

SUPPORTING STATEMENT A FOR PAPERWORK REDUCTION ACT SUBMISSION

Federal Fish and Wildlife Permit Applications and Reports— Special Double-Crested Cormorants; 50 CFR 21 OMB Control Number 1018-New

Terms of Clearance: None. This is a request for a new OMB control number.

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The U.S. Fish and Wildlife Service (Service, we) is the Federal agency delegated with the primary responsibility for managing migratory birds. Our authority derives from the Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. 703–712), as amended, which implements conventions with Great Britain (for Canada), Mexico, Japan, and Russia. We implement the provisions of the MBTA through the regulations in parts 10, 13, 20, 21, 22, and 92 of title 50 of the Code of Federal Regulations (CFR). The MBTA protects migratory birds (listed in 50 CFR 10.13) from take directed at birds, except as authorized under the MBTA. Regulations pertaining to specific migratory bird permit types are at 50 CFR parts 21 and 22.

The double-crested cormorant is a fish-eating migratory bird that is distributed across a large portion of North America. There are five different breeding populations, variously described by different authors as the Alaska, Pacific (or Western), Interior, Atlantic, and Southern populations. Although these populations are described by their breeding ranges, the birds commingle to various extents on their migration and wintering areas, with birds from populations closer to each other overlapping more than those that are more distant.

In response to ongoing damage at aquaculture facilities and other damage and conflicts associated with increasing cormorant populations, the Service administered regulations that included, in addition to Depredation Permits (located at 50 CFR 21.41), an Aquaculture Depredation Order (which was located at 50 CFR 21.47) beginning in 1998 and a Public Resource Depredation Order (which was located at 50 CFR 21.48), which began in 2003. Both of these regulations were in place until May 2016 when they were vacated by Court order (see more below).

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 2016, these 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 (EA) issued in 2014 under the National Environmental Policy Act of 1969, as amended (NEPA). Following the Court ruling, the Service prepared an EA to address

continuing conflicts with cormorants (USFWS 2017). The authority for authorizing lethal take of depredating cormorants reverted back to the issuance of individual depredation permits pursuant to 50 CFR 21.41. Under the 2017 EA, cormorants could lethally be taken only to address conflicts with aquaculture, human health and safety, threatened and endangered species (as listed under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*) and State-listed species of management concern, and personal property.

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. Conflicts also exist between cormorants and conservation of other species and habitats in some areas. As fish-eating birds, cormorant predation of fish occurs not only at aquaculture facilities, but also in private recreational ponds and large aquatic ecosystems. While conflicts exist between cormorants and some stakeholders, birders and other interested parties value cormorants for their aesthetic and existential values.

The Service is responsible for balancing the lethal take of cormorants to alleviate conflicts where available data support such take and maintaining sustainable populations of cormorants and minimizing the regulatory burden on Federal and State agencies, Tribes, and individual citizens. To address these conflicts, the Service has prepared a proposed rule to establish a new permit for State and federally recognized Tribal (hereafter “Tribe” or “Tribal”) wildlife agencies for the management of double-crested cormorants (*Phalacrocorax auritus*; hereafter “cormorants”). The new permit would authorize specific take activities that are normally prohibited and are intended to relieve or prevent impacts from cormorants on lands within State or Tribal jurisdictions to address conflicts related to the following issues:

- Wild and publicly stocked fish stocked by State agencies or Tribes;
- Tribal- and State-owned or operated aquaculture facilities (including hatcheries);
- Human health and safety;
- State- or Tribal-owned property and assets; and
- Threatened and endangered species (listed under the Endangered Species Act of 1973, as amended, or identified in State- or Tribal-specific legislation as threatened or endangered).

The Service would retain ultimate authority for regulating the take of cormorants. States and Tribes would have the discretion to determine whether, when, where, and for which of the above purposes they would conduct lethal take within limits and allocations set by the Service.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.

The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity. In instances where birds will be killed we use the information collected on the application to determine that the birds do not suffer needlessly. This permit is necessary to allow the take of double-crested cormorants to alleviate conflicts in an efficient manner by allowing States and Tribes to conduct take activities without applying for permits each time a conflict arises. Absent this permit, States and Tribes would be unable to expeditiously conduct management activities to reduce conflicts as they occur. The Service will annually determine the number of birds that can be taken to ensure sustainable cormorant populations,

and how that take will be apportioned among permittees. Tracking the number of birds actually taken via this form will allow the Service to ensure compliance with amounts of take by individual permittees and that overall take is at or below the overall amount established by the Service. The questions asked specifically address required information in the permit regulation (50 CFR 21.28). We also will collect information on birds of other species that look similar to cormorants that are taken incidentally to double-crested cormorant management actions to assess potential impacts of this permit on non-target species of birds.

