

RECORD OF DECISION

Management of Conflicts Associated with Double-crested Cormorants

Final Environmental Impact Statement U.S. Fish and Wildlife Service

December 2020

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Introduction

This Record of Decision (ROD) was developed by the U.S. Fish and Wildlife Service (Service) in compliance with the agency decision-making requirements of the National Environmental Policy Act (NEPA) of 1969, as amended.¹ The purpose of this ROD is to document the decision of the Service for the selection of an alternative for managing conflicts associated with double-crested cormorants (*Phalacrocorax auritus*; hereafter “cormorants”) across the contiguous 48 United States (hereafter “Project”). The Service based its decision on the analysis completed in the June 5, 2020, Draft Environmental Impact Statement (DEIS) and the November 20, 2020, Final Environmental Impact Statement (FEIS). The Service prepared the DEIS and the FEIS in cooperation with the United States Department of Agriculture’s Animal and Plant Health Inspection Service, Wildlife Services Program (Wildlife Services).

This ROD is designed to a) state the Service's decision, present the rationale for its selection, and portray its implementation; b) identify the alternatives considered in reaching the decision; and c) state whether all means to avoid or minimize environmental harm from the implementation of the selected alternative have been adopted (40 CFR 1505.2).

Based on the review of the alternatives and their environmental consequences described in the FEIS for the Project, the decision of the Service is to implement Alternative A, the Preferred Alternative. The selected action entails the establishment of a new permit for state and federally recognized tribal (hereafter “tribe” or “tribal”) fish and wildlife agencies for the management of cormorants.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–1050.

Purpose and Need

As part of the continued effort to address conflicts between cormorants and wild and publicly stocked fisheries and aquaculture facilities, the FEIS evaluates alternatives within the Service’s authority to implement measures that address conflicts associated with cormorants within the contiguous 48 United States. Thus, the purpose of the proposed action is to establish a long-term, coordinated approach in order to minimize conflicts between cormorants and human interests, while maintaining sustainable populations of cormorants, complying with the Migratory Bird Treaty Act (MBTA), and minimizing the regulatory burden on federal, tribal, and state agencies and individual citizens. The need for this action is to address conflicts and economic damage associated with cormorants while addressing possible impacts on the environment.

Key Issues

Through public scoping and input from various federal and state agencies and the public, the Service identified key issues to consider and evaluate in the NEPA process. These issues focused on the following subject areas: (1) reduction of predation-related losses of wild and publicly stocked fisheries; (2) reduction of predation-related losses of stocks at aquaculture facilities; (3) reduction of predation-related losses of federally listed and candidate fish species; (4) reduction of the adverse effects by cormorants on habitats important to bird species of concern through habitat destruction, exclusion, and/or nest competition; (5) reduction of adverse effects on personal property and vegetation, particularly where

¹ The Service initiated development of the FEIS prior to the establishment of updated CEQ regulations on September 14, 2020. The FEIS is, therefore, written to comply with the previous regulations.

cormorants nest; (6) reduction of adverse effects on human health and safety; (7) increasing flexibility to federal, tribal, and state agencies to address spatial and temporal complexity of conflicts; (8) ensuring the trust responsibility of the Service to maintain sustainable populations of cormorants; and (9) increasing the level of transparency and accountability of the Service's decision-making process. The Service examined these issues thoroughly in the DEIS and FEIS.

Project Description

The Service developed a Potential Take Limit (PTL) model to evaluate allowable take of cormorants in the contiguous 48 United States. The PTL model estimates the maximum allowable annual take of cormorants given management objectives and desired population size. The maximum allowable take is not a prescribed take level for cormorants; rather, it is the predicted maximum allowable level of annual take. The PTL corresponds with a biologically sustainable level of annual take based on knowledge of cormorant population dynamics. Under all analyzed alternatives in this FEIS (except the no action alternative), the maximum allowable take would be 121,504 cormorants nationally per year. Subpopulation-specific maximum allowable take levels would be: Atlantic, 37,019; Interior, 78,632; Western, 4,539²; and Southern (Florida), 1,314.

The Service would require annual reporting of actual take of cormorants from all permittees. The main differences between the alternatives pertain to the regulatory mechanism associated with accurately monitoring the authorized and actual take of cormorants throughout the year. Under all alternatives, the Service would: (1) monitor reported take to ensure the maximum allowable take is not exceeded, and (2) establish population-monitoring programs that would assess the effects of lethal take on cormorant populations and ensure take is commensurate with population status. Monitoring will inform future decisions regarding levels of allowable take and allocation of that take. States, tribes, and other partners can provide assistance and information regarding monitoring activities and needs. Upon publication of this ROD and a final rule, the Service would formally convene with each flyway and relevant stakeholders to develop a specific cormorant-population-monitoring regime. This regime will be made public within approximately one year of the publication date of this ROD.

