

copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Federal Communications Commission.

**Barbara A. Kreisman,**

Chief, Video Division, Media Bureau.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 21

RIN 1018-AI39

#### Migratory Bird Permits; Regulations for Double-Crested Cormorant Management

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** Increasing populations of the double-crested cormorant (*Phalacrocorax auritus*) have caused biological and socioeconomic resource conflicts. In November 2001, the U.S. Fish and Wildlife Service (Service or we) completed a draft Environmental Impact Statement (DEIS) on double-crested cormorant management. The proposed action in the DEIS was Alternative D. This action entailed: revising the existing aquaculture depredation order to allow winter roost control; establishing a new depredation order to protect public resources from cormorant damages; and revising Director's Order 27 to allow lethal take of double-crested cormorants at public fish hatcheries.

**DATES:** Comments on this proposed rule will be accepted through May 16, 2003.

Comments on the information collection aspects of this proposed rule will be considered if received by May 16, 2003. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, your comments should be received by OMB by April 16, 2003.

**ADDRESSES:** Comments can be mailed to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP-4107, Arlington, Virginia 22203; or e-mailed to [cormorants@fws.gov](mailto:cormorants@fws.gov); or faxed to 703/358-2272.

Comments specific to the information collection aspects of the proposed rule should be mailed to Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and Anissa Craghead, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 222, Arlington, VA 22203; [anissa\\_craghead@fws.gov](mailto:anissa_craghead@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Brian Millsap, Chief, Division of

Migratory Bird Management, U.S. Fish and Wildlife Service (see **ADDRESSES**).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Service is the Federal agency with primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and Russia. The double-crested cormorant (DCCO) is federally protected under the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico, as amended, 50 Stat. 1311, T.S. No. 912. The take of DCCOs is strictly prohibited except as authorized by regulations implementing the MBTA.

The authority for the proposed regulations set forth in this rule is the MBTA, which authorizes the Secretary, subject to the provisions of, and in order to carry out the purposes of, the applicable conventions, to determine when, if at all, and by what means it is compatible with the terms of the conventions to allow the killing of migratory birds. DCCOs are covered under the terms of the Convention for the Protection of Migratory Birds and Game Mammals with Mexico. The DCCO is a non-game, non-insectivorous bird for which the applicable treaty does not impose specific prohibitions or requirements other than the overall purpose of protection so as not to be exterminated and to permit rational utilization for sport, food, commerce, and industry. In the DEIS for this proposed action, the Service has considered all of the statutory factors as well as compatibility with the provisions of the convention with Mexico. The Russian convention (Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment, concluded November 19, 1976) provides an authority to cover DCCOs even though not listed in the Appendix. To the extent we choose to apply the convention, it contains an exception from the prohibitions that may be made for the protection against injury to persons or property. We note, therefore, that there is no conflict between our responsibility for managing migratory birds and our proposed action.

Regulations governing the issuance of permits for migratory birds are contained in title 50, Code of Federal Regulations, parts 13 and 21. Regulations in subpart D of part 21 deal

specifically with the control of depredating birds. Section 21.41 outlines procedures for issuing depredation permits. Sections 21.43 through 21.47 deal with special depredation orders for specific species of migratory birds to address particular problems in specific geographical areas. While the Service has the primary responsibility for regulating DCCO management, on-the-ground management activities are largely carried out by entities such as State fish and wildlife agencies, wildlife damage control agencies such as the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS/WS) and, in some cases, by private citizens.

This proposed rule is directly related to the DEIS on DCCO management that was completed in November 2001 and made available for public comment via a **Federal Register** notice of December 3, 2001 (66 FR 60218). Copies of the DEIS may be obtained by writing us (see **ADDRESSES**) or by downloading it from our Web site at <http://migratorybirds.fws.gov/issues/cormorant/deis/deis.html>. The Wires *et al.* report "Status of the double-crested cormorant in North America," mentioned in a **Federal Register** notice of November 8, 1999 (64 FR 60826), may also be downloaded at <http://migratorybirds.fws.gov/issues/cormorant/status.pdf>.

