

**1 Supporting Statement A for
Paperwork Reduction Act Submission
OMB Control Number 1018-0146**

**Depredation Order for Blackbirds, Grackles, Cowbirds, Magpies, and Crows
50 CFR 21.43**

Note: When we published the proposed rule, we requested that OMB assign a new control number because the currently approved collection was undergoing renewal. OMB renewed approval in December 2013. Therefore, we are revising 1018-0146 and will not use the new number (1018-0155). OMB filed a comment on the proposed rule, directing us to resubmit at the final rule stage.

1. Explain the circumstances that make the collection of information necessary.

The Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703 et seq.) implements four treaties concerning migratory birds that the United States has signed with Canada, Mexico, Japan, and Russia. Under the treaties, we must preserve most species of birds in the United States, and activities involving migratory birds are prohibited except as authorized by regulation.

This information collection is associated with our regulations that implement the MBTA. 50 CFR 21.43 is a depredation order for blackbirds, cowbirds, grackles, crows and magpies that authorizes take of these birds "when found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance." The regulations authorize control of some species of blackbirds, cowbirds, grackles, crows, and magpies that may be injurious to crops or livestock, or may cause human health hazards or other nuisances. We have prepared a final rule that:

- Removes the yellow-billed magpie (*Pica nuttalli*) from the depredation order. This species is endemic to California and has suffered substantial population declines. It is a species of conservation concern. Individuals and organizations needing to deal with depredating yellow-billed magpies can apply for a depredation permit under 50 CFR 21.41. Depredation permits are covered under OMB Control Number 1018-0022.
- Limits application of this depredation order, which currently covers protecting all wildlife, to only allow take without a permit for protection of threatened or endangered species. Take to protect other species of wildlife can be allowed under depredation permits.
- Adds conditions for live trapping, which are not currently included in the regulation.
- Adds requirement that when an injured or debilitated bird of a nontarget species is federally listed as an endangered, threatened, or candidate species must be delivered to a rehabilitator and the take must be reported to the nearest U.S. Fish and Wildlife Service Field Office or Special Agent.
- Revises the reporting requirements at 50 CFR 21.43(i) to gather data that will be more useful in assessing actions taken under the order.
- Allows three methods of euthanasia considered humane by the American Veterinary Medical Association.

2. Indicate how, by whom, how frequently, and for what purpose the information is to be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, explain how the collection complies with all applicable Information Quality Guidelines.

All persons or entities acting under the depredation order at 50 CFR 21.43 must provide an annual report. We will use FWS Form 3-202-21-2143 to collect the information for the annual report. We collect the name, address, phone number, and email address of each person operating under the Order and the following information for each species:

- Species collected.
- Number taken.
- Month taken.
- County and State.
- Method of take.
- Purpose of the take.
- Disposition of nontarget species.
- Whether captured nontarget species were released, sent to rehabilitators, or died.
- Nonlethal control methods attempted.

We also require that when an injured or debilitated bird of a nontarget species is federally listed as an endangered, threatened, or candidate species, it must be delivered to a rehabilitator and the take must be reported to the nearest U.S. Fish and Wildlife Service Field Office or Special Agent.

To effectively manage migratory bird populations, we need to collect this information so that we can determine how many birds of each species are taken each year and whether the control actions are likely to affect the populations of those species.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection.

Those who undertake control activities under this regulation must submit an annual report. FWS Form 3-202-21-2143 will be available on our website in a fillable format. We will not require that respondents use the form, but they must submit the required information. Respondents may submit reports electronically by email or through the mail.

4. Describe efforts to identify duplication.

No other agency has the authority to regulate take of migratory birds, and the information we propose to collect is not being gathered elsewhere.

5. If the collection of information impacts small businesses or other small entities, describe the methods used to minimize burden.

This collection will not have a significant impact on small entities. We collect only the minimum information necessary to manage these migratory birds.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Not collecting the information would not affect the depredation order. However, we need the information to assess the take it allows. The information also may allow us to eliminate take of some species under the order.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no circumstances that require us to collect the information in a manner inconsistent with OMB guidelines.