The Service would also produce a report every five years that provides analyses from population-monitoring efforts. The Service would provide this report to the public to promote transparency of decision making and evaluation of the effectiveness of this conflict-management tool. This report would include, but not be limited to: (1) updated cormorant population status and trends; (2) reported lethal take of cormorants nationally and by cormorant populations; (3) updated PTL analyses based on new or more current population information; (4) the state of the conflict and need for continued management as reported by requests for depredation permits (both individually and programmatically by participating states and tribes); and (5) a conflict-management decision and justification for either continued management or a proposed new management approach, if appropriate and needed.

The Service would continue to issue depredation permits (50 CFR 21.41), special purpose permits (50 CFR 21.27), and scientific collection permits (50 CFR 21.23). To maintain cormorant populations at sustainable levels, the Service would ensure that authorized take of cormorants resulting from all permit types would not exceed the maximum allowable threshold specified in the PTL.

² Population-specific recommended levels of take western subpopulation in the PTL allowed for up to 9,077 to be taken per year. However, due to concerns expressed by a number of commenters in the Pacific Flyway that take reaching the allowable level could negatively impact the western subpopulation, the Service would allow up to only half of this level, or a maximum of 4,539 birds, to be taken annually from that population.

Alternatives

Alternative A (preferred alternative) - Special Permit for States and Tribes

This alternative would establish a new permit option under 50 CFR part 21 (special double-crested cormorant permit) that would be available to state and tribal fish and wildlife agencies in the 48 contiguous United States. A new permit would allow these agencies to manage conflicts associated with double-crested cormorants specifically on state or tribal-managed lands and waters in their jurisdiction. The Service may issue a permit to reduce conflicts involving depredation at state- and tribal-owned-or-operated aquaculture facilities (including hatcheries); impacts to health and human safety; impacts to federally threatened and endangered species (as listed in under the Endangered Species Act, ESA) and state-listed species identified in their state- or tribal-specific legislation as threatened or endangered; species listed as Species of Greatest Conservation Need in State Wildlife Action Plans, where take activities to prevent depredation on aquatic Species of Greatest Conservation Need may occur only in natural or public waters; damage to state or tribal property and assets; or depredations of wild and publicly stocked fish managed by state fish and wildlife agencies or federally recognized tribes and accessible to the public and all tribal members. Those states and tribes not wishing to obtain this new permit could apply for depredation permits (50 CFR 21.41) to address conflicts with cormorants within the scope of conflicts established in the no action alternative, which does not apply to wild or publicly stocked fisheries. Commercial aquaculture facilities experiencing conflicts associated with cormorants could continue to apply for individual depredation permits (50 CFR 21.41).

The intent of this alternative is to allow state wildlife management agencies and tribes sufficient flexibility within predefined guidelines to address conflicts caused by cormorants within their respective boundaries. This new special permit would apply to any state- and tribal-owned-or-operated aquaculture facility that produces fish, or other aquatic organisms, that are susceptible to cormorant predation or impact during any stage of production, and/or immediately following release into natural or controlled environments. Under Alternative A, commercial aquaculture facilities and personal property owners experiencing conflicts associated with cormorants would continue to apply for individual depredation permits (50 CFR 21.41). This permit would not apply to any efforts to prevent depredation or harm to privately owned animals (e.g., hobby animals, pets or similar) that are raised free-range or otherwise released to the wild. Private landowners may apply for a depredation permit (50 CFR 21.41) to alleviate damage to some types of property (i.e., buildings and infrastructure; vehicles and equipment; some types of vegetation; and display animals, such as zoo exhibits).

Under this alternative, the Service would maintain primary authority for the management of cormorant populations but would authorize the individual states and tribes to implement the provisions of this alternative within the guidelines established by the Service. The Service would expect states and tribes issued this new special permit to prioritize their allotted take to entities/instances most in need of conflict resolution, and would encourage them to conduct monitoring to assess the efficacy of control activities. States and tribes would be responsible for compiling all take they and their authorized subpermittees conduct under this special permit and report that take annually to the Service. Subpermittees may be employees of state and tribal wildlife agencies, Wildlife Services employees, and employees of federal and state agencies or private companies specializing in wildlife damage abatement and under direct control of the permittee.

