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FWSF-1

DECISION AND FINDING OF NO SIGNIFICANT IMPACT FOR THE ENVIRONMENTAL ASSESSMENT: REDUCING PIGEON, STARLING, HOUSE SPARROW, BLACKBIRD AND CROW DAMAGE THROUGH AND INTEGRATED WILDLIFE DAMAGE MANAGEMENT PROGRAM IN THE STATE OF NEW YORK

I. INTRODUCTION

The U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Wildlife Services program (WS) receives and responds to a variety of requests for assistance from individuals, organizations, and agencies experiencing damage and other problems related to wildlife. Wildlife damage management is the alleviation of damage or other problems caused by or related to the presence of wildlife, and is recognized as an integral part of wildlife management (The Wildlife Society 1992). In November 2004, WS released an Environmental Assessment (EA) "*Management of Pigeon, Starling, House Sparrow and Crow Damage through an Integrated Wildlife Damage Management Program in the State of New York*". Ordinarily individual WS damage management actions are categorically excluded and do not require an environmental assessment (EA) (7 CFR 372.5(c), 60 Fed. Reg. 6000-6003, 1995). However, in order to facilitate planning, interagency coordination, and the streamlining of program management, and to clearly communicate with the public the analysis of cumulative impacts from WS's proposed program, the EA on alternatives for managing feral pigeon (*Columba livia*), European starling (*Sturnus vulgaris*), house sparrow (*Passer domesticus*), blackbird {red-winged blackbird (*Agelaius phoeniceus*), brown-headed cowbird (*Molothrus ater*), common grackle (*Quiscalus quiscula*)}, American crow (*Corvus brachyrynchos*), and fish crow (*Corvus ossifragus*) (hereafter: bird) damage in the state of New York was prepared. The EA documented the need for bird damage management (BDM) in New York and analyzed the environmental impacts of alternative ways for WS to protect 1) property, 2) agricultural and natural resources, 3) livestock and dairies, and 4) human health and safety from bird damage. The EA and supporting documentation are available for review at the USDA-APHIS-WS State Office, 1930 Route 9, Caslteton, NY 12033. The EA is tiered to the WS programmatic Environmental Impact Statement (EIS) (USDA 1997, Revised). Copies of the EIS are available from the USDA/APHIS/WS, Operational Support Staff, 4700 River Road, Unit 87, Riverdale, MD 20737-1234.

The purpose of the proposed program is to reduce damage to agricultural and natural resources and property and reduce risks to human health and safety resulting from the activities of pigeons, starlings, house sparrows, blackbirds and crows in New York. The EA was prepared in consultation with the New York State Department of Environmental Conservation (NYSDEC) to determine impacts on state wildlife populations and to ensure that the proposed actions are in compliance with relevant laws, regulations, policies, orders and procedures. All WS ARDM activities will be conducted consistent with the Endangered Species Act of 1973 including consultation with the United States Department of Interior, Fish and Wildlife Service (USFWS), and all other applicable Federal, State and local laws, regulations and policies.

II. BACKGROUND

The determination of a need for WS assistance with BDM in New York is based on requests for assistance with bird damage to property, agricultural and natural resources, and bird-related risks

to livestock and human health and safety. Details on the damage associated with pigeons, starlings, house sparrows, blackbirds, and crows are provided in the EA. No license or permit from NYSDEC is required for taking of destructive wildlife as authorized by ECL Section 11-0523. Included under this authorized taking are starlings, American crows, pigeons and, during certain months of the year, blackbirds (red-winged black birds, common grackles and cowbirds). The exception is within New York City where pigeon control is regulated by the New York City Department of Health (ECL Section 11-0513). Federal permits are not required to take house sparrows, starlings and feral pigeons. Under a depredation order established by the USFWS (CFR 21.43), no Federal permit is required by anyone to kill red-winged blackbirds, cowbirds grackles or crows 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 to constitute a health hazard or other nuisance.* The WS EA only evaluated alternatives for WS involvement in BDM and cannot change New York State statutes or NYSDEC policy permitting private landowners access to lethal and nonlethal alternatives for managing damage by some bird species. Therefore, a major overarching factor in determining how to analyze potential environmental impacts of WS' involvement in BDM is that in most instances, such management will likely be conducted by state, local government, or private entities that are not subject to compliance with NEPA if WS is not involved. This means that the Federal WS program has limited ability to affect the environmental outcome of BDM in the state, except that the WS program is likely to have lower risks to nontarget species and less impact on wildlife populations than some alternatives available to resource owners/managers. Therefore, WS has limited ability to affect the environmental *status quo*. Despite this limitation to federal decision-making, this EA process is valuable for informing the public and decision-makers of the substantive environmental issues and alternatives for management of aquatic rodent damage.

