

Enviros press FWS to revoke permit for poisoning Idaho ravens

Scott Streater, E&E reporter

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An environmental group is demanding the Fish and Wildlife Service revoke a permit authorizing the use of a pesticide to kill as many as 4,000 ravens in southern Idaho, arguing that doing so violates federal law.

A senior attorney with Boise, Idaho-based Advocates for the West Inc. in a [letter](#) sent today to FWS Director Dan Ashe takes aim at the federal plan to cull raven populations in Idaho. The goal of the raven control plan is to determine whether doing so helps protect greater sage grouse in the Gem State.

Ravens are known predators of the sage grouse, though their impact on grouse populations is not clear. FWS officials say the raven-killing plan being developed by the Agriculture Department's Wildlife Service predator-control program is designed to help answer that question.

FWS has until late next year to decide whether to propose listing the greater sage grouse as threatened or endangered across the bird's 11-state Western range.

The ravens, which are protected by federal law, would be killed with poisoned chicken eggs laced with the pesticide DRC-1339. The raven-control plan, which will be carried out in a partnership between the Idaho Department of Fish and Game and USDA's Wildlife Services, also calls for shooting the birds and destroying nests.

But it's the use of the pesticide that has garnered the attention of Todd Tucci, senior attorney with Advocates for the West in Washington, D.C.

Tucci wrote in the eight-page letter to Ashe and other FWS officials that Wildlife Services isn't following the specific precautions and monitoring mandates required by U.S. EPA as part of the use of the pesticide DRC-1339.

For one, he wrote, EPA mandates that before the pesticide can be applied, "sites that are to be treated must be observed for evidence of nontarget activity and must be prebaited" to guard against other animals being exposed. Also, he wrote, the carcasses of dead birds must be collected and disposed of "by burning or burial," again to guard against other species being poisoned.

Wildlife Services and Idaho Fish and Game are doing neither, Tucci wrote.

"Wildlife Services' expansive use of DRC-1339 ... and its refusal to collect and dispose of the dead, poisoned raven carcasses creates a potential public health emergency, and violates the express terms of the [EPA's] pesticide label," he wrote.

Tucci in the letter asks FWS to "investigate Wildlife Services' unlawful use of this highly-toxic avicide in contravention of the Federal Insecticide, Fungicide and Rodenticide Act," and to "immediately revoke" the permit authorizing the plan granted to Idaho, "as it was invalidly issued."

He also asks that FWS "commence enforcement actions if Wildlife Services begins its scheduled use of DRC-1339."

While FWS has issued a permit authorizing the use of the pesticide, Wildlife Services has not finalized a required environmental assessment (EA) of the plan, and officials with the agency have said they may not begin the culling plan until next year.

Regardless, Tucci said in an interview that Wildlife Services needs to slow down and do its due diligence and back off the use of the pesticide, which would be applied by spreading poisoned chicken eggs in specific targeted areas with raven populations.

"I want to ensure that the agency that is proposing to place 14,000 poisonous eggs on the ground does not do it," Tucci said. "If they do it, they will be sued."

Miel Corbett, an FWS spokeswoman in Portland, Ore., said in an emailed statement that the agency has received Tucci's letter and is "having conversations with Idaho Fish and Game and Wildlife Services about the concerns raised" in it.

Carol Bannerman, a Wildlife Services spokeswoman, did not provide a comment on Tucci's letter in time for publication. But she pointed to USDA's technical specifications for DRC-1339 that notes the pesticide is designed for specific targets and is "only slightly to moderately toxic to many nonsensitive birds, most predatory birds, and most mammals."

Bannerman has also said in the past that the pesticide is designed to be expelled by the ravens before they die, so if a raptor or other animal ate a dead raven it would not ingest the poison. But the so-called tech note also states, "To reduce any potential hazard, poisoned birds should be retrieved, then burned or buried, whenever possible."

Tucci's letter to Ashe follows letters sent last month to Ashe and Agriculture Secretary Tom Vilsack from a coalition of conservation groups, including the American Bird Conservancy, National Audubon Society and Advocates for the West, asking Ashe and Vilsack to abandon the Idaho plan ([*E&ENews PM*](#), May 5). In the [letter](#) to Vilsack, the coalition wrote that the proposal "ignores the central threats to Greater sage-grouse habitat and populations throughout Idaho," which it lists as wildfire, weeds, habitat fragmentation due to human development and livestock grazing.

