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(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress therefrom has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds;

(v) By the use or aid of live birds as decoys; although not limited to, it shall be a violation of this paragraph for any person to take mid-continent light geese on an area where tame or captive live geese are present unless such birds are and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of mid-continent light geese;

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of mid-continent light geese;

(vii) By the aid of baiting, or on or over any baited area. As used in this paragraph, “baiting” means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and “baited area” means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph prohibits the taking of mid-continent light geese on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin, or other shots that are authorized in 50 CFR 20.21(j). Season limitations in that section do not apply to participants acting under this order.

(e) *Under what conditions would the conservation order be revoked?* The Service will annually assess the overall impact and effectiveness of the conservation order to ensure compatibility with long-term conservation of this resource. If at any time we receive that clearly demonstrates a serious threat of injury to the area or areas involved no longer exists, we will initiate action to revoke the conservation order.

(f) *Will information concerning the conservation order be collected?* The information collection requirements of the conservation order have been approved by OMB and assigned clearance number 1018–0103. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The record-keeping and reporting requirements imposed under regulations established in this subpart E will be utilized to administer this program, particularly in the assessment of impacts alternative regulatory strategies may have on mid-continent light geese and other migratory bird populations. The information collected will be required to authorize State and Tribal governments responsible for migratory bird management to take mid-continent light geese within the guidelines provided by the Service.

[66 FR 32265, June 14, 2001]

§21.61 Population control of resident Canada geese.

(a) *Which Canada geese are covered by this regulation?* This regulation addresses the population control of resident Canada geese, as defined in §21.3.

(b) *What is the resident Canada goose population control program, and what is its purpose?* The resident Canada goose population control program is a managed take program implemented under the authority of the Migratory Bird Treaty Act to reduce and stabilize resident Canada goose populations when

traditional and otherwise authorized management measures are unsuccessful, not feasible for dealing with, or applicable, in preventing injury to property, agricultural crops, public health, and other interests from resident Canada geese. The Director is authorized to allow States and Tribes to implement a population control, or managed take, program to remedy these injuries. When authorized by the Director, managed take allows additional methods of taking resident Canada geese, allows shooting hours for resident Canada geese to extend to one-half hour after sunset, and removes daily bag limits for resident Canada geese inside or outside the migratory bird hunting season frameworks as described in this section. The intent of the program is to reduce resident Canada goose populations in order to protect personal property and agricultural crops and other interests from injury and to resolve potential concerns about human health. The management and control activities allowed or conducted under the program are intended to relieve or prevent damage and injurious situations. No person should construe this program as opening, reopening, or extending any hunting season contrary to any regulations established under section 3 of the Migratory Bird Treaty Act.

(c) *What areas are eligible to participate in the program?* When approved by the Director, the State and Tribal wildlife agencies of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming may implement the resident Canada goose population control program components in the Atlantic, Central, and Mississippi Flyway portions of these States.

(d) *What is required in order for State governments to participate in a managed take program?* Following the conclusion

of the first full operational year of §§21.49 through 21.52 of this part, any wildlife agency from a State listed in 21.61(c) may request approval for the population control program. A request must include a discussion of the State's or Tribe's efforts to address its injurious situations utilizing the methods approved in this rule or a discussion of the reasons why the methods authorized by these rules are not feasible for dealing with, or applicable to, the injurious situations that require further action. Discussions should be detailed and provide the Service with a clear understanding of the injuries that continue, why the authorized methods utilized have not worked, and why methods not utilized could not effectuate resolution of the injuries. A State's request for approval may be for an area or areas smaller than the entire State. Upon written approval by the Director, any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, resident Canada geese under the following conditions:

(1) Activities conducted under the managed take program may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities may be conducted under this section only between August 1 and August 30.

(3) Control measures employed through this section may be implemented only between the hours of one-half hour before sunrise to one-half hour after sunset.

(4) Nothing in the program may limit or initiate management actions on Federal land without concurrence of the Federal agency with jurisdiction.

(5) States and Tribes must designate participants who must operate under the conditions of the managed take program.

(6) States and Tribes must inform participants of the requirements/conditions of the program that apply.

(7) States and Tribes must keep annual records of activities carried out under the authority of the program. Specifically, information must be collected on:

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(i) The number of individuals participating in the program;

(ii) The number of days individuals participated in the program;

(iii) The total number of resident Canada geese shot and retrieved during the program; and

(iv) The number of resident Canada geese shot but not retrieved. The States and Tribes must submit an annual report summarizing activities conducted under the program and an assessment of the continuation of the injuries on or before June 1 of each year to the Chief, Division of Migratory Bird Management, 4401 North Fairfax Drive, ms-MBSP-4107, Arlington, Virginia 22203.

(e) *What is required for individuals to participate in the program?* Individual participants in State and Tribal programs covered by the managed take program must comply with the following requirements:

(1) Participants must comply with all applicable State and Tribal laws or regulations including possession of whatever permit(s) or other authorization(s) may be required by the State or Tribal government concerned.

(2) Participants who take resident Canada geese under the program may not sell or offer for sale those birds or their plumage, but may possess, transport, and otherwise properly use them.

(3) Participants must permit at all reasonable times, including during actual operations, any Service special agent or refuge officer, State or Tribal wildlife or deputy wildlife agent, warden, protector, or other wildlife law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted and must promptly furnish whatever information an officer requires concerning the operation.

(4) Participants may take resident Canada geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance.

