

U.S. Fish and Wildlife Service

DRAFT ENVIRONMENTAL ASSESSMENT

REMOVAL OF THE RUSTY BLACKBIRD AND THE
TAMAULIPAS CROW FROM 50 CFR 21.43

DIVISION OF MIGRATORY BIRD MANAGEMENT



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ABSTRACT

In this Draft Environmental Assessment we consider whether to remove the Rusty Blackbird and the Tamaulipas Crow from the list of those species that can be taken “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” under the depredation order at 50 CFR 21.43. We would disallow take of either species without a depredation permit (50 CFR 21.41) or other applicable MBTA permit..

- We propose to remove from the introductory paragraph in § 21.43 “yellow-headed, red-winged, rusty, and Brewer’s blackbirds, cowbirds, all grackles, crows, and magpies,” and replace that list with “Brewer’s, yellow-headed, and red-winged blackbirds; brown-headed, shiny, and bronzed cowbirds; common, great-tailed, greater Antillean, and boat-tailed grackles; American, northwestern, and fish crows; or yellow-billed and black-billed magpies.” This more precise listing of the species that may be taken under the depredation order makes the regulation easier to understand.

- The regulations change also would implement use of nontoxic shot and bullets for all control actions under the depredation order in which firearms are used.

- We also would require reporting on all control actions undertaken under the depredation order.

INTRODUCTION

Because of long-term evidence of population declines throughout much of their ranges, the Rusty Blackbird (*Euphagus carolinus*) and Mexican (now the Tamaulipas) Crow (*Corvus imparatus*) have become species of conservation concern. We propose to remove the Rusty Blackbird and the Tamaulipas Crow from the list of species that may be controlled under the depredation order at 50 CFR 21.43. After these changes, a depredation permit would be necessary to conduct control actions that result in take of these species. We also propose to add a requirement for use of nontoxic shot or bullets if firearms are used to undertake the actions, and to require reporting on all control actions carried out under the depredation order.

PURPOSE AND NEED FOR ACTION

The primary purpose of this Assessment is to review data on the populations of the two species and assess the likely impacts of disallowing control of these two species under the depredation order. Secondly, we consider the impact of the additional requirement for use of nontoxic shot or bullets when firearms are used for control under the depredation order. Adding the reporting requirement has very minimal impacts on the quality of the human environment.

SCOPING AND PUBLIC PARTICIPATION

We will publish this Draft Environmental Assessment for public comment for 90 days. We will consider all comments we receive when we prepare a Final Environmental Assessment.

AUTHORITY AND RESPONSIBILITY

The U.S. Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Part 21 of title 50 of the Code of Federal Regulations covers migratory bird permits. Subpart D deals specifically with the control of depredating birds and presently includes six depredation orders. A depredation order allows the take of certain species of migratory birds for specific purposes without a depredation permit. The depredation order for blackbirds, cowbirds, grackles, crows, and magpies allows take when individuals of an included species are "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.”

AFFECTED ENVIRONMENT

RUSTY BLACKBIRD

The Rusty Blackbird is highly dependent upon wooded wetlands, and breeds further north than any other blackbird in North America. It breeds mainly in Alaska and Canada, and occurs in the contiguous U.S. largely during migration and winter. For a map of the species’ geographic distribution, go to {http://www.birds.cornell.edu/AllAboutBirds/BirdGuide/Rusty_Blackbird_dtl.html#range}. Estimates of the Rusty Blackbird’s global breeding population have varied and continue to vary considerably. A good recent estimate is perhaps 1.3 million (P. Blancher, Environment Canada, unpublished data).

Greenberg and Droege (1999) wrote “All of the evidence to date indicates that the Rusty Blackbird was once abundant but has been experiencing a chronic decline since the mid-1800s. This decline may be accelerating, with total decreases estimated at approximately 90 percent by three independent population surveys.” This evidence of sharp decline, coupled with the species’ low population density, has made it a conservation concern. The Rusty Blackbird is included on both Audubon’s WatchList (National Audubon Society 2008) and the Partners In Flight Watch List (where it is labeled as “moderately abundant or widespread [but] with declines or high threats”; (Rich *et al.* 2004). Additionally, it is labeled a species of “Special Concern” by the Committee on the Status of Endangered Wildlife in Canada and as “Vulnerable” to extinction in the wild by the World Conservation Union (BirdLife International 2004).

Three lines of evidence have raised concerns about the Rusty Blackbird’s population status. First, the species is now rare or absent from at least some boreal forest areas where it was once common (Greenberg and Droege 1999). Second, Breeding Bird Survey (BBS) data indicate that the species has declined dramatically over the past few decades, with the highest rates of decline occurring in the central and eastern portion of the boreal forest. Since 1966, abundance of the Rusty Blackbird has declined by 12.8 percent annually across the BBS survey (Sauer *et al.* 2007). However, BBS survey coverage is concentrated at the southern extent of the Rusty Blackbird’s breeding range and thus the BBS trend may not be representative of the entire population. Third, Christmas Bird Count (CBC) data analysis indicates a 5.1 percent annual decline throughout the species’ winter range from 1965-66 to 2002-03 (Niven *et al.* 2004). CBC data are considered more reliable for detecting changes in Rusty Blackbird abundance than are BBS data because only a small area of the species’ breeding range is covered by BBS routes. A large portion of its winter range is covered by CBC surveys (Machtans *et al.* 2007, Niven *et al.* 2004).