The coalition also wrote that the proposal "fails to fully examine the direct, indirect and cumulative impacts of using the avicide DRC-1339 across the southern Idaho landscape."

In the coalition's [letter](#) to Ashe, they asked him to "strongly consider revoking" the permit allowing "the use of lethal measures" as part of a two-year study evaluating the effectiveness of raven control on greater sage grouse populations in the state.

Instead, the coalition wants Fish and Wildlife to focus on conservation efforts like those outlined last year in a number of proposed resource management plan amendments aimed at implementing management strategies to preserve and restore the grouse.



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VIA EMAIL ONLY

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Dear Director Ashe, Assistant Directors Ford and Woody, Regional Director Thorson, and Ms. Seto:

I write to inform you of some disquieting developments concerning the United States Department of Agriculture's Animal and Plant Health Inspection Services-Wildlife Service (Wildlife Services) unrestrained use and application of the DRC-1339 to kill approximately 4,000 common raven across vast swaths of public lands across southern Idaho. As discussed in detail below, Wildlife Services' expansive use of DRC-1339 – due to begin imminently on behalf of the

Idaho Department of Fish and Game (IDFG) – and its refusal to collect and dispose of the dead, poisoned raven carcasses creates a potential public health emergency, and violates the express terms of the U.S. Environmental Protection Agency’s pesticide label. Advocates for the West requests the U.S. Fish and Wildlife Service (the Service) investigate Wildlife Services’ unlawful use of this highly-toxic avicide in contravention of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136j(a)(2)(G) (FIFRA); immediately revoke IDFG’s Federal Fish and Wildlife Permit number MB25486B-O (MBTA permit) as it was invalidly issued; and commence enforcement actions if Wildlife Services begins its scheduled use of DRC-1339.

DRC-1339 and EPA’s Pesticide Registration Label

DRC-1339 is a slow-acting avicide that is “highly toxic” to birds and freshwater invertebrates, and moderately toxic to mammals. EPA R.E.D. Facts, Starlicide (EPA 1995);); Wildlife Services’ Tech. Note, DRC-1339 (Starlicide). DRC-1339 is “very highly toxic” to columbids, corvids, icterids, and starling, and APHIS notes that “the sensitivity of nontarget species to DRC-1339 is not as clear as what is observed for target species.” Eisemann *et al.*, Acute and Chronic Toxicity of Compound DRC-1339 (30Chloro-4-Methylaniline Hydrochloride) to Birds (APHIS 2001).

On December 11, 2013, EPA issued a label revision for DRC-1339 for use in livestock, nest and fodder depredations. EPA Reg. No. 56228-29 (Pesticide Label). According to the Pesticide Label, DRC-1339 is “fatal is inhaled,” and EPA classifies DRC-1339 as a “**RESTRICTED USE PESTICIDE,**” due to “**High Acute Inhalation Toxicity and Eye and Skin Corrosiveness to Humans; High Acute Toxicity to Nontarget Birds and Aquatic Invertebrates; and the Need for highly Specialized Applicator Training.**” *Id.* at 1.

Because DRC-1339 is a “**RESTRICTED USE PESTICIDE,**” EPA adopted a series of precautionary measures designed to mitigate adverse public health and ecological impacts associated with its use, including:

1. “**Before baits made from this produce are applied, sites that are to be treated must be observed for evidence of nontarget activity and must be prebaited**”;
2. “**DO NOT** store, apply, or even temporarily place treated bait in locations accessible to children, pets, domestic animals, or non-target wildlife”;
3. “Keep persons other than authorized handlers, as well as pets and livestock, away from the bait at all times. Only protected handlers may be in the area during bait application. Exclude unauthorized persons from application sites during prebaiting and baiting,” *id.*; and

4. **“Collect . . . carcasses of dead or dying birds,” and “[d]ispose of . . . carcasses by burning or burial.”** *Id.* (emphasis added).