Additional conditions would include restrictions on when lethal take can occur, a requirement to use lethal removal only in conjunction with an established nonlethal harassment program, and additional conditions and restrictions similar to all alternatives (use of nontoxic shot, decoys, use of nonlethal methods, protection measures for co-nesting species and non-target species, and additional protection

measures for cormorant chicks). In addition, states and tribes applying for the first time must consult with Wildlife Services for an assessment of the appropriate level of take and provide recommendations of short-term measures to provide relief from depredation and long-term measures to help eliminate or significantly reduce the problem.

Lastly, to minimize risks to co-nesting species that look similar to double-crested cormorants (e.g., neotropic cormorants, great cormorants, and anhingas), the Service would require states and tribes to report any other species of bird taken accidentally due to double-crested cormorant management activities under this permit, along with the numbers of birds of each species taken. The Service would use this data to better track accidental take of these species when take of cormorants occurs, and recommend appropriate actions such as additional training of personnel, or avoiding areas where there is a high concentration of non-target species in the area.

Alternative B - New Aquaculture Depredation Order

This alternative would establish a new aquaculture depredation order that would apply within the boundaries of all types of aquaculture facilities, including commercial aquaculture facilities and state- and tribal-owned-or-operated aquaculture facilities (including hatcheries) in the contiguous lower 48 states. Under this alternative, the Service would authorize these entities, without a federal permit, to take cormorants when found committing or about to commit depredations to aquaculture stocks on or in close proximity to the premises used for the production of such stocks (e.g., nearby roost sites). The order would limit take at each facility to a certain number of cormorants each year.

Additional conditions would include restrictions on when lethal take can occur, a requirement to use lethal removal only in conjunction with an established nonlethal harassment program, a requirement that control occurring at roost sites must reasonably protect fish at nearby facilities, and additional conditions and restrictions similar to those in Alternative A (use of nontoxic shot, decoys, use of nonlethal methods, protection measures for co-nesting species and non-target species, and additional protection measures for cormorant chicks).

Landowners, operators, and tenants acting under a new aquaculture depredation order would be required to comply with monitoring and reporting requirements including monthly reporting and annual reporting to ensure the maximum allowable take of cormorants per year is not exceeded. Population surveys would be conducted at regular intervals collaboratively by the Service, state fish and wildlife agencies, and federally recognized tribes to ensure take is commensurate with population status to ensure the long-term sustainability of the cormorant populations.

This alternative would be limited to control at aquaculture facilities and would not allow the take of cormorants to reduce depredation on wild and publicly stocked fisheries. Therefore, this FEIS evaluates an additional alternative (C) that combines an aquaculture depredation order with Alternative A.

Alternative C - Combination of a Special Permit for States and Tribes and a New Aquaculture Depredation Order

This alternative combines Alternatives A and B to establish both a new permit option and a new aquaculture depredation order. Each would be established as described above, but differs in how the Service would authorize take at aquaculture facilities. This alternative would establish a new aquaculture depredation order that would apply within the boundaries of all types of aquaculture facilities, including commercial aquaculture facilities and state- and tribal-owned-or-operated aquaculture facilities (including hatcheries), and a new permit option under 50 CFR part 21 (special double-crested cormorant permit) that

would be available to state and tribal fish and wildlife agencies in the 48 contiguous United States to manage conflicts specifically associated with double-crested cormorants. Like in Alternative B, the aquaculture depredation order would authorize these entities, without a federal permit, to take cormorants when found committing or about to commit depredations to aquaculture stocks on or in close proximity to the premises used for the production of such stocks (e.g., nearby roost sites). The order would limit take at each facility to a certain number of cormorants each year.