Conversion of wooded wetland habitats on both breeding and wintering grounds compelling explanation for the species' decline. Effects of acid precipitation on the boreal forest (Greenberg and Droege 1999) and dessication of boreal wetlands (Greenberg et al. unpublished data) are other suspected contributing factors.

Avery (1995) noted that Rusty Blackbirds make up less than 1 percent of mixed-species winter roosts and that the effects of roost control on populations are "unknown." However, Greenberg and Droege (1999) speculated that bird control programs are not an important cause of the species' decline.

Despite uncertainty about the significance of blackbird control in the Rusty Blackbird's decline, given the long-term downward trend and special conservation status of the species, any take during roost control is potentially significant. Therefore, we have deemed it justified to remove the Rusty Blackbird from the list of species that may be controlled under the depredation order at 50 CFR 21.43. After this change, a depredation permit (50 CFR 21.41) would be required to take this species.

TAMAULIPAS CROW

In 50 CFR 10.13, the List of Migratory Birds (the bird species protected under the MBTA), the "Mexican Crow" is listed. However, *Corvus imparatus* is currently recognized by the common name "Tamaulipas Crow" by the American Ornithologists' Union Committee on Classification and Nomenclature.

The Tamaulipas Crow is a small, glossy crow of northeast Mexico with a total distribution limited to about 350 miles from the Texas/Mexico border area south to northern Veracruz, Mexico (Howell and Webb 1995). The species frequents semiarid brushlands and can be found in association with humans in villages, ranches, and garbage dumps (Oberholser 1974). The Tamaulipas Crow was first discovered in the United States in August 1968 when three birds were observed near the mouth of the Rio Grande in Cameron County, Texas; a week later, approximately 1,000 birds were seen in the same vicinity (Oberholser 1974, Arvin et al. 1975). Breeding in the United States was first documented in Brownsville, Texas, in 1989, and the species has bred sporadically in that area since then (Brush 2005). Lockwood and Freeman (2004) described the Tamaulipas Crow as such: "Very rare to casual visitor to southern Cameron County, primarily in the vicinity of the Brownsville Sanitary Landfill. Although formerly a common winter resident and very rare summer resident, this species now barely maintains a toe-hold in southern Texas."

Recent observations by ornithologists indicate that the total distribution (and possibly population) of the Tamaulipas Crow may have declined considerably since the late 20th century, although quantitative data are lacking. The species is listed in the "yellow" category on Audubon's WatchList, due to its limited range (National Audubon Society 2008), but has the rank of "Least Concern" on the World Conservation Union's Red List (BirdLife International 2004). However, concerns about rapid population decline in the northern part of its range are too recent to be reflected in the Red List. In the Partners In Flight species assessment database, Tamaulipas

Crow is listed as a Species of Regional Importance and it has the action code rating (the type of conservation action most needed for improving or maintaining current population status) of "Management Attention" (Rocky Mountain Bird Observatory 2005).

Because of the extremely limited distribution of this species in the United States, and its apparent rapid decline in number, we propose to remove the Tamaulipas Crow from the list of species that may be controlled under the depredation order at 50 CFR 21.43. After this change, a depredation permit (50 CFR 21.41) would be required to take this species.

ALTERNATIVES AND THEIR ENVIRONMENTAL CONSEQUENCES

ALTERNATIVE 1

No action. Control of Rusty Blackbirds and Tamaulipas Crows under the depredation order would remain unchanged. Neither a permit for take of the species nor a report on take would be required. There would be no requirement to use nontoxic shot for control actions with firearms under the depredation order. The consequences of this action would be that take of the species could continue under the order. In addition, toxic shot could continue to negatively effect biota, and the Service would continue to receive no information regarding the type and numbers of species taken under the depredation order.

ALTERNATIVE 2 (Preferred)

We would remove the Rusty Blackbird and the Tamaulipas Crow from the list of those species that can be taken "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" under 50 CFR 21.43. After this change, a depredation permit (50 CFR 21.41), or other applicable MBTA permit, would be required to take either species.

The regulations change also would implement use of nontoxic shot and bullets for all control actions under the depredation order in which firearms are used. Specifically, the proposed regulation states that "If you kill migratory birds under the provisions of this section, you must use nontoxic shot or nontoxic bullets to do so."

Under this alternative, take of the Rusty Blackbird and the Tamaulipas Crow likely would decrease because a permit would be required to take either species. Because reporting of take of these species is not currently required, we do not know whether or how much take will decline under this alternative. Further, we have insufficient information to determine that the take of either species under the depredation order is large, and available data indicates that other factors are more likely causing the declines of the two species. However, in light of the recent range and population

declines for each species, any reduction in take is potentially important to maintaining viable population levels for these species.