Id. Under this label, EPA noted that “[i]t is a violation of Federal law to use this product in a manner inconsistent with its labeling.” *Id.* at 2 (label page 1 of 3).

Idaho Department of Fish and Game’s Plan to Kill Ravens

The Idaho Legislature appropriated approximately \$100,000 to fund raven control within its jurisdictional boundary. Senate Bill No. 1171, Section 3. A senior IDFG official noted that the raven killing project was “to be a CONTROL effort with no money allocated for any research or monitoring,” and a leading researcher at IDFG noted that they lacked “enough funds to seriously study” the impacts of raven predation on sage grouse populations. Memo from T. Terry, IDFG, to S. Quinn *et al.*, IDFG (Nov. 18, 2013 at 1:41 p.m.); Memo from A. Moser, IDFG to D. Kemner, IDFG (August 1, 2013 at 11:24 a.m.). Moser then began preparing a draft narrative for a “degradation permit” from the Service to allow the control of ravens. Memo from A. Moser to Jack Depperschmidt, U.S. Dept. of Energy-Idaho National Laboratory) (Dec. 10, 2013 at 1:40 p.m.).

Shortly after, however, Moser worried that IDFG would get “turned down for a degradation permit because we have not ‘deployed all practical nonlethal measure to relieve the [supposed impacts of raven degradation on sage-grouse],’ which is a necessary component for a degradation permit. Memo from A. Moser (Dec. 13, 2013 at 11:08). In this same correspondence, Moser began contemplating an alternative route to killing ravens – i.e., applying for a “scientific collecting permit” instead of a degradation permit. *Id.* Moser worried, however, that IDFG would “need to present [its raven killing plan] as a true study.” *Id.*

The next day, a senior appointee at IDFG ordered Moser to “move swiftly with the scientific collecting permit.” Memo from J. Gould to A. Moser (Dec. 14, 2014 at 4:55 p.m. Days later, another IDFG employee noted that she was “[g]lad to hear we are pursuing the scientific collecting permit path. Much more likely to go through relatively quickly.” Memo From C. Moulton to A. Moser (Dec. 19, 2013 at 12:37 p.m.). IDFG then began to create a sham study, even though earlier IDFG employees realized that the so-called study “might not be able to tell us whether or not raven control was beneficial to sage-grouse. But by targeting [ravens], we have some justification there for raven control.” Email from A. Moser to D. Kemner (August 1, 2013 at 11:24 a.m.).

On December 23, 2013, IDFG submitted to the Service an application for a two-year Scientific Collecting Permit. Letter from V. Moore, IDFG, to J. Miller, USFWS (Dec. 23, 2013), and attachments (permit application). *But see* Memo from S. Nadeau, IDFG, to D. Kemner *et al.* (March 18, 2004 at 9:29 a.m.) (noting

that the IDFG raven killing experiment “is a 3-5 year study”). Although the Idaho legislature ordered the lethal control of ravens – with no funds appropriated for research or monitoring – IDFG purposefully hid this information from the Service. *Compare* Memo from A. Moser to C. Moulton, IDFG (Dec. 6, 2013 at 1:56 p.m.) (“One quick question – in my conversation with Jennifer Miller[, the Service’s MBTA Permits Branch Chief], should I NOT mention that the Legislature has told us to do this?”); *with* Memo from C. Moulton to A. Moser (Dec. 6, 2013 at 3:15 p.m.) (“I don’t think I would volunteer those specifics”). *See also* Memo from T. Terry, IDFG, to S. Quinn *et al.*, IDFG (Nov. 18, 2013 at 1:41 p.m.) (noting the funds appropriated are to support a raven “CONTROL effort with no money allocated for any research or monitoring”).

According to the permit application, IDFG planned to kill approximately 4,000 common ravens using DRC-1339 laced eggs in five different areas across Idaho. Permit Application at 3 (unpaginated). *See also id.* at IDFG Response to Question 2b), Evaluation of Removal of Common Ravens to Benefit At-risk Sage-grouse Populations, at p. 6 (IDFG Evaluation). These areas include public lands managed by the Department of Energy-Idaho National Laboratory (INL), U.S. Forest Service, and the Bureau of Land Management – including the Birch Creek watershed. IDFG Evaluation at 2-5, 10-13 (description and maps). *See also* Memo from A. Moser to T. Thomas (Jan. 3, 2014 at 9:41 a.m.) (noting that IDFG “expect[s] most of the work will be on INL or BLM” lands).