FWS Form 3-200-90, Special Double-Crested Cormorant Permit Application

Any State or Tribal wildlife agency wishing to obtain a permit must submit a permit application (FWS Form 3–200–90) to the appropriate Regional Director containing the general information and certification required by 50 CFR 13.12(a). A draft copy of this form is provided to OMB for review/comment prior to finalizing the form at the final rule stage of this rulemaking action.

All Service permit applications are in the 3-200 series of forms, each tailored to a specific activity based on the regulatory requirements for specific types of permits. Sections A through D on the applications are the same for all permit types. These sections collect standard identifier information, such as the name and address, telephone and fax numbers, tax identification number, and email address for the applicant. Regulations at 50 CFR 13.12, “General information requirements on applications for permits,” require submission of this information. Standardizing general information common to the application forms makes filing of applications easier for the public as well as expedites our review of applications. We use this information to establish a permit record and is unique to the applicant.

Section E of each application collects information specific to the activity the applicant wishes to conduct, as well as information concerning:

- (1) A brief description of the State's or Tribe's double-crested cormorant conflicts, including physical location(s), with optional site-specific information;
- (2) A detailed statement explaining how the cormorant management and take activities proposed will address human health and safety concerns, protect State- or Tribal-owned property and assets, protect threatened and endangered species (including species listed in their State or Tribal legislation), alleviate depredation at State- or Tribal-owned or operated aquaculture facilities, or prevent/reduce depredation of wild or publicly stocked fisheries stocked by State agencies or federally recognized Tribes;
- (3) The number of double-crested cormorants, including eggs and nests that the applicant proposes to take annually;
- (4) A statement indicating what information is available and will be collected to assess whether the management and take of double-crested cormorants is alleviating the damage or other conflict;
- (5) A statement indicating that the State or Tribe will ensure that all employees and subpermittees are fully informed and briefed regarding the regulatory requirements and permit conditions of this permit;
- (6) A list of all subpermittees who may conduct activities under the Special Double-Crested Cormorant Permit, including their names, addresses, and telephone numbers; and,
- (7) The name and telephone number of the individual in the State or Tribal agency who will be in charge of the double-crested cormorant management activities authorized under their permit.

FWS Form 3-202-56, Annual Report – Special Double-Crested Cormorant –

In conjunction with issuance of the Special Double-Crested Cormorant permit, we will require the permittee submit FWS Form 3-202-56, “Annual Report – Special Double-Crested Cormorant” to document their activities on an annual basis. We will collect the following information via Form 3-202-56 to ensure the applicant remains in compliance with the terms of their permit:

- (1) Permittee contact information, permit number, permit calendar year, and permit report due date;
- (2) Description of non-lethal techniques utilized;
- (3) Month and location of activity;
- (4) Purpose;
- (5) Numbers of birds killed, nests oiled, and/or nests destroyed;
- (6) Final Disposition (what they did with the birds, eggs, carcasses [e.g., buried; incinerated; euthanized and donated]); and,
- (7) Take of non-target birds species, including numbers of birds.

Recordkeeping – Any State or Tribal agency, when exercising the privileges of this permit, must keep records of all activities, including those of subpermittees, carried out under the authority of the special permit. These data are used to assess the impacts of the project on the species potentially affected and the effectiveness of the permitting program.

Designation of Subpermittees – States and Tribes may designate subpermittees who must operate under the conditions of the permit. Subpermittees can be employees of State and Tribal wildlife agencies, U.S. Department of Agriculture Wildlife Services employees, and employees of federal and State agencies or private incorporated companies specializing in wildlife damage abatement.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.

Applicants may complete the fillable application electronically and email the application to the regional office, or print and submit the application form with an electronic or original signature by mail. Applicants may send supporting information by email or fax, if we already have their application and they are able to reference their permit number.

ePermits – We are actively developing a new automated permit application system, referred to as “ePermits.” The ePermits System will allow the agency to move towards a streamlined permitting process to more significantly reduce the information collection burden on the public, particularly small businesses. Public burden reduction is a priority for the Service; the Assistant Secretary for Fish, Wildlife, and Parks; and senior leadership at the Department of the Interior. The intent of the ePermits System is to fully automate the permitting process to improve the customer experience and to reduce time burden on respondents. This new system will enhance the user experience by allowing users to enter data from any device that has Internet access, including personal computers, tablets, and smartphones. It will also link the permit applicant to the Pay.gov system for payment of the associated permit application fee.

