



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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MBPM-9

Date:

MIGRATORY BIRD PERMIT MEMORANDUM

SUBJECT: Interpretation of the Depredation Order for blackbirds, cowbirds, crows, grackles, and magpies (50 CFR 21.43).

PURPOSE: This memorandum serves to clarify that birds taken under this Depredation Order may be of any life stage using any humane method of take.

BACKGROUND: The U.S. Fish and Wildlife Service (Service) implements the Migratory Bird Treaty Act (16 U.S.C. §§ 703-712) and pursuant regulations, 50 CFR Part 21. Depredation Orders allow the take of specific species of migratory birds for specific depredation purposes without need for a Depredation Permit to relieve administrative burden when appropriate. The Depredation Order for Blackbirds, Cowbirds, Crows, Grackles, and Magpies (Depredation Order, 50 CFR 21.43) has existed since 1949 with modifications over the years to add and remove species and, more recently, address changing depredation issues and methods.

The Depredation Order (50 CFR 21.43) does not specify the life stages and methods of take authorized. The regulation authorizes the take of “species covered.” However, “species” could be interpreted to mean any stage in the life cycle (i.e., adult bird, chick, or egg). The regulation authorizes “control.” However, “control” could mean any method of take (i.e., shooting, trapping, nest destruction). In reviewing the regulatory history of this rule, there is no indication that the authors intended to exclude life stages and/or take methods. A plain-read interpretation is that the Depredation Order did not intend to restrict by life stage or method of take.

POLICY: The Service interprets the Depredation Order (50 CFR 21.43) to authorize the control of any life stage of a covered species using any humane method of take. All life stages (i.e., adult bird, chick, or egg) may be taken under this Depredation Order. Control may be any humane method of take, including firearm, avicide, lethal or live trap, egg addling, and nest destruction. Choice of life stage and control method must be consistent with the purpose for the control. Take of chicks, eggs, and/or nests must be to resolve the depredation problem. Use of any control method must also be consistent with the regulation, including the additional conditions for firearm ammunitions (50 CFR 21.43(d)), trapping (50 CFR 21.43(f)) and euthanasia (50 CFR 21.42(g)). Control must also be in compliance with all applicable federal, state, tribal, or territorial laws and regulations.