APHIS/WS was a cooperating agency in the development of the DEIS. Additionally, States and Canadian provinces were involved through the International Association of Fish and Wildlife Agencies. The DEIS examined six management alternatives for addressing conflicts with DCCOs: (A) No action, (B) Nonlethal control, (C) Increased local damage control, (D) Public resource depredation order, (E) Regional population reduction, and (F) Regulated hunting. The proposed action/preferred alternative in the DEIS was alternative D. This alternative is intended to enhance the ability of resource agencies to deal with immediate, local concerns by giving them more management flexibility. To address DCCO populations from a broader and more coordinated perspective, a population objectives approach will need to be considered over the longterm. In the future, if supported by biological evidence and appropriate monitoring resources, the Service may authorize management that focuses on setting and achieving regional population goals. At that time, a cormorant management plan will be developed. Until then, our strategy will

continue to focus on alleviating localized damages.

In addition to establishing a public resource depredation order, alternative D would make two other changes to the current management program. It would also revise 50 CFR 21.47, the depredation order for double-crested cormorants at aquaculture facilities, and revise Director's Order 27. The establishment of the public resource depredation order and the revision of the aquaculture depredation order require us to amend the regulations in 50 CFR, part 21, governing the issuance of migratory bird permits. This proposed rule outlines those amendments, clarifying the proposed action presented in the DEIS.

The Service received many comments as a result of the public review of the DEIS. In consideration of these comments, we are proposing to make some modifications to the proposed action. A description of these changes follows. In this proposed rule, the public resource depredation order will: (1) Apply to 24 States (those States where Interior and Southern DCCO populations present the greatest risk to public resources); (2) apply specifically to State fish and wildlife agencies, federally recognized Tribes, and APHIS/WS, rather than to "State, Tribal, and Federal land management agencies" as stated in the DEIS, in order to streamline cormorant control activities and give more responsibility to APHIS/WS, the primary Federal agency responsible for alleviating wildlife damage conflicts; (3) apply only to land and freshwater (not saltwater), since all of the documented fisheries impacts occur in freshwater; and (4) allow egg oiling, egg and nest destruction, cervical dislocation, shooting, and CO<sub>2</sub> asphyxiation instead of "shooting, egg oiling or destruction, and nest destruction." Although we do not believe these modifications will result in significant changes to our analysis in the DEIS, we will address any changes to our impact analysis, as appropriate, in the Final EIS.

#### Population Status of the Double-Crested Cormorant

The information in this section is derived from the DEIS (to obtain a copy, see **ADDRESSES**). The DCCO is the most abundant and widespread of six native species of cormorants that occur in the United States. Population increase and range expansion in recent years have followed significant declines in DCCO numbers that occurred in the 1960s and early 1970s, largely due to negative reproductive effects (*e.g.*, eggshell thinning) associated with

organochlorine contaminants such as DDT (Postupalsky 1978, Weseloh *et al.* 1983, Weseloh *et al.* 1995). Factors contributing to the resurgence of DCCO populations include reduced levels of environmental contaminants, increased food availability in breeding and wintering areas, and reduced human persecution associated with MBTA protection (Ludwig 1984, Vermeer and Rankin 1984, Price and Weseloh 1986, Fox and Weseloh 1987, Hobson *et al.* 1989, Weseloh *et al.* 1995, Wires *et al.* 2001). Tyson *et al.* (1999) conservatively estimated the total population of DCCOs in the United States and Canada at greater than 1 million birds, including breeding and nonbreeding individuals, but probably closer to 2 million. We estimate that the current continental population of DCCOs is approximately 2 million birds. Although historical information about DCCO populations is limited (Hatch 1995), we can conclude, based on available estimates of past breeding numbers, that population levels are greater now than in the past. The long term sustainability of DCCO populations is unlikely to be affected by the management actions authorized in this proposed rule. This will be ensured by regular resource monitoring activities as described in the EIS.

According to Breeding Bird Survey (BBS) data, DCCOs in the United States increased at a statistically significant average rate of 7.9 percent per year between 1975 and 2000 (Sauer *et al.* 2001). Within this period, growth rates of regional populations varied substantially. Five different breeding populations are generally recognized: Atlantic, Interior, Southern, and Pacific Coast and Alaska. Recent population expansion has blurred the boundaries for the Interior, Atlantic, and Southern populations (Hatch and Weseloh 1999, Wires *et al.* 2001).

*Atlantic.* Approximately 23 percent of the DCCO breeding population is found in the Atlantic region (Tyson *et al.* 1999), which extends along the Atlantic coast from southern Newfoundland to New York City and Long Island (Wires *et al.* 2001). Atlantic DCCOs are migratory and occur with smaller numbers of great cormorants (*Phalacrocorax carbo*). From the early 1970s to the early 1990s, the Atlantic population increased from about 25,000 pairs to 96,000 pairs (Hatch 1995). While this population declined by 6.5 percent overall in the early to mid-1990s, some colonies were still increasing during this period. The most recent estimate of the Atlantic population is  $\geq 85,510$  breeding pairs (Tyson *et al.* 1999).