Once the new ePermits System is in place, we anticipate a reduction in the amount of time necessary for an applicant to apply for the permit and the associated annual report. Through the ePermits account registration, we will track and be able to more accurately report the numbers of small business applicants, along with the type of business (for-profit, farm, not-for profit). This information will allow the Service to be more responsive in identifying the possibility of additional burden reduction on small businesses.

We also plan to eliminate the necessity for physical mail-in applications (though this will remain an option for those who either don't have access to the internet or prefer to use mail-in applications), thus further reducing the burden on the public as well. With ePermits, an applicant will be able to establish an account, apply for multiple permits through a single interface, and track all their applications, permits and permit-related actions as well as all communications between Service staff and the permittee/applicant within the same interface, significantly reducing the burden on the government to process these applications and manage permit-related actions.

The Service anticipates the discontinuance of the paper-based versions of a large number of forms after the ePermits System has been in full operation for at least 18-24 months. The elimination of paper based forms is expected to reduce the government cost of administering and processing permit applications.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

Other than the general identifying information (name, address, telephone number, email address), the information that we collect is not available from any other source. Other than the general identifying information standard for each application, collection of duplicate information is minimal. Many permittees renew permits for ongoing activities. We retain information from their original application so they do not have to duplicate information that is unchanged for the new permit.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This collection affects only State and Tribal governments. It does not impact small businesses.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If we do not collect the information, or if we collect the information less frequently, we would be unable to allow permittees to effectively address conflict issues with double-crested cormorants, resulting in increased threats to human health and safety and continued economic losses due to cormorant predation of fish stocked for public use. We would also be unable to track the amount of reported take relative to the limit allowed annually by regulations. Not knowing this information would prevent the Service from effectively sustaining cormorant populations and thus, would put the Service at risk of legal challenges under the Migratory Bird Treaty Act.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- * requiring respondents to report information to the agency more often than quarterly;
- * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- * requiring respondents to submit more than an original and two copies of any document;
- * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- * in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- * requiring respondents to submit proprietary trade secrets, or other confidential information, unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no reporting requirements inconsistent with OMB guidelines.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and in response to the PRA statement associated with the collection over the past three years, and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

We have prepared proposed regulations to solicit the necessary information to implement the new permit, and associated annual report, which would authorize specific take activities that are normally prohibited and are intended to relieve or prevent impacts from cormorants on lands within State or Tribal jurisdictions to address conflicts. A copy of the proposed rule is attached. The proposed rule solicits public comment for a period of 30 days on the information collection requirements described in this supporting statement.

In addition to the proposed rule soliciting comments on the information collection

requirements, the Service conducted public scoping after publication of an Advance Notice of Proposed Rulemaking (ANPR) and announced our intent to prepare a NEPA document (42 U.S.C. 4321 et seq.) on January 22, 2020. This notice stated that the Service intended to establish new regulations regarding the management of conflicts associated with cormorants. The comment period for the ANPR continued through March 9, 2020. A total of four public scoping webinars were convened, two on February 11, 2020 and two on February 12, 2020. Additionally, two webinars provided only to Tribal members were conducted on February 19 and 27, 2020. In response to the ANPR, the Service received 1,404 comments and prepared a draft environmental impact statement that analyzes the proposed special permit and additional alternatives.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

We do not provide payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

We do not provide any assurance of confidentiality. Information is collected and protected in accordance with the Privacy Act (5 U.S.C. § 552a) and the Freedom of Information Act (5 U.S.C. 552). We will maintain the information in a secure System of Records (Permits System–Interior, FWS–21, September 4, 2003, 68 FR 52610; modification published June 4, 2008, [73 FR 31877](#)).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

We do not ask questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.
- * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.

We estimate that we will receive **700 responses** totaling **4,563 annual burden hours** for this information collection. The total dollar value of the annual burden hours is approximately **\$237,915** (rounded). We used table 1 from the of Bureau of Labor Statistics (BLS) News Release [USDL-20-0451](#), March 19, 2020, Employer Costs for Employee Compensation—December 2019, to calculate the total annual burden. Table 1 lists the hourly rate for government workers as \$52.14, including benefits.