IDFG permit application noted that it “may” prebait some control areas with non-poisoned eggs to acclimate ravens to the feeding sites. IDFG Evaluation at 11. Then, between March 1-June 1 in two successive years, IDFG’s proposed to set out approximately 14,000 chicken eggs (7,000 annually) laced with DRC-1339 across the public (and private) lands, mostly at ground level. *Id.*

In its permit application and evaluation, IDFG did not propose to remove all dead, poisoned raven carcasses, nor did IDFG claim that it would post or monitor public access in the areas where the 14,000 laced eggs would be set across the public lands. *See, generally,* Permit Application and IDFG Evaluation

On March 3, 2014, the Service issued to IDFG a Federal Fish and Wildlife Permit authorizing the lethal take of up to 4,000 ravens. Federal Fish and Wildlife Permit No. MB25486B-O (March 3, 2014) (MBTA permit). The MBTA permit permit IDFG to take ravens via “firearm with nontoxic shot and DRC-1339 egg bait.” *Id.* at 1 (unpaginated). Although IDFG did not propose to collect and destroy all dead raven carcasses, the permit required that “[a]ll dead specimens that you do not transfer to another authorized party must be disposed of by such means as are necessary to ensure that they are not exposed to animals in the wild.” *Id.* at 3. Moreover, the MBTA permit expressly noted that “THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.” *Id.* at 1.

Wildlife Service's Planned Application of DRC-1339

Because IDFG is unauthorized to use DRC-1339, IDFG partnered with Wildlife Services in conducting its ravens control project, and in March 2014, Wildlife Services issued an Environmental Assessment ostensibly reviewing the ecological impacts of placing 14,000 DRC-1339-laden eggs at ground level across Idaho. See Supplement to the Environmental Assessment: Predator Damage Management in Southern Idaho, May 2014.

http://www.aphis.usda.gov/wildlife_damage/nepa/2014_EA_Supplement_final_Southern%20Idaho.pdf (last visited May 12, 2014) (EA), at 23 (noting that DRC-1339 is only available for use by Wildlife Services and individuals working under direct supervision by Wildlife Services).

The EA largely recounts the project scope, locations and removal efforts discussed earlier in IDFG's permit application and evaluation, with a number of important modifications. First, in its EA, Wildlife Service asserts that its use and deployment of DRC-1339 to kill raven may extend beyond two years, because, according to Wildlife Services, "it may take longer than 2 years to conclusively determine impacts of raven removal efforts." EA at 16.

Wildlife Service similarly proposed to extend the poisoning season to include all of June, which coincides with summer break and the concomitant increase in recreational uses of the federal public lands – including the public lands within IDFG's and Wildlife Service's raven killing areas. Compare EA at 23 (stating that the poisoning season will run from March-June), and IDFG Evaluation, at 6 (stating that the poisoning season will run from March 1-June 1).

Moreover, in addition to using DRC-1339 to control ravens (as proposed in IDFG's permit application and evaluation), Wildlife Services' EA proposed several addition "kill" methods, including shooting ravens with rifles and shotguns, as well as "thoracic squeeze" (i.e., crushing nestlings via compression of the lungs and chest cavity) and "cervical dislocation" (i.e., breaking the neck and snapping the spine of raven nestlings). EA at 21-23. See also Memo from G. Graves, APHIS, to A. Moser (Jan. 28, 2014 at 3:53).

Wildlife Services' Use of DRC-1339 Violates the Pesticide Label and FIFRA.

Like the IDFG proposal forming the basis of the Service's MBTA permit, Wildlife Services' planned use of DRC-1339 directly violates the EPA's pesticide label in a number of different ways. First, Wildlife Services failed to include any monitoring efforts at its poisoning sites prior to setting the poison, and Wildlife Service claimed only that "most" baiting sites will be pre-baited with untreated eggs. Compare EA at 22 (Wildlife Service agrees to pre-bait "most" sites"); with Pesticide Label at 2 (requiring "**Before baits made from this produce are**

applied, sites that are to be treated **must be observed** for evidence of nontarget activity **and must be prebaited**”).

