

**1 Supporting Statement A for
Paperwork Reduction Act Submission**

**Depredation Orders Under 50 CFR 21.43 and 21.46
OMB Control Number 1018-0146**

Note: None

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

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 conserve most species of birds in the United States. Under the MBTA, it is unlawful to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter migratory birds or their parts, nests, or eggs except as authorized by regulation. This information collection is associated with our regulations that implement the MBTA.

In 1949, the US Fish and Wildlife Service (Service, we) issued a regulation at 50 CFR 21.43 establishing a depredation order that authorize the take of blackbirds, cowbirds, crows, grackles, and magpies under certain circumstances. This regulation imposes reporting and recordkeeping requirements. 50 CFR 21.43 authorizes take of blackbirds, cowbirds, grackles, crows and magpies "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."

In 1974, the Service issued a regulation at 50 CFR 21.46 establishing a depredation order that authorizes the take of scrub jays and Steller's jays in Washington and Oregon under certain circumstances. This regulation imposes reporting and recordkeeping requirements. 50 CFR 21.46 authorizes take of scrub jays and Steller's jays "when found committing or about to commit serious depredations to nut crops on the premises owned or occupied by such persons."

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

The regulations at 50 CFR 21.43 and 21.46 impose reporting and recordkeeping requirements via FWS Forms 3-202-21-2143 and 3-2500. We use the information to:

- Identify the person or entity acting under this depredation order,
- Help assess the impact of the depredation orders on blackbird, cowbird, crow, grackle, and magpie populations (21.43), and scrub jay and Steller's jay populations (21.46),
- Assess the impact to non-target migratory birds or other species,
- Ensure that agencies and individuals operate in accordance with the terms, conditions, and purpose of the orders,
- Help gauge the effectiveness of the orders at mitigating blackbird, cowbird, crow, grackle, and magpie-related damages (21.43), and scrub jay and Steller's jay-related damages (21.46), and

- Inform us as to whether there are areas in which control activities are concentrated and might be conducted more efficiently.

ANNUAL REPORT – 50 CFR 21.43 (FWS Form 3-202-21-2143)

“Depredation Order for Blackbirds, Cowbirds, Grackles, Magpies, and Crows”

All persons or entities acting under the depredation order at 50 CFR 21.43 must provide an Annual Report (FWS Form 3-202-21-2143). Capture and disposition of all non-target migratory birds, including Endangered, Threatened, or Candidate species must be reported on the Annual Report. In addition to the name, address, phone number, and email address of each person or entity operating under the Order, we collect the following information for each target and non-target species taken:

- Species taken.
- Number taken.
- Month and year taken.
- State and county where birds were taken.
- Purpose of the take (Crop or Animal Species)
- Disposition of non-target species (Released, sent to rehab, etc.)

ANNUAL REPORT – 50 CFR 21.46 (FWS Form 3-2500) – *NEW IC*

“Depredation Order for Depredating Jays in Washington and Oregon”

In 2013, we published a proposed rule to remove the regulations under 50 CFR 21.46. Because we had not received reports of activities undertaken under this regulation in the previous 15 years, it appeared as if the regulation was unused. Comments submitted on this proposed rule stated that the regulation was in fact being used; however, many users either were unaware of the reporting requirement, or were confused by the reporting requirements. In order to clarify the reporting requirements of 50 CFR 21.46, we developed an annual report form (3-2500) that clearly outlines the information requested for use only in the States of Washington and Oregon. It is expected that the availability of this form will increase the number of reports received, providing a more accurate picture of how this regulation is used.

All persons or entities acting under the depredation order at 50 CFR 21.46 must provide an Annual Report (FWS Form 3-2500). Capture and disposition of all non-target migratory birds, including Endangered, Threatened, or Candidate species must be reported on the Annual Report. In addition to the name, address, phone number, and email address of each person or entity operating under the Order, we collect the following information for each target and non-target species taken:

- Species taken.
- Number taken.
- Month taken.
- County and State where birds were taken.
- Purpose of the take (Crop species)
- Disposition of non-target species (Released, sent to rehab, etc.)

RECORDKEEPING REQUIREMENTS – 50 FR 13.48:

Persons and entities operating under this order must keep accurate records to complete Forms 3-202-21-2143 and 3-2500. The records must be legibly written or reproducible in English of any

taking and maintained for five years after they have ceased the activity authorized by this Order. Persons or entities who reside or are located in the United States and persons or entities conducting commercial activities in the United States who reside or are located outside the United States must maintain records at a location in the United States where the records are available for inspection.

NOTE: Based on our outreach documented in question 8, we increased the burden for the recordkeeping requirement associated with the Annual Report (FWS Form 3-202-21-2143) from 1 hour to 2 hours (in addition to increasing the reporting burden from 1.5 hours to 2 hours), for a total of 4 hours per submission.