*Interior.* Nearly 70 percent of the DCCO breeding population is found in the Interior region (Tyson *et al.* 1999), which reaches across the prairie provinces of Canada, includes the Canadian and U.S. Great Lakes, and extends west of Minnesota to southwestern Idaho (Wires *et al.* 2001). Interior DCCOs are strongly migratory and, in the breeding months, are concentrated in the northern prairies, with the Canadian province of Manitoba hosting the largest number of breeding DCCOs in North America (Wires *et al.* 2001). Additionally, large numbers of Interior DCCOs nest on or around the Great Lakes (Hatch 1995, Wires *et al.* 2001). Since 1970, when 89 nests were counted during a severe pesticide induced population decline (Weseloh *et al.* 1995), DCCO numbers have increased rapidly in the Great Lakes, with breeding surveys in 2000 estimating 115,000 nests there (Weseloh *et al.* 2002). From 1990 to 1997, the overall growth rate in the Interior region was estimated at 6 percent with the most dramatic increases occurring in Ontario, Michigan, and Wisconsin. The Interior population (including Canada) numbers  $\geq 256,212$  breeding pairs (Tyson *et al.* 1999).

*Southern.* The Southern region includes Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas (Wires *et al.* 2001). Most DCCOs in this region are winter migrants from the Interior and Atlantic regions; the number of these wintering birds has increased dramatically in recent years (Dolbeer 1991, Glahn and Stickley 1995, Jackson and Jackson 1995, Glahn *et al.* 2000). Surveys conducted by APHIS/WS biologists suggest that winter numbers in the delta region of Mississippi have increased by nearly 225 percent since the early 1990s (over 73,000 DCCOs were counted in the 2001–2002 winter surveys; G. Ellis, unpubl. data). Breeding DCCOs in this region are also on the rise, with some nesting occurrences representing first records and others recolonizations (Wires *et al.* 2001). Today, approximately 4 percent of the DCCO breeding population occurs in this region, numbering  $>13,604$  breeding pairs with an estimated annual growth rate of 2.6 percent (Tyson *et al.* 1999).

#### *Pacific Coast and Alaska.*

Approximately 5 percent of the DCCO breeding population is found along the Pacific coast (Tyson *et al.* 1999), which extends from Alaska down the coastline to Mexico and includes some inland colonies (Wires *et al.* 2001). Numbers were most recently estimated at  $\geq 17,084$

breeding pairs with approximately 12 percent in Alaska (Tyson *et al.* 1999). Along the coast from British Columbia to Mexico, past estimates numbered nearly 22,000 nesting pairs (Hatch 1995). However, significant changes occurred in the 1990s, with large increases documented at the Columbia River estuary (Oregon) and inland at the Salton Sea (California) and sharp declines observed in coastal British Columbia and Washington (Wires *et al.* 2001). Tyson *et al.* (1999) estimated the annual rate of change of the Pacific Coast DCCO population (including Alaska) at  $-7.9$  percent.

#### **Impacts of Double-Crested Cormorants on Public Resources**

*Fish.* Effects of DCCO predation on a given fish population are dependent on variables including the number of birds present, the time of year at which predation is occurring, prey species composition, and physical characteristics such as depth or proximity to shore (which affect prey accessibility). Environmental and human-induced factors that affect fish populations can be classified as biological (*e.g.*, overexploitation, exotic species, etc.), chemical (*e.g.*, water quality, nutrient and contaminant loading, etc.), or physical (*e.g.*, dredging, dam construction, hydropower operation, siltation, etc.). Such activities may lead to changes in species density, diversity, or composition due to direct effects on year-class strength, recruitment, spawning success, spawning or nursery habitat, or competition (USFWS 1995). Based on a review of the DCCO diet literature, commercially and recreationally valuable fish do not generally make up a large proportion of DCCO diet but there are localized exceptions (Trapp *et al.* 1999, Wires *et al.* 2001). While increasing DCCO populations do not appear to be causing widespread negative impacts to fish populations, there is evidence that DCCO predation has had a detrimental effect in some areas. For example, research efforts in New York's Oneida Lake and eastern Lake Ontario have examined data on DCCO diets and fish populations and concluded that cormorant predation is likely a significant source of fish mortality negatively impacting recreational catch (Adams 1999, Rudstam 2000, Lantry *et al.* 1999).