(ii) From or by means, aid, or use of a sinkbox or any other type of low-floating device, having a depression af-

fording the person a means of concealment beneath the surface of the water.

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegic persons and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance.

(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds.

(v) By the use or aid of live birds as decoys. No person may take resident Canada geese on an area where tame or captive live geese are present unless such birds are, and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of resident Canada geese.

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of resident Canada geese.

(vii) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited as described in §20.11(j) and (k) of this part. Resident Canada geese may not be taken on or over lands or areas that are baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation as described in §20.11(h) and (l) of this part. However, nothing in this paragraph prohibits the taking of resident Canada geese on or over the following lands or areas that are not otherwise baited areas:

(A) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural

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vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice as described in §20.11(g), (i), (l), and (m) of this part;

(B) From a blind or other place of concealment camouflaged with natural vegetation;

(C) From a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing, or scattering of grain or other feed; or

(D) Standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(E) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tungsten-nickel iron, or other shots that are authorized in §20.21(j) of this part.

(f) *Under what conditions would we suspend the managed take program?* Following authorization by the Director, we will annually assess the overall impact and effectiveness of the program on resident Canada goose populations to ensure compatibility with long-term conservation of this resource. If at any time evidence is presented that clearly demonstrates that resident Canada geese populations no longer need to be reduced in order to allow resolution or prevention of injury to people, property, agricultural crops, or other interests, the Director, in writing, will suspend the program for the resident Canada goose population in question. However, resumption of injuries caused by growth of the population and not otherwise addressable by the methods available in part 21 may warrant reinstatement of such regulations. A State must reapply for approval, including the same information and discussions noted in 21.61(d). Depending on the location of the injury or threat or injury, the Director, in writing, may suspend or reinstate this authorization for one

or more resident Canada goose populations, but not others.

(g) *What population information is the State or Tribe required to collect concerning the resident Canada goose managed take program?* Participating States and Tribes must provide an annual estimate of the breeding population and distribution of resident Canada geese in their State. The States and Tribes must submit this estimate on or before August 1 of each year, to the Chief, Division of Migratory Bird Management, 4401 N. Fairfax Dr., MBSP-4107, Arlington, Virginia 22203.

(h) *What are the general program conditions and restrictions?* The program is subject to the conditions elsewhere in this section, and, unless otherwise specifically authorized, the following conditions:

(1) Nothing in this section applies to any Federal land within a State's or Tribe's boundaries without written permission of the Federal agency with jurisdiction.

(2) States may not undertake any actions under this section if the activities adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act. Persons operating under this section must immediately report the take of any species protected under the Endangered Species Act to the Service. Further, to protect certain species from being adversely affected by management actions, States must:

(i) Follow the Federal State Contingency Plan for the whooping crane;

(ii) Conduct no activities within 300 meters of a whooping crane or Mississippi sandhill crane nest; and

(iii) Follow all Regional (or National when available) Bald Eagle Nesting Management guidelines for all management activities.

(i) *Has the Office of Management and Budget (OMB) approved the information collection requirements of the program?* OMB has approved the information collection and recordkeeping requirements of the program under OMB control number 1018-0133. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. You

may send comments on the information collection and recordkeeping requirements to the Service's Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222—ARLSQ, 1849 C Street, NW., Washington, DC 20240.

[71 FR 45992, Aug. 10, 2006]

PART 22—EAGLE PERMITS

Subpart A—Introduction

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Subpart D—Depredation Control Orders on Golden Eagles

- 22.31 Golden eagle depredations control order on request of Governor of a State.
- 22.32 Conditions and limitations on taking under depredation control order.

AUTHORITY: 16 U.S.C. 668a; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

SOURCE: 39 FR 1183, Jan. 4, 1974, unless otherwise noted.

Subpart A—Introduction

§ 22.1 What is the purpose of this part?

This part controls the taking, possession, and transportation within the United States of bald and golden eagles for scientific, educational, and depredation control purposes and for the religious purposes of American Indian tribes. This part also governs the transportation into or out of the United States of bald and golden eagle

parts for scientific, educational, and Indian religious purposes. The import, export, purchase, sale, trade, or barter of bald and golden eagles, or their parts, nests, or eggs is prohibited.

[64 FR 50472, Sept. 17, 1999]

§ 22.2 What activities does this part apply to?

(a)(1) You can possess or transport within the United States, without a Federal permit:

(i) Any live or dead bald eagles, or their parts, nests, or eggs that were lawfully acquired before June 8, 1940; and

(ii) Any live or dead golden eagles, or their parts, nests, or eggs that were lawfully acquired before October 24, 1962.

(2) You may not transport into or out of the United States, import, export, purchase, sell, trade, barter, or offer for purchase, sale, trade, or barter bald or golden eagles, or their parts, nests, or eggs of these lawfully acquired pre-act birds. However, you may transport into or out of the United States any lawfully acquired dead bald or golden eagles, their parts, nests, or dead eagles, if you acquire a permit issued under § 22.22 of this part.

(3) No exemption from any statute or regulation will apply to any offspring of these pre-act birds.

(4) You must mark all shipments containing bald or golden eagles, alive or dead, their parts, nests, or eggs as directed in § 14.81 of this subchapter. The markings must contain the name and address of the person the shipment is going to, the name and address of the person the shipment is coming from, an accurate list of contents by species, and the number of each species.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of this subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife (see also part 13 of this subchapter).

[39 FR 1183, Jan. 4, 1974, as amended at 64 FR 50472, Sept. 17, 1999]