Second, Wildlife Services plans to place 14,000 eggs at ground level at up to 14,000 different locations across accessible public lands in southern Idaho. EA at 22-23 (noting 7,000 poisoned eggs a year, and “only 1 to 2 treated eggs will be placed at each [poisoning] site”). Indeed, the Birch Creek Watershed – a heavily recreational area in eastern Idaho – falls within the Zone 8B poison area, and Wildlife Services proposes to place poisoned-eggs in this area through the end of June. EA at 11. *See also* EA at 23 (stating that the poisoning season will run from March-June). But EPA’s label prohibits Wildlife Services from “stor[ing], appl[ing], or even temporarily plac[ing] treated bait in locations accessible to children, pets, domestic animals, or non-target wildlife.” Pesticide Label at 2.

Similarly, EPA’s pesticide label requires that Wildlife Service’s “keep persons other than authorized handlers, as well as pets and livestock, away from the bait at all times. Only protected handlers may be in the area during bait application. Exclude unauthorized persons from application sites during prebaiting and baiting.” *Id.* Yet, Wildlife Service has provided no explanation of how it plans to exclude the public for these vast areas within its poisoning zones, and BLM’s own livestock authorizations for the allotments within these areas permits livestock to be within the poison zones during the March to June timeframe.

Further, Wildlife Services planned use of DRC-1339 fails to adhere to the requirement to collect and dispose of carcasses of poisoned ravens. Pesticide Label at 3 (requiring Wildlife Services to “**Collect . . . carcasses of dead or dying birds,**” and “[d]ispose of . . . carcasses by burning or burial”) (emphasis added). Indeed, the DOE-INL – where a large portion of the poisoning efforts will occur in Zone 8B - has forbidden Wildlife Services from collecting carcasses of dead or dying birds, and disposing of them appropriately. Memo from J. Depperschmidt, DOE-INL, to A. Moser (Jan. 30, 2014 at 10:17 a.m.) (“We do not want any ravens picked up”).

As you can see, Wildlife Services’ planned use of DRC-1339 violates the EPA’s pesticide label in several respects. The Federal Insecticide, Fungicide and Rodenticide Act makes it unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.” 7 U.S.C. §136j(a)(2)(G).

Based on these violations of FIFRA – to say nothing of the concomitant violations of the National Environmental Policy Act, 42 U.S.C. §§ 4332 *et seq.*, the Federal Lands Policy and Management Act, 43 U.S.C. §§ 1701 *et seq.*, the National Forest Management Act, 16 U.S.C. §§ 1600 *et seq.*, the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, and others, Advocates for the West requests, first, the Service immediately revoke the IDFG’s MBTA permit as the

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permit, itself, was **CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL, TRIBAL, OR OTHER FEDERAL LAW.**” MBTA Permit at 1. This standard cannot be met here, especially in light of the previously discussed non-compliance with the plain terms and conditions of EPA’s pesticide label.

Second, Advocates for the West specifically requests the Service’s Office of Law Enforcement commence an investigation into Wildlife Service’s use of DRC-1339 in other migratory bird control actions nationwide to ensure compliance with EPA’s pesticide label.

Advocates for the West further requests the Service commence an enforcement action against Wildlife Services immediately should Wildlife Service undertake any control actions proposed as discussed above. To be sure, Advocates for the West has made Wildlife Services aware of its violations of FIFRA and other federal environmental laws repeatedly over the last several weeks and months, and Wildlife Services’ implementation of its proposal raven control in Idaho will be a purposeful and willful violation of federal law.

Please inform me without delay how the Service intends to respond to this requests, including whether the Service has revoked IDFG’s MBTA permit, and launched an investigation into Wildlife Services’ use of DRC-1339. I can be reached at 208.724.2142, or via email at ttucci@advocateswest.org. Thank you.

Very truly yours,

/s/ Todd C. Tucci

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