As for the new permit option, the Service would establish a new special permit similar to Alternative A that would authorize states and tribal fish and wildlife agencies to conduct lethal take that is normally prohibited of double-crested cormorants on lands and waters within their respective jurisdictions. This new special permit would differ from the one described in Alternative A in that the special permit would not apply to state- and tribal-owned-or-operated aquaculture facilities (including hatcheries), because those facilities would be managed under a new aquaculture depredation order. The Service would only issue this permit when it is expected to reduce conflicts relating to impacts to health and human safety; impacts to federally threatened and endangered species (as listed in under ESA of 1973) and state-listed species identified in their state- or tribal-specific legislation as threatened or endangered; species listed as Species of Greatest Conservation Need in State Wildlife Action Plans, where take activities to prevent depredation on aquatic Species of Greatest Conservation Need may occur only in natural or public waters; damage to state or tribal property and assets; or depredations of wild and publicly stocked fish managed by state fish and wildlife agencies or federally recognized tribes and accessible to the public. Those states and tribes not wishing to obtain this new permit would need to apply for individual depredation permits (50 CFR 21.41) to address conflicts with cormorants within the scope of conflicts established in the no action alternative, which does not include wild or publicly stocked fisheries stocked by state agencies or federally recognized tribes. Personal property owners experiencing conflicts associated with cormorants would continue to apply for individual depredation permits (50 CFR 21.41). As with Alternative A, this permit would not apply to any efforts to prevent depredation or harm to privately owned animals (e.g., hobby animals, pets or similar) that are raised free-range or otherwise released to the wild. Private landowners may apply for a depredation permit (50 CFR 21.41) to alleviate damage to some types of property (i.e., buildings and infrastructure; vehicles and equipment; some types of vegetation; and display animals, such as zoo exhibits).

As with all alternatives analyzed in this FEIS, take at each facility would be limited to a certain number of cormorants each year. The Service manages allocation of this take, and that allocation largely depends on which states and tribes request a special permit. To comply with the new aquaculture depredation order, the order would require landowners, operators, and tenants acting under it to conduct monitoring and reporting, including monthly reporting and annual reporting, to ensure the maximum allowable take of cormorants per year is not exceeded.

Alternative D - New General Depredation Order

Unlike the depredation order described in Alternative B (above), this order would not be limited to aquaculture facilities. This general depredation order would apply to all lands and freshwaters (with appropriate landowner permission) in the contiguous 48 states. While such a broad-scale order can carry some risk for birds, it offers a reduction in administrative burden. Such broad-scale depredation orders, however, are only used when the risk to bird populations from large-scale take is low, and there is a desire to reduce the administrative burdens of applying for and issuing individual depredation permits. A new general depredation order would authorize state fish and wildlife agencies, federally recognized tribes, and Wildlife Services to take cormorants found committing or about to commit depredations and to prevent them.

This order would apply to conflicts involving depredation at state- and tribal-owned or operated aquaculture facilities (including hatcheries); commercial aquaculture facilities; impacts to health and human safety; impacts to threatened and endangered species (as listed in under ESA of 1973) and state-listed species identified in their state- or tribal-specific legislation as threatened or endangered; species listed as Species of Greatest Conservation Need in State Wildlife Action Plans, where take activities to prevent depredation on aquatic Species of Greatest Conservation Need may occur only in natural or public waters; damage to state or tribal property and assets; or depredations of wild and publicly stocked fish managed by state fish and wildlife agencies or federally recognized tribes and accessible to the public.

Agencies acting under a new general depredation order would be required to comply with monitoring and reporting requirements including monthly reporting and annual reporting to ensure the maximum allowable take of cormorants per year is not exceeded. To accomplish this, the Service would likely develop a new comprehensive monitoring and reporting database intended to track such information and provide a mechanism for agencies to register lethal take authorized under the depredation order. Population surveys would be conducted at regular intervals collaboratively by the Service, state fish and wildlife agencies, and federally recognized tribes to ensure long-term sustainability of the cormorant populations.

Alternative E - No Action (Current Process)

Currently, the Service issues individual depredation permits allowing the lethal take of cormorants that are committing or about to commit depredation or harm/damage to (1) aquaculture facilities (commercial, state, and tribal-owned facilities including hatcheries), (2) federally threatened and endangered species (as listed under the ESA) or their habitats, (3) human health and safety, and (4) personal property. The Service may also issue permits to take cormorants if there is convincing evidence that cormorants are adversely affecting species of high conservation concern (e.g., a regionally important bird population) or rare and declining plant communities at a local scale. The scope of authorization of cormorant take under the status quo is defined by the currently applicable procedures and frameworks. Those procedures and frameworks are specified in the MBTA (16 U.S.C. §§ 703-712), the Depredation Permit Regulation (50 CFR 21.41), the Issuance of Permits Regulation (50 CFR 13.21), the 2015 Final EIS (USACE 2015) for the management of the western population of cormorants, and the 2017 EA for management of cormorants essentially east of the Rocky Mountains (USFWS 2017). The no action alternative would be a continuation of these current procedures and frameworks, which does not include authorization of take through individual depredation permits for wild or publicly stocked fisheries because this was outside the scope of these NEPA analyses. Since the Court's vacating of the depredation orders in May 2016³, the Service has been reviewing and issuing individual depredation permits in the central and eastern lower 48 States pursuant to two separate analyses conducted under NEPA. Individuals or entities apply for these permits to address site-specific conflicts, and each application is logged, evaluated, and acted upon (approved or rejected) on a case-by-case basis based on the merits of the permit application. The Service's 2017 Environmental Assessment evaluated issuing depredation permits to take cormorants for specific circumstances across 37 central and eastern States and the District of Columbia.