ENDANGERED, THREATENED, AND CANDIDATE SPECIES TAKE REPORT - 50 CFR 21.43 & 50 CFR 21.46

If attempts to trap any species under this order injure birds federally listed as Endangered, Threatened, or is a Candidate for listing, it must be delivered to a rehabilitator and must be reported by phone or email to the nearest U.S. Fish and Wildlife Service Field Office or Special Agent. Capture and disposition of all non-target migratory birds must also be reported on the annual report.

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. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.

Those who undertake control activities under these regulations must submit an Annual Report using FWS Form 3-202-21-2143 or FWS Form 3-2500. These forms will be available on the Service's website in a fillable format (<http://www.fws.gov/forms/>). 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.

50 CFR 21.43: We anticipate the following electronic submissions of the Annual Report:

- Individuals and private sector categories – 50%
- Government category - 75%

50 CFR 21.46: We anticipate the following electronic submissions of the Annual Report:
Individuals and private sector categories – 10%

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

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 any 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 on the species included under this depredation order and determine if some species should be removed from this 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.

Persons and entities operating under this order must report take of bird listed as Threatened, Endangered, or are Candidates for Listing prior to reporting this take on their Annual Report. There are no other circumstances that require us to collect the information in a manner inconsistent with OMB guidelines.

The regulation at 50 CFR §13.46, Maintenance of records, requires records to be kept for a period of five years.

8. If applicable, provide a copy and identify 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 and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

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.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On July 3, 2017, we published in the *Federal Register* (82 FR 30884) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on September 2, 2017. We received one comment in which the commenter objected to the collection of this information, but did not specifically address the information collection requirements. We did not make any changes to our requirements as a result of that comment.

In addition to the Federal Register Notice, we consulted with the nine (9) individuals identified in Table 8.1 who familiar with this collection of information in order to validate our time burden estimate and asked for comments on the questions below:

Table 8.1

Organization	Title
Federal Agency	Natural Resources Program Manager
Cattle Ranch	Ranch Foreman
Municipal Airport	Airport Operations Manager
Federal Agency	State Director
State Agency	Wildlife Biologist
State Agency	Wildlife Biologist
N/A	Private Individual
N/A	Private Individual
N/A	Private Individual

“Whether or not the collection of information is necessary, including whether or not the information will have practical utility; whether there are any questions they felt were unnecessary”

Comments: All persons contacted were appreciative of the existence of the depredation order and complimentary on the form. They use the information collected to assess the efficacy of their management actions to achieve their desired management goals. The form is clear and easy to use and provides a convenient method for them to keep records as well as providing the required report to the Service. They did clarify that the burden to keep the records is equal to the effort to prepare and submit the report to the Service.

FWS Response/Action Taken: In response to the comments, we increased the estimated burden on the public to 2 hours for recordkeeping and 2 hours for reporting (for a total of 4 hours annual burden for each respondent).

“The accuracy of our estimate of the burden for this collection of information”

Comments: Though the report form was reported a clear and easy to use, the time required

for keeping records and preparing the report was underestimated.

FWS Response/Action Taken: In response to the comments, we increased the estimated burden on the public to 2 hours for recordkeeping and 2 hours for reporting for a total of 4 hours annual burden for each respondent.

“Ways to enhance the quality, utility, and clarity of the information to be collected”

Comments: All commenters were of the opinion that the form is clear and easy to use.

FWS Response/Action Taken: None.

And

“Ways to minimize the burden of the collection of information on respondents”

Comments: All commenters thought the information collection was necessary for them to manage their programs and achieve the goals of their program. They were not aware of any way to reduce the burden of this information collection.

FWS Response/Action Taken: None.

On November 4, 2013, we published in the *Federal Register* (78 FR 65953) a proposed rule to remove regulations that set forth the depredation order for migratory birds under 50 CFR 21.46. Because we had not received reports of activities undertaken under this regulation in the last 15 years, it appeared as if the regulation was unused. In that proposed rule, we solicited comments for 90 days, ending on February 3, 2014. We received 8 comments, 3 of which (2 from the same commenter) were in support of the proposed rule removal, and 5 that objected to the proposed rule removal.

Of the 2 commenters in support of the proposed rule removal, 1 did not specifically address this particular depredation order, rather he or she expressed the overall disagreement with lethal take of birds in general; the other expressed general support for removing outdated regulations that are no longer being used.

The 5 commenters that objected to the proposed rule removal provided the following comments:

- The depredation order has provided growers a valuable tool in managing and controlling jays that depredate nut crops.
- It is believed that many, if not most, of the growers were either not aware of the requirement for annual report submission or confused by the reporting requirements.

In 2015, we received 15 annual reports reporting take under 50 CFR 21.46. There were 7 reports received from individuals and 8 reports received from businesses. These respondents had been taking birds under 50 CFR 21.46 for many years; however, were not submitting annual reports because they were unaware of the requirements.