III. ISSUES ANALYZED IN THE EA

The following issues were identified as important to the scope of the analysis (40 CFR 1508.25) and each of the proposed alternatives was evaluated relative to its impacts on these issues.

- Effects on target bird species,
- Effects on other wildlife species, including T&E species,
- Effects on human health and safety,
- Impacts to stakeholders, including aesthetics
- Humaneness and animal welfare concerns of methods used

An additional 5 issues were discussed but not addressed in detail for each alternative including:

- Bird damage management should not be conducted at taxpayer expense (wildlife damage management should be fee based);
- Bird damage should be managed by private wildlife control agents;
- Appropriateness of preparing an EA instead of an EIS for such a large area; and
- Effectiveness of bird damage management methods.

IV. ALTERNATIVES ANALYZED IN DETAIL

The following Alternatives were developed to analyze and respond to issues. Four additional alternatives were considered but not analyzed in detail. A detailed discussion of the effects of the Alternatives on the issues is analyzed in the EA.

Alternative 1: Technical Assistance Only

Under this alternative WS would only provide technical assistance and make recommendations when requested. This alternative would not allow for WS operational BDM in New York. Producers, property owners, agency personnel, or others could conduct BDM using any legal lethal or non-lethal method available to them. Avitrol® could be used by state certified restricted-use pesticide applicators. Currently, DRC-1339 not registered for use in the state of New York and is only Federally registered for use by WS employees. Therefore, use of this chemical would not be available for use. However, the restricted use pesticide Starlicide® is similar to DRC-1339 and could be used by certified applicators if it becomes registered for use in New York. Alpha-chloralose would only be available for use if entities other than WS seek approval from the FDA and the State of New York. Appendix B of the EA describes a number of BDM methods available for recommendation by WS under this alternative.

Alternative 2: Integrated Bird Damage Management Program (Proposed Action/No Action)

Wildlife Services proposes to continue the current bird damage management program that responds to feral pigeon (*Columbia livia*), European starling (*Sturnus vulgaris*), House sparrow (*Passer domesticus)*, blackbird {red-winged blackbird (*Agelaius phoeniceus*), brown-headed cowbird (*Molothrus ater*), common grackle (*Quiscalus quiscula*)}, fish crow *(Corvus ossifragus)*, and American crow (*Corvus brachyrhynchos*) damage requests in the State of New York. An IWDM approach would be implemented to reduce damage activities to property, agricultural and natural resources, livestock, and public health and safety. Damage management would be conducted on public and private property in New York when the resource owner (property owner) or manager requests assistance. An IWDM strategy would be recommended and used, encompassing the use of practical and effective methods of preventing or reducing damage while minimizing harmful effects of damage management measures on humans, target and non-target species, and the environment. Under this action, WS could provide technical assistance and direct operational damage management, including non-lethal and lethal management methods by applying the WS Decision Model (Slate et al. 1992). When appropriate, physical exclusion, habitat modification or harassment would be recommended and utilized to reduce damage. In other situations, birds would be removed as humanely as possible using: shooting, trapping, and registered pesticides. In developing site-specific damage management strategies, preference would be given to practical and effective non-lethal methods. However, non-lethal methods may not always be applied as a first response to each damage problem. The most appropriate response could often be a combination of non-lethal and lethal methods, or there could be instances where application of lethal methods alone would be the most appropriate strategy. Appendix B of the EA provides a more detailed description of the methods that could be used under the proposed action. The proposed program would be conducted in accordance with all applicable laws and regulations authorizing take of feral pigeons, European starlings, House sparrows, blackbirds (red-winged blackbird, brown-headed cowbird, common grackle), American crows, and fish crows, developed through partnerships among WS, USFWS and NYSDEC, and as requested by and through coordination with requestors of assistance. All management actions would comply with applicable federal, state, and local laws.

Alternative 3: Non-lethal Bird Damage Management Only by WS

Under this Alternative, WS would only be able to provide technical and operational assistance with non-lethal BDM methods. Information on lethal BDM methods would still be available to producers and property owners through other sources such as USDA Agricultural Extension Service offices, NYSDEC, universities, or pest control organizations.