The geographical scope of the cormorant framework for the central and eastern states encompasses

³ 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. In May of 2016, the depredation orders were vacated by the United States District Court for the District of Columbia. At that time, the authority for authorizing lethal take of depredating cormorants reverted back to the issuance of individual depredation permits pursuant to 50 CFR 21.41.

Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. The scope of decisions in the central and eastern United States is limited to applications for depredation permits to manage cormorant damage at or near aquaculture facilities, alleviating human health and safety concerns, protecting threatened and endangered species (as listed under the ESA), and reducing damage to property. The Service may also issue permits to take cormorants if there is convincing evidence that cormorants are adversely affecting species of high conservation concern (e.g., a regionally important bird population) or rare and declining plant communities at a local scale.

Under this previous PTL analysis that was for cormorants in the central and eastern states only, the Service set the maximum level of authorized take of cormorants to alleviate conflicts, but limited allowable take to a level that would not change cormorant population size. The Service further limited take and minimized potential impacts to cormorant populations by using the lower limit of the 95% confidence interval for allowable take. The PTL analysis for the 2017 EA allowed a take of up to 51,571 cormorants per year. This alternative limited take to amounts well below the lower limit of the PTL model conducted for the 2017 EA. This EA noted that the Service may consider transitioning that take level to the lower limit of the PTL, an annual maximum allowable take of 74,396 cormorants per year. After receiving multiple amendments to increase the authorized take of cormorants in 2018 and 2019, the Service in December 2019 announced that it would be adopting the higher annual take threshold (84 FR 69762). Therefore, the cumulative authorized take of cormorants to reduce damage to aquaculture, human health and safety, federally listed threatened and endangered species, and property in the central and eastern United States cannot exceed the lower limit of the PTL of 74,396 cormorants. In addition, the cumulative authorized take of cormorants cannot exceed 26,226 cormorants from the Atlantic flyway subpopulation, 46,898 cormorants from the Mississippi/Central flyways subpopulation, and 1,272 cormorants from the Florida subpopulation. Under this existing framework, the Service takes a precautionary approach to cormorant management, and implements a lower level of allowable take that is even more conservative than the assessment described in this FEIS.

Management of cormorants in the western United States (Pacific flyway or western subpopulation, *P. albociliatus*) is also through site-specific, case-by-case permits. The Service authorizes take of western subpopulation cormorants primarily to reduce predation-related losses by cormorants of federally threatened or endangered juvenile salmon (*Oncorhynchus spp.*) and steelhead (*O. mykiss*) migrating to the Pacific Ocean. Additional authorizations for take occur at Federal, State, and Tribal hatcheries rearing federally threatened or endangered fish species, to protect aquaculture facilities, and for removing nests related to infrastructure maintenance. The U.S. Army Corps of Engineers' Double-crested Cormorant Management Plan to Reduce Predation of Juvenile Salmonids in the Columbia River Estuary—Final Environmental Impact Statement (FEIS; United States Army Corps of Engineers (USACE) 2015) guides management activities related to the take of cormorants in the western cormorant subpopulation.

The geographical scope of the cormorant framework for the Pacific flyway subpopulation encompasses Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Similar to the allowable take model described for the cormorant populations in the central and eastern United States, the Service developed a Potential Biological Removal (PBR) model that evaluated the cumulative take of cormorants on the Pacific flyway (minus Alaska and Mexico) subpopulation (see Appendix E-1 in USACE 2015). Maximum allowable take under the framework for the Pacific flyway is an adaptive approach that is based on monitoring cormorant abundance and adapting take to meet population objectives for the Pacific flyway. Adjustments in cormorant take are based on thresholds that were developed for a plan to reduce cormorant predation of federally listed juvenile

salmonids in the Columbia River Estuary (USACE 2015). The Service adjusts allowable cormorant take based on a two-step evaluation process involving whether observed abundances through monitoring are less than, greater than, or within one standard deviation of predicted abundances from population models developed for cormorants in the Pacific flyway subpopulation (see Table 2-1 and Appendix E-2 in USACE 2015).

