

## ELECTRONIC CODE OF FEDERAL REGULATIONS

**e-CFR Data is current as of October 30, 2012**

Title 50: Wildlife and Fisheries

PART 21—MIGRATORY BIRD PERMITS

Subpart D—Control of Depredating and Otherwise Injurious Birds

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

(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 should first utilize nonlethal control methods such as harassment and exclusion devices when these are considered effective and practicable and not harmful to other nesting birds by the responsible Agency.

(2) Double-crested cormorants may be taken only by means of egg oiling, egg and nest destruction, cervical dislocation, firearms, 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;

(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, Kansas, 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 double-crested cormorants to the appropriate Service Regional Migratory Bird Permit Office.

(8) Nothing in this depredation order authorizes the take of any species protected by the Endangered Species Act. Persons operating under this order must immediately report the take of species protected under the Endangered Species Act to the Service.

(i) To protect piping plovers, interior least terns, wood storks, and bald eagles, the following conservation measures must be observed within any geographic area where Endangered Species Act protection applies to these species:

(A) The discharge/use of firearms to kill or harass double-crested cormorants or use of other harassment methods are allowed if the control activities occur more than 1,000 feet from active piping plover or interior least tern nests or colonies; occur more than 1,500 feet from active wood stork nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks; or occur more than 750 feet from active bald eagle nests;

(B) Other control activities such as egg oiling, cervical dislocation, CO<sub>2</sub> asphyxiation, egg destruction, or nest destruction are allowed if these activities occur more than 500 feet from active piping plover or interior least tern nests or colonies; occur more than 1,500 feet from active wood stork nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks; or occur more than 750 feet from active bald eagle nests;

(C) To ensure adequate protection of piping plovers, any Agency or its agents who plan to implement control activities that may affect areas designated as piping plover critical habitat in the Great Lakes Region are to obtain prior approval from the appropriate Regional Director. Requests for approval of activities in these areas must be submitted to the Regional Migratory Bird Permit Office. The Regional Migratory Bird Permit Office will then coordinate with the Endangered Species Field Office staff to assess whether the measures in paragraph (d)(8)(i)(B) of this section are adequate.

(ii) At their discretion, Agencies or their agents may contact the Regional Migratory Bird Permit Office to request modification of the above measures. Such modification can occur only if the Regional Director determines, on the basis of coordination between the Regional Migratory Bird Permit Office and the Endangered Species Field Office, that the species listed in paragraph (d)(8)(i) of this section will not be adversely affected.

(iii) If adverse effects are anticipated from the control activities in a geographical area where Endangered Species Act protection applies to any of the four species listed in paragraph (d)(8)(i) of this section, either during the intra-Service coordination discussions described in paragraph (d)(8)(i)(C) of this section or at any other time, the Regional Migratory Bird Permit Office will initiate consultation with the Endangered Species Field Offices.

(9) Responsible Agencies must, before they initiate any control activities in a given year, provide a one-time written notice to the appropriate Service Regional Migratory Bird Permit Office indicating that they intend to act under this order.

(i) Additionally, if any Agency plans a single control action that would individually, or a succession of such actions that would cumulatively, kill more than 10 percent of the double-crested cormorants in a breeding colony, it must first provide written notification to the appropriate Service Regional Migratory Bird Permit Office. This letter must be received no later than 30 days in advance of the activity and must provide:

(A) The location (indicating specific colonies, if applicable) of the proposed control activity;

(B) A description of the proposed control activity, specifying what public resources are being impacted, how many birds are likely to be taken and what approximate percentage they are of total DCCOs present, and which species of other birds are present; and

(C) Contact information for the person in charge of the control action.

(ii) The Regional Director may prevent any such activity by notifying the agency in writing if the Regional Director deems the activity a threat to the long-term sustainability of double-crested cormorants or any other migratory bird species.

(10) Persons operating under this order must keep records of all activities, including those of designated agents, carried out under this order. 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 conclusion 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, or actually did, alleviate resource impacts.

(11) Agencies must provide annual reports to the appropriate Service Regional Migratory Bird Permit Office, as described in paragraph (d)(10) of this section, by December 31 for the reporting period October 1 of the previous year to September 30 of the same year. For example, reports for the period October 1, 2003, to September 30, 2004, would be due on or before December 31, 2004. The Service will regularly review Agency 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 resources.

(12) In some situations, Agencies may deem it necessary to reduce or eliminate local breeding populations of double-crested cormorants to reduce the occurrence of resource impacts.

(i) For such actions, Agencies must:

(A) Comply with paragraph (d)(9) of this section;

(B) Carefully plan activities to avoid disturbance of nontarget species;

(C) Evaluate effects of management activities on cormorants at the control site;

(D) Evaluate, by means of collecting data or using best available information, effects of management activities on the public resources being protected and on nontarget species; and

(E) Include this information in the report described in paragraph (d)(10) of this section.

(ii) Agencies may coordinate with the appropriate Service Regional Migratory Bird Permit Office in the preparation of this information to attain technical or other assistance.

(13) We reserve the right to suspend or revoke the authority of any Agency, Tribe, or State Director granted by this order if we find that the specified purpose, terms, and conditions have not been adhered to or if the long-term sustainability of double-crested cormorant populations is threatened by the action(s) of that Agency, Tribe, or State Director. The criteria and procedures for suspension, revocation, reconsideration, and appeal are outlined in §§ 13.27 through 13.29 of this subchapter. For the purposes of this section, “issuing officer” means the Regional Director and “permit” means the authority to act under this depredation order. For purposes of § 13.29(e), appeals shall be made to the Director.

(e) *Does this section contain information collection requirements?* Yes, the information collection requirements in this section are approved by the Office of Management and Budget (OMB) under OMB control number 1018-0121. Federal agencies may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(f) *When does this depredation order expire?* This depredation order will automatically expire on June 30, 2014, unless revoked or extended prior to that date.

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