FWS Response/Action Taken: In order to clarify the reporting requirements of 50 CFR 21.46 we developed an annual report form (3-2500) that clearly outlines the information requested. With the availability of this form, we anticipate that the number of reports received will increase or remain constant at the 2015 levels, providing a more accurate picture of how this regulation is used. It is

with that information that we have estimated 10 individual and 10 business respondents each year moving forward.

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. Information is collected and protected in accordance with the Privacy Act (5 U.S.C. § 552a) and the Freedom of Information Act (5 U.S.C. 552). We will maintain the information in a secure System of Records (Permits System–Interior, FWS–21, 68 FR 52610). The information is not publicly available and we only share the information with agencies having a legal interest.

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. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

We do not ask questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- * **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- * **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- * **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

We estimate that we will receive **56 responses** totaling **209 annual burden hours**. We estimate the annual dollar value of the burden hours to be **\$8,362** (rounded). We used the of Bureau of Labor Statistics (BLS) News Release [USDL-17-1222](#), September 8, 2017, Employer Costs for Employee Compensation—June 2017, to calculate the total annual burden.

- Individuals. Table 1 lists the hourly rate for all workers \$35.28, including benefits.
- Private Sector. Table 5 lists the hourly rate for all workers as \$33.26, including benefits.

- Government. Table 3 lists the hourly rate for all workers as \$48.06, including benefits.

Respondent	Activity	Annual No. of Respondents	Number of Submissions Each	Total Annual Responses	Avg. Time per Response (hours)	Total Annual Burden Hours*	Hourly Labor Costs Incl. Benefits	Dollar Value of Annual Burden Hours
Depredation Order Annual Report (FWS Form 3-202-21-2143) 50 CFR 21.43								
Individuals	Reporting	5	1	5	2	10	\$ 35.28	\$ 352.80
	Recordkeeping				2	10	35.28	352.80
Private Sector	Reporting	5	1	5	2	10	33.26	332.60
	Recordkeeping				2	10	33.26	332.60
Government	Reporting	20	1	20	2	40	48.06	1,922.40
	Recordkeeping				2	40	48.06	1,922.40
Subtotals:		30		30		120		\$ 5,215.60
Endangered, Threatened, and Candidate Species Take Report 50 CFR 21.43 and 50 CFR 21.46								
Individuals	Reporting	1	1	1	1	1	35.28	\$ 35.28
Private Sector	Reporting	1	1	1	1	1	33.26	33.26
Government	Reporting	3	1	3	1	3	48.06	144.18
Subtotals:		5		5		5		\$ 212.72
Depredation Order for Depredating Jays in Washington and Oregon (FWS Form 3-2500) 50 CFR 21.46								
Individuals	Reporting	10	1	10	2	20	\$ 35.28	\$ 705.60
	Recordkeeping				2	20	35.28	705.60
Private Sector	Reporting	10	1	10	2	20	33.26	665.20
	Recordkeeping				2	20	33.26	665.20
Government	Reporting	1	1	1	2	2	48.06	96.12
	Recordkeeping				2	2	48.06	96.12
Subtotals:		21		21		84		\$ 2,933.84
Totals:		56		56		209		\$ 8,362.16

13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

- * The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4)

as part of customary and usual business or private practices.

There is no nonhour cost burden to respondents.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

The estimated annual cost to the Federal Government for reviewing and processing reports associated with this collection of information is **\$1,939** (rounded). Staff in the migratory bird offices in each of our Regional Offices receive and process the reports. We used Office of Personnel Management Salary Table [2017-DCB](#) to obtain the most up-to-date hourly rates for staff. We used News Release [USDL-17-0321](#), March 17, 2017, Employer Costs for Employee Compensation—December 2016, and multiplied the hourly wage by 1.6 to account for benefits. We estimate it will take staff 1/2 hour to review and process each report (total of 18 hours).

Action	Position and Grade	Hourly Rate	Fully Burdened Hourly Rate (x 1.6)	Estimated Number of Responses	Total Annual Hours	Annual Cost
Review and process annual and take reports	Biologist , GS 12/5	\$ 43.29	\$ 69.26	56	28	\$ 1,939.28

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

Based on our outreach documented in question 8, we increased the burden for the reporting requirement associated with the Annual Report (FWS Form 3-202-21-2143) from 1.5 hours to 2 hours. We also increased the recordkeeping burden for the Annual Report from 1 hours to 2 hours. The total burden for form 3-202-21-2143 is now 4 hours per submission. As a result, we are reporting a change in adjustment due to agency estimate of 44 hours for the additional time burden.

The title of collection was changed to “Depredation Orders Under 50 CFR 21.43 and 21.46” to incorporate the additional CFR reference of 21.46 covering scrub jay and Steller jay depredation orders. Based on the comments received as documented in question 8, we developed an annual report form (3-2500) for 50 CFR 21.46. It is expected that the availability of this form will increase the number of reports received, providing a more accurate picture of how this regulation is used. As a result of this new IC, we are reporting a change due to agency discretion of 21 annual responses and 84 annual burden hours.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

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. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no exceptions to the certification statement.