8. Provide the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice (or in response to a PRA statement) and describe actions taken by the agency in response to these comments.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

On May 13, 2013, we published a proposed rule (78 FR 27930) to revise the regulations governing control of depredating blackbirds, cowbirds, grackles, crows and magpies. We solicited comments on the information collection requirements for 30 days, ending on June 12, 2013. All comments received posted on www.regulations.gov and are discussed in the preamble of the final rule. We received the following comments on

the information collection requirements:

Comment: The proposed rule's section on nonlethal control efforts could be clarified with an explanation of the documentation required regarding the manner in which nonlethal methods were attempted and deemed ineffective. Annual reports submitted under this depredation order should be required to include this information as well.

Response: In the final rule, paragraph (b)(6) specifies that nonlethal control actions must be attempted each calendar year before lethal take is conducted by private citizens. The annual report for activities undertaken under this order requires simple information on nonlethal control methods attempted.

Comment: One commenter stated that to ensure compliance, further clarification may be needed regarding how detailed the reporting needs to be in describing methods utilized to reduce the capture of nontargets. Another commenter stated that the proposed rule would require that a landowner attempt to use nonlethal control of migratory bird depredation, but it is unclear what constitutes an "attempt." It is important to recognize that lethal control can frequently be a significant part of a deterrent program. Often, nonlethal control methods become ineffective, and without continued lethal control as a part of a vertebrate pest management program, nonlethal actions will not work. The proposed changes to the regulations are unclear whether or not lethal control methods could be ongoing.

Response: The final rule revises the regulations to allow lethal control by private individuals, with the condition that nonlethal control must be attempted each calendar year before lethal control is undertaken. If nonlethal control methods are ongoing, they need to be documented on the annual report, which does not need to be detailed. The reporting form provides space for descriptions of methods used, such as "abatement raptors flown daily from 1 April through 31 May," or "netting placed over livestock feed from 1 November through 30 April." We added examples of possible nonlethal control methods to 50 CFR 21.43(b)(6).

Comment: Farm Bureau is opposed to the additional information that would be required in the annual reporting requirements included in the proposal. This reporting requirement would lead to a requirement that farmers self-incriminate, if they accidentally take a nontarget species in violation of the MBTA.

Response: The reporting requirements proposed and in the final rule are the same as would be required of a depredation permittee. Intentional take of species not covered under the depredation order, or flagrant disregard of the prohibition on take of other species, would be grounds

for prosecution. The Service compiles information on accidental take of other species to determine if particular species are at risk due to control actions taken under the depredation order.

Comment: Farm Bureau recognizes the importance of conserving at-risk species and recognizes that information on accidental losses of these species would be helpful in improving their conservation. However, the risk that the proposed reporting requirements place on California farmers could be significant and could create an onerous paperwork burden. In addition to providing species and timing information, agricultural producers would be forced to disclose personal information about themselves and their operations. Farm Bureau opposes incorporating personal information. To address reporting concerns, we suggest creating a reporting requirement that allows agricultural producers to work cooperatively with their county agriculture commissioners to gather such information and submit it in an aggregate fashion. Providing an aggregate report, without individual identifying information, would provide the necessary information to improve species conservation without jeopardizing California farmers.

Response: The information on the report form requires disclosure of limited information that often is publically available: name, address, telephone number, and email address. For private individuals, this information will not be disclosed to others. The information required on the report form will help the Service determine take of the species covered under the order, take of nontarget species, the locations of take, the methods of take, and the effectiveness of nonlethal control measures.

Comment: One commenter believes the increased reporting requirements are justified to allow the Service to receive quality data, and believes the benefit of increased data reporting outweighs the burden on permittees. APHIS WS states that in the proposed rule, the Service estimates it will take 30 minutes to comply with the annual reporting requirements, but if the Service expands the reporting requirements as proposed, the estimated time to comply would be at least 4 hours to collect the information throughout the year and summarize it in the required report. While APHIS WS already collects some of the data as part of its internal reporting requirements, program personnel would still have to pull the data from our internal Management Information System and provide it in the required format.

Response: We recognize that APHIS WS personnel may undertake much more trapping than many entities that might control depredation under the order. However, until we gather data on reporting times, we stand by our estimate of the average reporting time for all respondents.

Comment: APHIS WS recommended that reporting requirements be confined to nontarget take details only. If the intent of the proposed rule is to gather needed information about nontarget capture and the effects of trapping activities on nontarget species, then the newly proposed reporting requirements should be limited only to those species. Based on the language in the proposed rule, it is not clear that the collection of information regarding all species controlled under the depredation order would have sufficient utility to warrant the additional time spent recording the data in the required FWS format.