Literature on DCCO feeding habits and fisheries impacts has shown that: (1) DCCOs are a generalist fish predator with prey selection varying opportunistically throughout the seasons and among locations; (2) present composition of cormorant diet

has been strongly influenced by human-induced changes in the natural balance of fish stocks; (3) an impact can occur at different scales, such that ecological effects on fish populations are not necessarily the same as effects on recreational or commercial catches, or vice versa; (4) cormorant impact is generally most significant in artificial, highly managed situations; (5) cormorant diet typically consists of low percentages of sport fish, but conclusions about fisheries impacts cannot be based on diet studies alone; and (6) conflicts with cormorants will vary locally since ecological conditions vary locally.

*Other Birds.* Weseloh *et al.* (2002) observed that nesting DCCOs could impact other colonial waterbirds in at least three ways: by DCCO presence limiting nest site availability, by DCCOs directly taking over nest sites, or by falling guano and nesting material from DCCO nests leading to the abandonment of nests below. Habitat destruction is another concern reported by biologists (USFWS 2001). The significance of DCCO-related effects on other birds varies with scale. While large-scale impacts on regional or continental bird populations have not been documented (Cuthbert *et al.* 2002), there is evidence that species such as black-crowned night herons, common terns, and great egrets can be negatively impacted by DCCOs at a site-specific level (Jarvie *et al.* 1999, Shieldcastle and Martin 1999, USFWS 2001, Weseloh *et al.* 2002). Biologists from several States and provinces have reported or expressed concern about impacts to other bird species associated with increased cormorant abundance (Wires *et al.* 2001, USFWS 2001).

*Vegetation and Habitat.* Cormorants destroy their nest trees by both chemical and physical means. Cormorant guano, or excrement, is highly acidic and kills ground vegetation and eventually the nest trees. In addition, cormorants damage vegetation by stripping leaves for nesting material and by breaking branches due to the combined weight of the birds and their nests. Vegetation and habitat destruction problems tend to be localized in nature. For example, resource professionals from the Great Lakes region are concerned about loss of plant diversity associated with increasing cormorant numbers at some breeding sites (Weseloh and Ewins 1994, Moore *et al.* 1995, Lemmon *et al.* 1994, Bédard *et al.* 1995, Shieldcastle and Martin 1999).

*Aquaculture.* Cormorant depredation at commercial aquaculture facilities, particularly those in the southern catfish-producing region, remains

economically significant. DCCOs move extensively within the lower Mississippi valley during the winter months (Dolbeer 1990). In the delta region of Mississippi, cormorants have been found to forage relatively close to their night roosting locations with most birds traveling an average distance of less than 20 km from their night roosting locations to their day roosts (King *et al.* 1995). Cormorants that use day roosts within the catfish-producing regions of the delta typically forage at aquaculture facilities; USDA researchers concluded that as much as 75 percent of the diet of DCCOs in these areas consists of catfish (Glahn *et al.* 1999). Losses from cormorant predation on fingerling catfish in the delta region of Mississippi have been estimated at approximately 49 million fingerlings each winter, valued at \$5 million. Researchers estimate the value of catfish at harvest to be about 5 times more than the replacement cost of fingerlings, placing the total value of catfish consumed by DCCOs at approximately \$25 million (Glahn *et al.* 2000). Total sales of catfish growers in Mississippi amounted to \$261 million in 2001 (USDA-NASS 2002).

Revisions to the aquaculture depredation order in this proposed rule would authorize APHIS/WS personnel to conduct winter roost control in the area of aquaculture facilities. In recent years, APHIS/WS has been involved extensively with nonlethal roost harassment efforts to reduce DCCO depredation on aquaculture facilities in the southern U.S. The Service trusts APHIS/WS personnel to decide which damage management techniques are most appropriate in a given situation and is therefore not requiring that nonlethal strategies be used first.

