covered by the managed take program must comply with the following requirements:

(1) Participants must comply with all applicable State and Tribal laws or regulations including possession of whatever permit(s) or other authorization(s) may be required by the State or Tribal government concerned.

(2) Participants who take resident Canada geese under the program may not sell or offer for sale those birds or their plumage, but may possess, transport, and otherwise properly use them.

(3) Participants must permit at all reasonable times, including during actual operations, any Service special agent or refuge officer, State or Tribal wildlife or deputy wildlife agent, warden, protector, or other wildlife law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted and must promptly furnish whatever information an officer requires concerning the operation.

(4) Participants may take resident Canada geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine

gun, fish hook, poison, drug, explosive, or stupefying substance.

(ii) From or by means, aid, or use of a sinkbox or any other type of low-floating device, having a depression affording the person a means of concealment beneath the surface of the water.

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegic persons and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance.

(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds.

(v) By the use or aid of live birds as decoys. No person may take resident Canada geese on an area where tame or captive live geese are present unless such birds are, and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of resident Canada geese.

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of resident Canada geese.

(vii) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited as described in § 20.11(j) and (k) of this part. Resident Canada geese may not be taken on or over lands or areas that are baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation as described in § 20.11(h) and (l) of this part. However, nothing in this paragraph prohibits the taking of resident Canada geese on or over the following lands or areas that are not otherwise baited areas:

(A) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds

or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice as described in § 20.11(g), (i), (l), and (m) of this part;

(B) From a blind or other place of concealment camouflaged with natural vegetation;

(C) From a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing, or scattering of grain or other feed; or

(D) Standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(E) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tungsten-nickel iron, or other shots that are authorized in § 20.21(j) of this part.

(f) *Under what conditions would we suspend the managed take program?* Following authorization by the Director, we will annually assess the overall impact and effectiveness of the program on resident Canada goose populations to ensure compatibility with long-term conservation of this resource. If at any time evidence is presented that clearly demonstrates that resident Canada geese populations no longer need to be reduced in order to allow resolution or prevention of injury to people, property, agricultural crops, or other interests, the Director, in writing, will suspend the program for the resident Canada goose population in question. However, resumption of injuries caused by growth of the population and not otherwise addressable by the methods available in part 21 may warrant reinstatement of such regulations. A State must reapply for approval, including the same information and discussions noted in 21.61(d). Depending on the location of the injury or threat or injury, the Director, in writing, may suspend or reinstate this authorization for one or more resident Canada goose populations, but not others.

(g) *What population information is the State or Tribe required to collect concerning the resident Canada goose managed take program?* Participating States and Tribes must provide an annual estimate of the breeding population and distribution of resident Canada geese in their State. The States

and Tribes must submit this estimate on or before August 1 of each year, to the Chief, Division of Migratory Bird Management, 4401 N. Fairfax Dr., MBSP-4107, Arlington, Virginia 22203.

(h) *What are the general program conditions and restrictions?* The program is subject to the conditions elsewhere in this section, and, unless otherwise specifically authorized, the following conditions:

(1) 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.

(2) States 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 section 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, States 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.

(i) *Has the Office of Management and Budget (OMB) approved the information collection requirements of the program?* OMB has approved the information collection and recordkeeping requirements of the program 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.

Dated: July 6, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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