Requests for information regarding lethal management approaches would be referred to NYSDEC, USFWS, local animal control agencies, or private businesses or organizations. Individuals might choose to implement WS non-lethal recommendations, implement lethal methods or other methods not recommended by WS, contract for WS operational assistance with non-lethal BDM methods, use contractual services of private businesses, or take no action. Persons receiving WS' non-lethal technical and direct control assistance could still resort to lethal methods that were available to them. Currently, DRC-1339 not registered for use in the state of New York and is only Federally registered for use by WS employees. Therefore, use of this chemical would not be available for use. However, the restricted use pesticide, Starlicide®, is similar to DRC-1339 and may be used by certified applicators if it becomes registered for use in New York. Avitrol® could also be used by state certified restricted-use pesticide applicators. Appendix B of the EA describes a number of non-lethal methods available for use by WS under this alternative.

Alternative 4: No Federal WS Bird Damage Management

This alternative would eliminate WS federal involvement in BDM in New York. WS would not provide direct operational or technical assistance and requesters of WS' assistance would have to conduct their own BDM without WS input. Information on BDM methods would still be available to producers and property owners through other sources such as USDA Agricultural Extension Service offices, NYSDEC, universities, or pest control organizations. Requests for information would be referred to NYSDEC, USFWS, local animal control agencies, or private businesses or organizations. Individuals might choose to conduct BDM themselves, use contractual services of private businesses, or take no action. Alpha-chloralose would only be available for use if entities other than WS seek approval from the FDA and the State of New York. Currently, DRC-1339 not registered for use in the state of New York and is only Federally registered for use by WS employees. Therefore, this chemical would not be available for use. However, the restricted use pesticide, Starlicide®, is similar to DRC-1339 and may be used by certified applicators if registered for use in NY. Avitrol® could also be used by state certified restricted-use pesticide applicators.

V. MONITORING

The New York WS program will annually monitor the impacts of its actions relative to each of the issues analyzed in detail in the EA. This evaluation will include reporting the WS take of all target and nontarget species to help ensure no adverse impact on the viability of any target or non-target species including State and Federally listed threatened/endangered species. NYSDEC expertise will be used to assist in determining impacts on state wildlife populations.

VI. PUBLIC INVOLVEMENT

As part of this process, and as required by the CEQ and APHIS-NEPA implementing regulations, an announcement of the availability of the EA for public review and comment was made through "Notices of Availability" (NOA) published in the four major newspapers throughout the State *Newsday* (NYC/Long Island), *Times Union* (Albany), *The Post Standard* (Syracuse), *and Buffalo News*, and The Environmental News Bulletin (NYSDEC), and through direct mailings to parties that have specifically requested to be notified. Seventy letters were mailed to organizations, individuals, and public agencies announcing that the EA was available. WS received 15 requests for copies of the EA for review. Following the 40 day public review and comment period for the EA, NY WS received 90 comments on the EA. All comments were considered in detail and reviewed for substantive and relevant issues. Documentation of a complete review of the comments received was provided to the decision maker for this EA. Some concerns raised in the comments received were already addressed in the EA or outside the scope of the analysis, but some of the comments indicated areas that warranted additional clarification or treatment. These comments and the WS response are available in Appendix A.

VII. AGENCY AUTHORITIES

The following are authorities of the cooperating agencies. Further details on these authorities are found in the EA Section 1.7.1. (I took the USFWS out of here since they weren't a cooperating agency)

Wildlife Services Legislative Authority.

Under various acts of Congress, the Secretary of Agriculture is authorized to carry out wildlife control programs necessary to protect the Nation's agricultural and other resources. Among these are the Act of March 2, 1931, 46 Stat. 1468-69, 7 U.S.C. §§426-426b, as amended and Public Law No. 100-202, § 101(k), 101 Stat. 1329-331, 7 U.S.C. §426c. Under the Act of March 2, 1931 and 7 U.S.C. §426c, the Secretary of Agriculture may carry out these wildlife control programs alone, or may enter into cooperative agreements with States, local jurisdictions, individuals and public and private agencies whereby they may fund and assist in carrying out such programs. The Secretary has delegated the authority under both these Acts to APHIS. Within that agency, the authority resides with the Wildlife Services (WS) program.

New York State Department of Environmental Conservation (NYSDEC), Division of Fish, Wildlife and Marine Resources.