**Hatcheries.** DCCO impacts to hatcheries are related to predation, stress, disease, and financial losses to both hatcheries and recipients of hatchery stock. Hatchery fish may be stressed by the presence of DCCOs, wounds caused by unsuccessful attacks, and noisemakers used to scare away DCCOs. This stress can lead to a decrease in growth factors as feeding intensity decreases. Additionally, disease and parasites can be spread more easily by the presence of fish-eating birds. State and Federal hatchery managers, particularly in the upper midwest (*e.g.*, Wisconsin, Michigan) and the south (*e.g.*, Arizona, Louisiana, Oklahoma, Texas), have reported significant depredation problems at hatcheries (USFWS 2001). Currently, Director's Order No. 27, "Issuance of Permits to Kill Depredating Migratory Birds at Fish Cultural Facilities,"

dictates that "kill permits (for fish-eating birds) will be issued for use at public facilities only when it has been demonstrated that an emergency or near emergency exists and an (APHIS/WS) official certifies that all other deterrence devices and management practices have failed." The two depredation orders that we are proposing would supercede this Director's Order (for DCCOs only) by giving managers at State and Federal fish hatcheries more authority to control DCCOs to protect fish stock.

#### **Environmental Consequences of Proposed Action**

We analyzed our proposed action in the DEIS. We predict the proposed action will not have significant negative impacts on DCCO populations, will benefit fisheries in some situations, will not adversely affect federally protected species (*i.e.*, those protected under the MBTA or the Endangered Species Act), will contribute to protection of vegetation and habitat in some situations, and will help reduce depredation at private aquacultural facilities and State and Federal hatcheries.

#### **References**

A complete list of citation references is available upon request from the Division of Migratory Bird Management (*see ADDRESSES*).

#### **Public Comment Solicitation**

If you wish to comment on this proposed rule, you may submit your comments by any one of several methods. We may accept comments on the degree to which the rule's data sources comply with Service information quality guidelines (these guidelines can be found at <http://irm.fws.gov/infoguidelines/>). You may mail comments to the location listed in **ADDRESSES**. You may also comment via the Internet to: [cormorants@fws.gov](mailto:cormorants@fws.gov). Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AI39" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us by phone at 703/358-1714. You may also fax your comments to 703/358-2272. Finally, you may hand deliver comments to the location listed in **ADDRESSES**. Our practice is to make comments, including names and addresses of respondents, available for public review, by appointment, during regular business hours. Individual respondents may request that we withhold their home

address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organization or businesses available for public inspection in their entirety.

#### **Cormorant Regulations Under the Proposed Action**

This proposed rule would implement the DEIS proposed action in the following ways: it would (1) revise the 1998 aquaculture depredation order that allows APHIS/WS to protect public and private aquacultural stock in the 13 States listed in 50 CFR 21.47 by also allowing the take of DCCOs at winter roost sites; and (2) establish a new depredation order authorizing State fish and wildlife agencies, federally recognized Tribes, and APHIS/WS to take DCCOs without a Federal permit to protect public resources on public and private lands and freshwaters in 24 States (the 13 States listed in 50 CFR 21.47 and 11 additional States with significant resource threats). Both of the actions would amend subpart D of 50 CFR part 21.

#### **NEPA Considerations**

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR parts 1500-1508), we prepared a DEIS in November 2001, followed by a 100-day public comment period. This DEIS is available to the public (*see ADDRESSES*).

#### **Endangered Species Act Considerations**

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1543; 87 Stat. 884) provides that "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out...is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat \* \* \*." We have initiated Section 7 consultation under the ESA for this proposed rule. The result of this consultation will be included in the final Environmental Impact Statement.

**Executive Order 12866**

In accordance with the criteria in Executive Order 12866, this proposed action is not a significant regulatory action subject to Office of Management and Budget review. OMB has made this determination of significance under the Executive Order. This rule will not have an annual economic effect of \$100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required. The purpose of this rule is to help reduce adverse effects caused by cormorants, thereby providing economic relief. The total estimated economic impact of DCCOs is less than \$50 million per year. Assuming that landowners (*e.g.*, aquaculture producers) and other stakeholders utilize, informally or formally, some degree of cost-benefit analysis, the financial expenses to control cormorant problems should not exceed the damages incurred. Thus we can assume that the total annual economic effect of this rule will be less than \$50 million.

This proposed action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. The action proposed is consistent with the policies and guidelines of other Department of the Interior bureaus. This proposed action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed action will not raise novel legal or policy issues because we have previously managed DCCOs under the Migratory Bird Treaty Act.

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the

**SUPPLEMENTARY INFORMATION** section helpful in understanding the proposed rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229,

1849 C Street NW., Washington, DC 20240.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for actions that will have a significant economic effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. Because of the structure of wildlife damage management, the economic impacts of our proposed action will fall primarily on State governments and APHIS/WS. These do not qualify as "small governmental jurisdictions" under the Act's definition. Effects on other small entities, such as aquaculture producers, will be positive but are not predicted to be significant. Thus, we have determined that a Regulatory Flexibility Act analysis is not required.

**Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of \$100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

**Paperwork Reduction Act and Information Collection**

Simultaneous with the publication of this proposed rule, we have submitted an application for information collection approval from the Office of Management and Budget (OMB). Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), information collections must be approved by OMB. 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. This proposed rule would institute new information collection burden hours, as described below. We will notify the public of OMB's response to our application in the final rule for this regulation.

We intend to collect information from State, Tribal, and Federal agencies and private aquaculture producers who conduct DCCO management under the authority of the depredation orders. The specific monitoring and reporting

requirements associated with this rule are listed below in the proposed language for 50 CFR 21.47 and 21.48. The information collected will help us to determine how many DCCOs are being taken and for what purposes.

Information collections associated with this proposed rule are §§ 21.47(d)(7) and (d)(8) and 21.48(d)(7), (d)(8), (d)(9), and (d)(11) listed below in the proposed amendments to 50 CFR part 21. The breakdown of the information collection burden is as follows: We estimate that 21.47(d)(7) will have 50 annual respondents with 25 total annual burden hours valued at \$750; we estimate that 21.47(d)(8) will have 900 annual respondents with 1,800 total annual burden hours valued at \$54,000; we estimate that 21.48(d)(7) will have 10 annual respondents with 5 total annual burden hours valued at \$150; we estimate that 21.48(d)(8) will have 60 annual respondents with 60 total annual burden hours valued at \$1,800; we estimate that 21.48(d)(9) will have 60 annual respondents with 1,200 total annual burden hours valued at \$36,000; and we estimate that 21.48(d)(11) will have 10 annual respondents with 800 total annual burden hours valued at \$24,000.

Overall, we estimate that a total of 960 respondents will annually submit a total of 1,090 responses to the recordkeeping and reporting requirements associated with these depredation orders. Each response will require an average of 3.6 hours to complete, for a total of 3,890 hours per year for all of the information collection and recordkeeping requirements in this proposed rule. We estimate that the average wage of the individuals collecting the information is \$30.00 per hour and, thus, the dollar value of the total annual hour burden is \$116,700. OMB regulations at 5 CFR part 1320 require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden of the information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents. Send comments on this information collection within 30 days of the date of publication of this proposed rule to the addresses listed in the **ADDRESSES** section.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the proposed action would not “significantly or uniquely” affect small governments, and will not produce a Federal mandate of \$100 million or more in any given year on local or State government or private entities. Therefore, this action is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

### Takings Implication Assessment

In accordance with Executive Order 12630, this proposed action does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this proposed action will help alleviate private and public property damage and allow the exercise of otherwise unavailable privileges.

### Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. While legally this responsibility rests solely with the Federal Government, in the best interest of the migratory bird resource, we work cooperatively with States and other relevant agencies to develop and implement the various migratory bird management plans and strategies. For example, in the establishment of migratory game bird hunting regulations, we annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

This proposed action does not have a substantial direct effect on fiscal

capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. It will allow, but will not require, States to develop and implement their own DCCO management program. Therefore, in accordance with Executive Order 13132, this proposed action does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

### Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951) and Executive Order 13175, we have determined that this action has no significant effects on federally recognized Indian Tribes. In order to promote consultation with Tribes, a copy of the DEIS was mailed to all federally recognized Tribes in the continental United States.

### Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this proposed action is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

### List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby propose to amend part 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### PART 21—[AMENDED]

1. The authority citation for part 21 is revised to read as follows:

**Authority:** Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108; sec. 3 of

the Migratory Bird Treaty Act (16 U.S.C. 704), 40 Stat. 755; and sec. 3 of the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712), 92 Stat. 3112.

2. In subpart D, revise § 21.47 to read as follows:

### § 21.47 Depredation order for double-crested cormorants at aquaculture facilities.

(a) *What is the purpose of this depredation order?*

The purpose of this depredation order is to help reduce depredation of aquacultural stock by double-crested cormorants at private fish farms and State and Federal fish hatcheries.

(b) *In what areas can this depredation order be implemented?*

This depredation order applies to commercial freshwater aquaculture facilities and to State and Federal fish hatcheries in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

(c) *What does this depredation order allow and who can participate?*

(1) This depredation order authorizes landowners, operators, and tenants (or their employees or agents) actually engaged in the commercial, Federal, or State production of freshwater aquaculture stocks to take, without a Federal permit, double-crested cormorants when they are found committing or about to commit depredations to aquaculture stocks. This authority is applicable only during daylight hours and only within the boundaries of freshwater commercial aquaculture facilities or State and Federal hatcheries.