The regulations change would reduce the potential impacts of use of lead shot and lead bullets on biota. Though poisonings from consumption of lead shot used in blackbird control are rare, the use of nontoxic shot for these efforts will reduce lead deposition in the environment and unintentional poisonings of other wildlife.

CUMULATIVE IMPACTS

Take of Rusty Blackbirds and Tamaulipas Crows would likely be reduced, as would unintentional poisonings of other species. We foresee no additional impacts from the preferred alternative.

ADAPTIVE MANAGEMENT

The requirement for a permit to take Rusty Blackbirds or Tamaulipas Crows and the requirement to use nontoxic shot or bullets will not be subject to reconsideration or adaptive management unless we revise the regulations.

NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE

We reviewed the proposed action to determine whether it met any of the general criteria for preparation of an Environmental Impact Statement (EIS). We concluded that, under NEPA, its implementing regulations, and the guidance in the USFWS Manual (550 FW3), more closely regulating the control of Rusty Blackbirds and Tamaulipas Crows and requiring use of nontoxic shot or bullets under the preferred alternative is not a major federal action requiring an EIS.

TRANS-BOUNDARY EFFECTS OF THE ALTERNATIVES

The regulation at 50 CFR 21.43 governs only actions in the United States. Because the range of each species traverses international boundaries, there are potentially positive trans-boundary effects for each species that should be mentioned here because of reduced control of the two species.

LITERATURE CITED

- Arvin, J., J. Arvin, C. Cottam, and G. Unland. 1975. Mexican Crow Invades South Texas. *The Auk* 92:387-390.
- Avery, M.L. 1995. Rusty Blackbird (*Euphagus carolinus*). Number 200 in *The Birds of North America*, A. Poole and F. Gill, editors. The Academy of Natural Sciences, Philadelphia, and The American Ornithologists' Union, Washington, D.C.
- BirdLife International 2004; IUCN Red List, see <http://www.birdlife.org/datazone/species/index.html?action=SpcHTMDetails.asp&sid=5777&m=0>.
- Brush, T. 2005. *Nesting Birds of a Tropical Frontier, the Lower Rio Grande Valley of Texas*. Texas A&M University Press, College Station, TX.
- Greenberg, R. and S. Droege. 1999. On the Decline of the Rusty Blackbird and the Use of Ornithological Literature to Document Long-Term Population Trends. *Conservation Biology* 13:553-559.
- Howell, S.N.G. and S. Webb. 1995. *A Guide to the Birds of Mexico and Northern Central America*. Oxford University Press, New York, NY.
- Lockwood, M. W. and B. Freeman. 2004. *The TOS Handbook of Texas Birds*. Texas A&M University Press, College Station, TX.
- Machtans, C.S., S.L. Van Wilgenburg, L.A. Armer, and K.A. Hobson. 2007. Retrospective Comparison of the Occurrence and Abundance of Rusty Blackbird in the Mackenzie Valley, Northwest Territories. *Avian Conservation and Ecology*. 2:3. Online at: <http://www.ace-eco.org/vol2/iss1/art3/>.
- National Audubon Society 2008; Audubon's WatchList. <http://web1.audubon.org/science/species/watchlist/profile.php?speciesCode=rusbla>.
- Niven, D.K., J.R. Sauer, G.S. Butcher, and W.A. Link. 2004. Christmas bird count provides insights into population change in land birds that breed in the boreal forest. *American Birds* 58:10-20.
- Oberholser, H. C. 1974. *The Bird Life of Texas*. University of Texas Press; Austin.
- Rich, T. D., C. J. Beardmore, H. Berlanga, P. J. Blancher, M. S. W. Bradstreet, G. S. Butcher, D. W. Demarest, E. H. Dunn, W. C. Hunter, E. E. Iñigo-Elias, J. A. Kennedy, A. M. Martell, A. O. Panjabi, D. N. Pashley, K. V. Rosenberg, C. M. Rustay, J. S. Wendt, T. C. Will. 2004. *Partners in Flight North American Landbird Conservation Plan*. Cornell Lab of Ornithology. Ithaca, NY. http://www.partnersinflight.org/cont_plan/ (VERSION: March 2005).
- Rocky Mountain Bird Observatory. 2005. *Partners In Flight Species Assessment Database*. Online at: <http://www.rmbo.org/pif/pifdb.html>.
- Sauer, J. R., J. E. Hines, and J. Fallon. 2007. *The North American Breeding Bird Survey, Results and Analysis 1966-2006. Version 10.13.2007*. USGS Patuxent Wildlife Research Center, Laurel, Maryland. Available at: <http://www.mbr-pwrc.usgs.gov/bbs/bbs.html>.

PREPARER

This assessment was prepared by George T. Allen, who has approximately 25 years of experience in wildlife research and management.

DIVISION OF MIGRATORY BIRD MANAGEMENT