Response: We disagree. It is important to know about nontarget take, but it is equally important for us to be able to compile information on the take of the species covered under the regulation. The annual report will require information on take of both target and nontarget species.

Comment: APHIS WS believes that the Global Positioning System (GPS) requirement in the proposed rule may be onerous to farmers and other nongovernmental entities. The expense of having to purchase a GPS device could be burdensome to some individuals. Also, there should be consideration given to the fact that some individuals may lack the training or knowledge to properly use such devices.

Response: We removed the requirement for GPS coordinates that was in the proposed rule. The annual report will require only the name of the county in which control activities were undertaken.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We do not provide payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

We do not provide any assurance of confidentiality.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

We do not ask questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

We estimate that we will receive 35 responses totaling 81 annual burden hours. Each annual report will take approximately 2.5 hours to complete. Each take report will require about 1 hour to complete. These estimates include time necessary to gather and maintain the information and review the report.

We estimate the annual dollar value of the burden hours to be \$3,309 (rounded). We used

information from the Bureau of Labor Statistics to estimate average hourly wages and calculate benefits:

- Individuals – We used the wage and salary costs for all workers from Table 1, USDL 14-1673, September 10, 2014 (Employer Costs for Employee Compensation-June 2014), which states an hourly rate of \$21.95. To calculate benefits, we multiplied the hourly rate by 1.4. The hourly rate including benefits is \$38.73.
- Private Sector – Based on the Bureau of Labor Statistics, Occupational Employment and Wages, May 2013, United States (19-1023 Zoologists and Wildlife Biologists), the mean hourly wage for a wildlife biologist is \$30.10. We multiplied the hourly wage by 1.4 to account for benefits in accordance with BLS news release USDL 14-1673. The hourly rate including benefits is \$42.15.
- State Government – For purposes of this collection, we used the same hourly wage (\$30.10) as for the private sector. To calculate benefits, we multiplied the hourly rate by 1.5. The hourly rate including benefits is \$45.15.

Activity	Annual Responses	Completion Time per Response (hours)	Annual Burden Hours	Hourly Labor Costs Including Benefits	Dollar Value of Annual Burden Hours
Take Report					
Individuals	1	1	1	\$38.73	\$ 38.73
Private Sector	1	1	1	42.15	42.15
Govt	3	1	3	45.15	135.45
Subtotal	5		5		\$ 216.33
Annual Report					
Individuals	5	2.5	13	\$38.73	\$ 503.49
Private Sector	5	2.5	13	42.15	547.95
Govt	20	2.5	50	45.15	2,257.50
Subtotal	30		76		
Total	35		81		\$3,308.94

13. Provide an estimate of the total annual [nonhour] cost burden to respondents or recordkeepers resulting from the collection of information.

There is no nonhour cost burden to respondents.

14. Provide estimates of annualized costs to the Federal Government.

The estimated annual cost to the Federal Government for reviewing and processing reports associated with this collection of information is \$1,109 (rounded). Staff in the migratory bird offices in each of our Regional Offices receive and process the reports. We used the Office of Personnel Management 2014-DCB as an average pay rate nationwide. The hourly salary rate for a GS-12/step 5 Fish and Wildlife Service permits biologist is \$41.07. We multiplied the hourly wage by 1.5 to account for benefits in accordance BLS news release USDL 14-1673, resulting in a total hourly average rate of \$61.61. We estimate it will take staff 1/2 hour to review and process each report (total of 18 hours).

Action	Position and Grade	Average Hourly Rate including Benefits	Estimated Number of Responses	Total Annual Hours	Annual Cost*
Review and process annual and take reports	Biologist, GS 12/5	\$61.61	35	18	\$1,109

*rounded

15. Explain the reasons for any program changes or adjustments.

We are reporting 35 annual responses totaling 81 burden hours, which is an increase of 5 responses and 21 annual burden hours from our previous submission. We are reporting as a program change:

- 18 annual burden hours associated with new reporting requirements for annual reports.
- 5 responses and 5 annual burden hours associated with the new take report.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

We will not publish the results of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

We will display the OMB control number and expiration date on appropriate materials.

18. Certification.

There are no exceptions to the certification statement.