(2) This depredation order authorizes employees of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service to take double-crested cormorants, with appropriate landowner permission, at roost sites in the vicinity of aquaculture facilities, at any time, day or night, during the months of October, November, December, January, February, and March.

(3) Authorized employees of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service may designate agents to carry out control, provided these individuals act under the conditions of the order.

(d) *What are the terms and conditions of this order?*

(1) Persons operating under paragraph (c)(1) of this section may only do so in conjunction with an established nonlethal harassment program as certified by officials of the Wildlife

Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service.

(2) Double-crested cormorants may be taken only by shooting with firearms, including rifles. Persons using shotguns are required to use nontoxic shot as listed in 50 CFR 20.21(j).

(3) Persons operating under this depredation order may use decoys, taped calls, or other devices to lure within gun range birds committing or about to commit depredations.

(4) Persons operating under this depredation order must obtain appropriate landowner permission before implementing activities authorized by the order.

(5) Double-crested cormorants may not be killed contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State or other permits, if required.

(6) Persons operating under this depredation order must properly dispose of double-crested cormorants killed in control efforts:

(i) Individuals may donate birds killed under authority of this order to museums or other such scientific and educational institutions for the purposes of scientific or educational exhibition. Recipients of such donations must have a scientific collecting permit as outlined in 50 CFR 21.23;

(ii) Individuals may also bury or incinerate birds taken; and

(iii) Individuals may not allow birds taken under this order, or their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

(7) Nothing in this depredation order authorizes the take of any migratory bird species other than double-crested cormorants. Two look-alike species co-occur with double-crested cormorants in the southeastern States, the anhinga, which occurs across the southeastern United States, and the neotropical cormorant, which is found in varying numbers in Texas, Louisiana, and Oklahoma. Both species can be mistaken for double-crested cormorants, but take of these two species is not authorized under this depredation order. Persons operating under this order must immediately report the take of a migratory bird species other than DCCOs to the appropriate Service Regional Migratory Bird Permit Office. Additionally, this depredation order does not authorize the take of any species protected by the Endangered Species Act, unless as permitted. Persons operating under this order must immediately report the take of species

protected under the Endangered Species Act to the Service.

(8) Persons operating under this depredation order must:

(i) Keep a log recording the date and number of all birds killed each month under this authorization;

(ii) Maintain this log for a period of 3 years (and maintain records for 3 previous years of takings at all times thereafter); and

(iii) Annually provide the most recent log to the appropriate Service Regional Migratory Bird Permit Office. Regional Office addresses are found in § 2.2 of subchapter A of this chapter.

(9) The authority to take double-crested cormorants under this order can be revoked by the Regional Director for violations of or failure to comply with the terms and conditions of the order. Persons whose authority is revoked may apply for a depredation permit under 50 CFR 21.41.

(e) *Does this rule contain information collection requirements?*

Yes. This information collection is authorized by OMB control number 1018-XXXX.

(f) *When does this depredation order expire?*

This depredation order will automatically expire on April 30, 2005, unless revoked or extended prior to that date.

3. In Subpart D, add § 21.48 to read as follows:

**§ 21.48 Depredation order for double-crested cormorants to protect public resources.**

(a) *What is the purpose of this depredation order?*

The purpose of this depredation order is to reduce the occurrence and/or minimize the risk of adverse impacts to public resources (fish, wildlife, plants, and their habitats) caused by double-crested cormorants.

(b) *In what areas can this depredation order be implemented?*

This depredation order applies to all lands and freshwaters in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, West Virginia, and Wisconsin.

(c) *What does this depredation order allow and who can participate?*

(1) This depredation order authorizes State fish and wildlife agencies, federally recognized Tribes, and State Directors of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (collectively termed

“Agencies”) to take without a permit double-crested cormorants found committing or about to commit, and to prevent, depredations on the public resources of fish (including hatchery stock at Federal, State, and Tribal facilities), wildlife, plants, and their habitats.

(2) Agencies may designate agents to carry out control, provided those individuals act under the conditions of the order.

(3) Federally recognized Tribes and their agents may carry out control only on reservation lands or ceded lands within their jurisdiction.

(d) *What are the terms and conditions of this order?*

(1) Persons operating under this order must first utilize nonlethal control methods such as harassment and exclusion devices when these are considered effective and practicable by the responsible Agency.