Requirement	Average Number of Annual Respondents	Average Number of Responses Each	Average Number of Annual Responses	Average Completion Time per Response	Estimated Annual Burden Hours	Hourly Rate	\$ Value of Annual Burden Hours
Application - Special Double-Crested Cormorant Permit (Form 3-200-90) 50 CFR 21							
Reporting	50	1	50	16	800	\$52.14	\$ 41,712.00
ePermits Application - Special Double-Crested Cormorant Permit (Form 3-200-90) 50 CFR 21							
Reporting	50	1	50	14	700	52.14	36,498.00
Annual Report - Special Double-Crested Cormorant Permit (Form 3-202-56) 50 CFR 21							
Reporting	50	1	50	1	50	52.14	2,607.00
Recordkeeping				16	800	52.14	41,712.00
ePermits Annual Report - Special Double-Crested Cormorant Permit (Form 3-202-56) 50 CFR 21							
Reporting	50	1	50	.75	38	52.14	1,981.32
Recordkeeping				16	800	52.14	41,712.00
Designation of Subpermittees - Special Double-Crested Cormorant Permit 50 CFR 21							
Reporting	500	1	500	.75	375	52.14	19,552.50
Recordkeeping				2	1,000	52.14	52,140.00
Totals:	700		700		4,563		\$ 237,914.82

13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

- * The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

There are no non-hour costs associated with this information collection.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

We estimate the total cost to the Federal Government to administer this information collection will be **\$68,686** (rounded).

Service biologists (GS-11/13) and permit examiners (GS-9/12), with support of GS-7 staff, will:

- Review and determine the adequacy of the information an applicant provides.
- Conduct any internal research necessary to verify information in the application or evaluate the biological impact of the proposed activity.
- Assess the biological impact of the proposed activity on double-crested cormorants.
- Evaluate whether the proposed activity meets the issuance criteria.
- Prepare or review NEPA documentation.
- Prepare either a permit or a denial letter for the applicant.
- When necessary to evaluate the impact of the proposed activity, visit the location to examine site-specific conditions.
- Monitor reports.

Permits are processed in our eight Regional Offices, which are located in major cities across the United States. Therefore, we used Office of Personnel Management Salary Table [2020-DCB](#) to obtain the most up-to-date hourly rates for staff. In accordance with BLS News Release [USDL-20-0451](#), March 19, 2020, Employer Costs for Employee Compensation—December 2019, we multiplied the hourly rate by 1.59 to calculate the fully burdened rates for each staff member. The table below shows Federal staff and grade levels performing various tasks associated with this information collection.

Position/Grade	2020 Hourly Rate	Hourly Rate, Incl. Benefits (x1.59 multiplier)	Time Spent on Information	Weighted Average (\$/Hour)
Clerical – Receptionist, Office Asst. (GS-07/05)	\$26.43	\$42.02	5%	\$2.10
Legal documents examiner – Permit Examiner (GS-09/05)	32.33	51.40	30%	15.42
Legal documents examiner - Permit Examiner (GS-11/05)	39.12	62.20	30%	18.66
Biologist (GS-11/05)	39.12	62.20	10%	6.22
Supervisor – Permit Chief (GS-12/05)	46.88	74.54	20%	14.91
Management - Branch/Division Chief, Solicitor (GS-13/05)	55.75	88.64	5%	4.43
Weighted Average (\$/hr)				\$61.74

IC	Total Responses	Gov't Hours/Response	Total Gov't Hours	Total Gov't Cost* (\$61.74/hour)
Application - Special Double-Crested Cormorant Permit (Form 3-200-90) 50 CFR 21				
	50	8	400	\$ 24,696

ePermits Application - Special Double-Crested Cormorant Permit (Form 3-200-90) 50 CFR 21				
	50	7.5	375	23,153
Annual Report - Special Double-Crested Cormorant Permit (Form 3-202-56) 50 CFR 21				
	50	1	50	3,087
ePermits Annual Report - Special Double-Crested Cormorant Permit (Form 3-202-56) 50 CFR 21				
	50	.75	37.5	2,315
Designation of Subpermittees - Special Double-Crested Cormorant Permit 50 CFR 21				
	500	.5	250	15,435
Totals:	700		1,112.50	\$ 68,686

*Rounded

15. Explain the reasons for any program changes or adjustments in hour or cost burden.

This is a request for a new OMB control number in conjunction with a rulemaking.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

We will not publish the information collected.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

We will display the OMB control number and expiration date.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no exceptions to the certification statement.