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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–HQ–MB–2019–0103; FF09M29000–190–FXMB1232090000]

RIN 1018–BE67

Migratory Bird Permits; Management of Double-crested Cormorants (*Phalacrocorax auritus*) Throughout the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking; intent to prepare a National Environmental Policy Act document.

SUMMARY: This document advises the public that we, the U.S. Fish and Wildlife Service, intends to gather information necessary to develop a proposed rule to expand management of double-crested cormorants (*Phalacrocorax auritus*) throughout the United States, and prepare a draft environmental review pursuant to the National Environmental Policy Act of 1969, as amended. We are furnishing this advance notice of proposed rulemaking to advise other agencies and the public of our intentions; obtain suggestions and information on the scope of issues to include in the environmental review; and announce public scoping webinars to occur in 2020.

DATES: *Comment submission:* Public scoping will begin with the publication of this document in the *Federal Register* and will continue through [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. We will consider all comments on the scope of the draft environmental review that are received or postmarked by that date. Comments received or postmarked after that date will be considered to the extent practicable.

Scoping meetings: We will hold public scoping meetings in the form of multiple webinars that will occur in February 2020. We will announce exact webinar dates, times, and registration details on the internet at <https://www.fws.gov/birds/management/managed-species/double-crested-cormorants.php>.

ADDRESSES: You may submit written comments by one of the following methods. Please do not submit comments by both.

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–HQ–MB–2019–0103.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–MB–2019–0103; U.S. Fish and Wildlife Service Headquarters, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We do not accept email or faxes. We will post all comments on <http://www.regulations.gov>, including any personal information you provide.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, Assistant Director, Migratory Birds, U.S. Fish and Wildlife Service, at 202–208–1050.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) is the Federal agency delegated with the primary responsibility for managing migratory birds. Our authority derives from the Migratory Bird Treaty Act of 1918, as amended (MBTA), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Russia Federation. The MBTA protects certain migratory birds from take, except as permitted under the MBTA. We implement the provisions of the MBTA through regulations in parts 10, 13, 20, 21, and 22 of title 50 of the Code of Federal Regulations (CFR). Regulations pertaining to migratory bird permits are at 50 CFR part 21.

The double-crested cormorant (*Phalacrocorax auritus*, [cormorants]) is a fish-eating migratory bird that is distributed across a large portion of North America. There are five different breeding populations of cormorants, variously described by different authors as the Alaska, Pacific Coast, Interior, Atlantic, and Southern populations. Cormorant populations have exhibited increasing abundance over the last few decades. In response to ongoing damage at aquaculture facilities and other damage and conflicts associated with increasing cormorant populations, the Service administered regulations that included an Aquaculture Depredation Order (which was located at 50 CFR 21.47) and a Public Resource Depredation Order (which was located at 50 CFR 21.48) from October 2003 until May of 2016.

The Aquaculture Depredation Order eliminated individual permit requirements in 13 States for private individuals, corporations, State agencies, and Federal agencies taking cormorants at aquaculture facilities. The Public Resource Depredation Order enabled States,

Tribes, and the U.S. Department of Agriculture's Wildlife Services in 24 States, without individual depredation permits, to take 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. In May of 2016, the depredation orders were vacated by the United States District Court for the District of Columbia. The Court concluded that the Service did not sufficiently consider the effects of the depredation orders on cormorant populations and other affected resources and failed to consider a reasonable range of alternatives in the review within the environmental assessment issued under the National Environmental Policy Act of 1969, as amended (NEPA), in 2014. The authority for authorizing lethal take of depredating cormorants reverted back to the issuance of individual depredation permits pursuant to 50 CFR 21.41.

Conflicts in aquatic systems continue to exist between cormorants and fish stocks managed by Federal, State, and Tribal agencies as recreational and/or commercial fisheries, or for species-conservation purposes. Cormorant predation of fish also occurs at aquaculture facilities and private recreational lakes and ponds. Birders and other interested parties value cormorants for their aesthetic and existential values.

The Service is responsible for determining the maximum amount of lethal take of cormorants to allow in order to minimize conflicts in aquatic systems, while maintaining sustainable populations of cormorants and minimizing the regulatory burden on Federal and State agencies and individual citizens. In the process of making this decision, the Service wants to use an effective and transparent decision-making process that ensures collaboration among migratory bird and fisheries management programs, fulfills Tribal trust and subsistence responsibilities, adheres to legal and regulatory requirements under NEPA, and addresses key

biological uncertainties. When determining total allowable take, the Service must consider uncertainty related to cormorant population dynamics, estimated maximum sustainable harvest, and risk of over-exploitation. Furthermore, the Service and stakeholders must identify appropriate monitoring requirements that ensure progress toward stated objectives and inform future decisions regarding total allowable take.