(2) Double-crested cormorants may be taken only by means of egg oiling, egg and nest destruction, cervical dislocation, shooting, and CO<sub>2</sub> asphyxiation. Persons using shotguns must use nontoxic shot, as listed in 50 CFR 20.21(j). Persons using egg oiling must use 100 percent corn oil, a substance exempted from regulation by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act.

(3) Persons operating under this depredation order may use decoys, taped calls, or other devices to lure within gun range birds committing or about to commit depredation of public resources.

(4) Persons operating under this depredation order must obtain appropriate landowner permission before implementing activities authorized by the order.

(5) Persons operating under this depredation order may not take double-crested cormorants contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State or other permits, if required.

(6) Persons operating under this depredation order must properly dispose of double-crested cormorants killed in control efforts:

(i) Individuals may donate birds killed under authority of this order to museums or other such scientific and educational institutions for the purposes of scientific or educational exhibition. Recipients of such donations must have a scientific collecting permit as outlined in 50 CFR 21.23;

(ii) Individuals may also bury or incinerate birds taken; and



(iii) Individuals may not allow birds taken under this order, or their plumage, to be sold, offered for sale, bartered, or shipped for purpose of sale or barter.

(7) Nothing in this depredation order authorizes the take of any migratory bird species other than double-crested cormorants. Two look-alike species co-occur with double-crested cormorants in the southeastern States, the anhinga, which occurs across the southeastern United States, and the neotropic cormorant, which is found in varying numbers in Texas, Louisiana, and Oklahoma. Both species can be mistaken for double-crested cormorants, but take of these two species is not authorized under this depredation order. Persons operating under this order must immediately report the take of a migratory bird species other than DCCOs to the appropriate Service Regional Migratory Bird Permit Office. Additionally, this depredation order does not authorize the take of any species protected by the Endangered Species Act, unless as permitted. Persons operating under this order must immediately report the take of species protected under the Endangered Species Act to the Service.

(8) Responsible Agencies must, before they initiate control, provide a one-time notice, in writing, to the appropriate Service Regional Migratory Bird Permit Office of their intention to carry out control activities under this order. Regional Office addresses are found in § 2.2 of subchapter A of this chapter.

(9) Persons operating under this order must keep records of all activities, including those of designated agents, carried out under this order. The

Service will review Agencies' reports and will periodically assess the overall impact of this program to ensure compatibility with the long-term conservation of double-crested cormorants and other public resources. On an annual basis, Agencies must provide the Service Regional Migratory Bird Permit Office with a report detailing activities conducted under the authority of this order, including:

(i) By date and location, a summary of the number of double-crested cormorants killed and/or number of nests in which eggs were oiled;

(ii) A statement of efforts being made to minimize incidental take of nontarget species and a report of the number and species of migratory birds involved in such take, if any;

(iii) A description of the impacts or anticipated impacts to public resources by double-crested cormorants and a statement of the management objectives for the area in question;

(iv) A description of the evidence supporting the hypothesis that double-crested cormorants are causing or will cause these impacts;

(v) A discussion of other limiting factors affecting the resource (*e.g.*, biological, environmental, and socioeconomic); and

(vi) A discussion of how control efforts are expected to alleviate resource impacts.

(10) Agencies must provide annual reports, as described above, by December 31 for the reporting period September 1 of the previous year to August 31 of the same year. For example, reports for the period September 1, 2003, to August 31, 2004,

would be due on or before December 31, 2004.

(11) For actions that are conducted with the intent of reducing or eliminating local double-crested cormorant populations, Agencies must:

(i) Monitor effects of their management activities on cormorants and other migratory birds at sites of control;

(ii) Monitor effects of their management activities on the public resources being protected at control sites; and

(iii) Evaluate effects of the management activities listed in paragraphs (d)(11)(i) and (ii) of this section and adjust management actions accordingly. Upon request, Agencies must provide the Service with documentation of their monitoring and evaluation efforts.

(12) The authority to take double-crested cormorants under this order can be revoked by the Regional Director for violations of or failure to comply with the terms and conditions of the order. Persons whose authority is revoked may apply for a depredation permit under 50 CFR 21.41.

(e) *Does this rule contain information collection requirements?*

Yes. This information collection is authorized by OMB control number 1018-XXXX.

Dated: January 13, 2003.

**Craig Manson,**

*Assistant Secretary for Fish, Wildlife and Parks.*

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