The New York State Department of Environmental Conservation was established by chapter 140 of the New York State Laws of 1970 and is continued under the current laws. The mission of the NYSDEC, as stated in Section 1-0101 of the New York State Environmental Conservation Law (ECL), is to "conserve, improve, and protect its natural resources and environment, and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well being." The NYSDEC is authorized to manage wildlife resources for the state under Title 3— General powers and duties of the Department. The NYSDEC is responsible for the management of the natural population of birds in New York (ECL Sections 11-0105 and 11-0305 Paragraph 10). The NYSDEC is also the agency responsible for administering and enforcing New York State Pesticide laws. Article 33 of the ECL provides the general framework for the distribution, sale, use and transportation of pesticides in New York.

Authority of WS for Wildlife Damage Management in New York.

Through the Memorandum of Understanding (MOU) among Cornell Cooperative Extension, NY Department of Agriculture and Markets, NY Department of Environmental Conservation, NY Department of Health, and U.S. Department of Agriculture, Wildlife Services has established a cooperative relationship among these agencies. This MOU authorizes WS "to reduce or control wildlife species detrimental to agriculture, public health and safety, or property" after consultation with the NYSDEC. WS is obligated to conduct control activities under the applicable Federal, State, and local laws and regulations.

VIII. DECISION AND RATIONALE

I have carefully reviewed the EA and the input resulting from the EA review process. I believe the issues identified in the EA are best addressed by selecting Alternative 2, *Integrated Bird Damage Management Program (Proposed Action/No Action)*, and applying the associated standard operating procedures and monitoring measures discussed in Chapter 3 of the EA. Alternative 2 provides the best range of damage management methods considered practical and effective, addresses the issues, and accomplishes WS' Congressionally directed role in protecting the Nation's agricultural and other resources. WS policies and social considerations, including humane issues, will be considered while conducting BDM. While Alternative 2 does not require non-lethal methods to be used, WS will continue to provide information and encourage the use of practical and effective non-lethal methods (WS Directive 2.101).

The analyses in the EA demonstrate that Alternative 2 provides WS the best opportunity to address the issues and had low impacts on target and non-target species. Alternative 2 best: 1) addresses the issues identified in the EA and provides safeguards for public safety, and 2) allows WS to meet its obligations to the NYSDEC, and cooperating counties and residents of New York. Alternative 2 provides a mix of technical and operational assistance with non-lethal and lethal methods. As a part of this Decision, the New York WS program will continue to provide biological and non-lethal management techniques information that could reduce damage. I have also adopted the EA as final because comments from the public did not change the analysis

FINDING OF NO SIGNIFICANT IMPACT

The EA indicates that there will not be a significant impact, individually or cumulatively, on the quality of the human environment because of this proposed action, and that these actions do not constitute a major Federal action. I agree with this conclusion and therefore determine that an EIS will not be necessary or prepared. This determination is based on the following factors:

1. Pigeon, starling, sparrow, blackbird and crow damage management, as conducted in New York is not regional or national in scope.

2. The proposed action will not have an impact on unique characteristics of the areas such as historical or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecological critical areas.

3. The effects on the quality of the human environment are not highly controversial. Although there is opposition to WS damage management, this action is not controversial in relation to size, nature or effects.

4. Standard Operating Procedures adopted as part of the proposed action lessen risks to the public and prevent adverse effects on the human environment and reduce uncertainty and risks.

5. The proposed action does not establish a precedent for future actions with significant effects. This action would not set precedence for additional WS damage management that may be implemented or planned in New York.

6. The number of animals taken (both target and non-target) by WS annually is small in comparison to their total populations. Adverse effects on wildlife or wildlife habitats would be minimal.

7. No significant cumulative effects were identified by this assessment or other actions implemented or planned within the area.

8. Wildlife Services' bird damage management activities would not affect cultural or historic resources. The proposed action does not affect districts, sites, highways, structures or objects listed in or eligible for listing in the National Register of Historic Places, nor will it cause a loss or destruction of significant scientific, cultural, or historical resources.

9. An evaluation of the proposed action and its effects on State and Federally listed T/E species determined that there would be no significant adverse effects on these species. The proposed action will fully comply with the Endangered Species Act of 1973, as amended. Consultations with the USFWS and the NYSDEC have taken place and their input was used to develop Standard Operating Procedures for the proposed action.

10. This action would be in compliance with federal, State and local laws or requirements for damage management and environmental protection.

For additional information regarding this decision, please contact Richard B. Chipman, USDA, APHIS, WS, 1930 Route 9, Castleton, NY 12033-9653, or by phone @ (518) 477-4837.

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2/10/05
Date