

**DOUBLE-CRESTED CORMORANTS:**  
An Update from the U.S. Fish and Wildlife Service  
October 3, 2017

**I SUMMARY**

- U.S. District Court vacated two U.S. Fish and Wildlife Service (FWS) Depredation Orders that previously allowed the lethal take of cormorants, citing inadequate NEPA documentation.
- FWS and USDA are completing a NEPA Environmental Assessment to evaluate options for lethal take permits for aquaculture facilities, among other circumstances, which is expected to be completed by the end of October.
- FWS will also review the science and options for lethal take permits involving cormorants and their potential damage to recreational and commercial fishing.
- The FWS is striving to make certain the NEPA reviews are built on a strong biological foundation to ensure cormorants are managed responsibly and in compliance with federal laws and regulations, while also balancing economic development, human health and safety, and endangered species management.

**II BACKGROUND**

Double-crested cormorants are protected under the Migratory Bird Treaty Act (MBTA), which implements four international conservation treaties that the United States entered with Canada, Japan, Mexico, and Russia. The MBTA prohibits the take (killing, capture, selling, trading, transport, etc.) of protected migratory bird species without prior authorization by the FWS. Depredation permits (50 CFR 21.41) are provided to individuals, private organizations, and other federal and state agencies on a case-by-case basis for the lethal control of problem birds. In contrast, a Depredation Order establishes conditions in regulations under which specified entities or individuals can take a covered species without obtaining an individual depredation permit.

In May 2016, the U.S. District Court for the District of Columbia remanded the FWS' 2014 Environmental Assessment (EA) and vacated two Depredation Orders for double-crested cormorants until the FWS prepares an adequate EA or Environmental Impact Assessment (EIS) pursuant to National Environmental Policy Act (NEPA). The court concluded that FWS did not take a "hard look" at the effects of the Depredation Orders on cormorant populations and other affected resources, and failed to consider a reasonable range of alternatives. The Orders impacted were the Aquaculture Depredation Order (50 CFR 21.47) and the Public Resource Depredation Order (50 CFR 21.48), which covered cormorant management in 24 states in the Midwest, Southeast, and Northeast United States.

As a result of the court decision to vacate the Depredation Orders, lethal control activities for double-crested cormorants may only be conducted under an individual migratory bird depredation permit issued by the FWS. The issuance of individual depredation permits is also

subject to the requirements of NEPA. Many of the existing NEPA documents covering the issuance of individual cormorant depredation permits relied upon the same remanded 2014 EA; therefore the NEPA documents and analysis need to be revised before new permits can be issued. As a result, the FWS has temporarily stopped issuing new permits that allow for the lethal take of double-crested cormorants until we complete an adequate NEPA decision document.

### **III LOOKING FORWARD**

The FWS in conjunction with the U.S. Department of Agriculture's Wildlife Services program is currently completing an EA focused on evaluating options for the issuance of depredation permits for cormorants where there is either significant economic damage to fish production facilities (aquaculture); significant damage to native vegetation; significant impact on a threatened or endangered species; or significant human safety risks. The FWS expects to have this EA completed in October. Completion of this EA will provide the basis for issuing individual depredation permits in order to provide relief for aquaculture facilities experiencing direct economic losses from cormorants. We expect to begin issuing actual permits prior to cormorant migration this fall.

The FWS recognizes this review does not address the concerns raised by states regarding potential damage to recreational and commercial fishing by cormorants. The scale and complexity of the issues involving cormorant removal to protect wild free-swimming fish populations is significant, and not as easily assessed as the impacts on aquaculture. There is limited scientific information regarding the biological and economic effects of cormorants or their removal on wild fisheries. The FWS is currently evaluating the options for addressing the concerns of the U.S. District Court and has started a dialogue with state fish and wildlife agencies to assess comprehensive management options for cormorants across the United States.

The FWS will initiate the process of analyzing cormorant impacts to free-swimming fish immediately after completion of the aquaculture EA. As part of this process, the FWS will conduct formal stakeholder engagement sessions in order to come to agreement on the biological, social, and economic significance of wild fish-cormorant interactions, and to identify a suite of management alternatives. This will include identifying the monitoring needs necessary to address the issue and gathering better scientific information that could be used in the NEPA review and decision making process.

The FWS is striving to make certain that all the NEPA reviews are built on a strong biological foundation and fully account for the cumulative impacts of lethal cormorant control activities on cormorant populations across the United States. This will ensure cormorants are managed responsibly and in compliance with federal laws and regulations, while balancing economic development, human health and safety, endangered species management, and other priorities.