Public Scoping

A primary purpose of the NEPA scoping process is to receive suggestions and information on the scope of issues and alternatives to consider when drafting the environmental documents and to identify significant issues and reasonable alternatives related to the Service's proposed action. In order to ensure that we identify a range of issues and alternatives related to the proposed action, we invite comments and suggestions from all interested parties. We will conduct a review of this proposed action according to the requirements of NEPA and its regulations, other relevant Federal laws, regulations, policies, and guidance, and our procedures for compliance with applicable regulations. Once the environmental documents are completed, we will offer further opportunities for public comment.

Proposed Action and Possible Alternatives

The Service has collaborated with State fish and wildlife agencies, Tribes, and Federal partners in further addressing cormorant conflicts including aquaculture and wild and stocked fisheries. In this rulemaking action, we propose these long-term solutions to cormorant conflicts:

(1) Establish a new permit for State wildlife agencies for authorizing certain cormorant management and control activities that are normally prohibited and are intended to relieve or

prevent impacts from cormorants on wild and stocked fisheries, aquaculture facilities, human health and safety, property, and threatened and endangered species (as listed under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)). States would have the delegated authority to determine whether, when, where, and for what purposes to control cormorants within limits set by the Service.

(2) Establish an aquaculture depredation order, which would allow take of cormorants under prescribed conditions at aquaculture facilities without the need to acquire an individual permit.

(3) Both (1) and (2) in combination.

The proposed action presented in the environmental analysis will be compared to the no-action alternative. The no-action alternative will compare estimated future conditions without implementation of the alternatives listed here to the estimated future conditions with those alternative actions in place (i.e., issuance of individual depredation permits pursuant to 50 CFR 21.41).

Information Requested

Issues Related to the Scope of the NEPA Review

We seek comments or suggestions from the public, governmental agencies, Tribes, the scientific community, industry, or any other interested parties. To promulgate a proposed rule and prepare a draft environmental review pursuant to NEPA, we will take into consideration all comments and any additional information received. To ensure that any proposed rulemaking effectively evaluates all potential issues and impacts, we are seeking comments and suggestions

on the following for consideration in preparation of additional management for double-crested cormorants:

- a. Assessment of interest in use of a new special permit by States and Tribes;
- b. Appropriate limitations to cormorant management and control activities, such as season, scope, and magnitude of expected lethal take; and
- c. Potential reporting and monitoring strategies of cormorants by States and participating Tribes.

The Service will act as the lead Federal agency responsible for completion of the environmental review. Therefore, we are seeking comments on the identification of direct, indirect, beneficial, and adverse effects that might be caused by additional management for double-crested cormorants. You may wish to consider the following issues when providing comments:

- a. Impacts on floodplains, wetlands, wild and scenic rivers, or ecologically sensitive areas;
- b. Impacts on park lands and cultural or historic resources;
- c. Impacts on human health and safety;
- d. Impacts on air, soil, and water;
- e. Impacts on prime agricultural lands;
- f. Impacts to other species of wildlife, including endangered or threatened species;
- g. Disproportionately high and adverse impacts on minority and low-income populations;
- h. Any other potential or socioeconomic effects; and
- i. Any potential conflicts with other Federal, State, local, or Tribal environmental laws or requirements.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we use in preparing the environmental analysis, will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Headquarters (see **ADDRESSES**, above).

Scoping Meetings

See **DATES** for information about upcoming scoping webinars. The purpose of scoping webinars is to provide the public with a general understanding of the background of the proposed rule, alternatives and activities it would cover, alternative proposals under consideration, and the Service's role and steps to be taken to develop the draft environmental analysis for the proposed action. Additionally, the purpose of these meetings and public comment period is to solicit suggestions and information on the scope of issues and alternatives for the Service to consider when preparing the draft environmental documents. Oral comments will be accepted at the webinars.

Comments can also be submitted by methods listed in **ADDRESSES**. Once the draft environmental documents and proposed rule are complete and made available for review, there will be additional opportunity for public comment on the content of these documents through an additional comment period.

Scoping Webinar Accommodations

Please note that the Service will ensure that the public scoping webinars will be accessible to members of the public with disabilities.

Public Comments

To promulgate a proposed rule and prepare a draft environmental review pursuant to NEPA, we will take into consideration all comments and any additional information received. Please note that submissions merely stating support for or opposition to the proposed action and alternatives under consideration, without providing supporting information, will be noted but not considered by the Service in making a determination. Please consider the following when preparing your comments:

- a. Be as succinct as possible.
- b. Be specific. Comments supported by logic, rationale, and citations are more useful than opinions.
- c. State suggestions and recommendations clearly with an expectation of what you would like the Service to do.
- d. If you propose an additional alternative for consideration, please provide supporting rationale and why you believe it to be a reasonable alternative that would meet the purpose and need for our proposed action.
- e. If you provide alternate interpretations of science, please support your analysis with appropriate citations.

The alternatives we develop will be analyzed in our draft environmental review pursuant to NEPA. We will give separate notice of the availability of the draft environmental review for

public comment when it is completed. We may hold public hearings and informational sessions so that interested and affected people may comment and provide input into the final decision.

Authority

The authority for this action is the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Dated: December 6, 2019.

Rob Wallace

Assistant Secretary for Fish and Wildlife and Parks.

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