In all cases under the current process, practicable and effective nonlethal methods are required as the initial approach before implementing lethal measures. If nonlethal measures are ineffective, lethal methods may be considered in combination with nonlethal methods as a means to reinforce nonlethal measures.

Public Involvement

On January 22, 2020, the Service published an Advance Notice of Proposed Rulemaking (ANPR) and announced its intent to prepare a NEPA document and to establish new regulations regarding the management of double-crested cormorants. The comment period for the ANPR continued through March 9, 2020. The ANPR listed possible alternatives composed of the no action alternative and the following:

- (1) Establish a new permit for state and tribal fish and wildlife agencies for authorizing certain cormorant management and control activities;
- (2) Establish an aquaculture depredation order; and
- (3) Both (1) and (2) in combination.

The Service also announced that it would hold several public-scoping meetings and that specific dates and times for the public meetings would be available on the internet at a designated website for this process. The Service convened four public-scoping webinars, two on February 11, 2020, and two on February 12, 2020. Additionally, the Service conducted two webinars provided only to tribal members on February 19 and 27, 2020. The Service provided attendees of all webinars with information on the following topics regarding cormorants, their management, and the regulations process: (1) biology and population changes; (2) background of the issues and previous management approaches; (3) current management of conflicts; (4) proposed approaches and alternatives; and (5) the planning process for the NEPA.

On June 5, 2020, the Service published a DEIS and draft rule. The comment period for each continued for 45 days, ending on July 20, 2020. The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. The Service received 1,404 comments in response to the ANPR and 1,047 in response to the Draft Rule and DEIS. The public may review the comments received at the Federal eRulemaking Portal: <http://www.regulations.gov> in Docket No. FWS–HQ–MB–2019–0103. The Service considered those comments on the ANPR in developing the draft proposed rule, and comments on the DEIS and proposed rule when developing this FEIS. Summaries of both sets of public comments are provided in Appendix B of the FEIS.

Service Decision

The Service's decision is to implement the Preferred Alternative, Alternative A, as it is described in the FEIS for the Project. This decision is based on a thorough review of the alternatives and their environmental consequences.

The Preferred Alternative has been selected for implementation based on consideration of a number of environmental factors. This decision is also based on the Service's ability to meet the purpose and need for managing conflicts associated with cormorants. Specifically, Alternative A has been selected as the preferred alternative because: 1) tracking authorized and actual take of cormorants would be less

burdensome than in other alternatives analyzed in the FEIS, enabling the Service to ensure that the authorized take level within the PTL is not exceeded; 2) developing cormorant population-monitoring programs would likely result in less burden; and 3) states and tribes are already familiar with the existing framework of permitting and have a long history of accurate reporting of take of cormorants with the Service. The Preferred Alternative A also enables states and tribes to address predation-related losses of wild and publicly stocked fisheries and provides increased flexibility to federal, tribal, and state agencies to address the spatial and temporal complexity of conflicts.

The Service expects the new special cormorant permit to increase the flexibility of states and tribes to address conflicts associated with cormorants. By authorizing conflict-management activities at the state or tribal level, instead of at the Department of the Interior Regional level, management activities will be more responsive and timely than is currently the case. Quicker resolution of conflicts ultimately may result in fewer complaints regarding cormorants to state fish and wildlife agencies. In expanding authority given to the states and tribes via this permit, workload burdens may shift with more being borne by the states and tribes and less by the Service. However, those states and tribes interested in obtaining the new permit would likely have staff and resources in place, with dedicated duties falling within the scope of conflicts associated with cormorants.

Importantly, reducing the abundance of cormorants is not the goal of the Service or this new permit. Rather, the goal of the Service is to reduce the number of conflicts associated with cormorants by combining lethal and nonlethal methods and allowing the lethal take of cormorants where conflicts persist, and nonlethal methods are not sufficient. Consequently, the abundance of cormorants in some areas may be reduced, but regional and continental populations will be managed at sustainable levels, albeit at somewhat reduced abundances. The Service also wants to ensure accountability not only in determining allowable take, but also in reporting of actual take by permittees. Therefore, the Service will annually review reports submitted by permit holders and periodically assess this permit program's overall impact to ensure compatibility with long-term conservation of cormorants. This approach will result in the transparency and accountability necessary to make informed decisions about and promote adherence to authorized levels of take.

Alternatives B and C were not selected as the preferred alternative because of the expected increase in regulatory burden for the Service to ensure the authorized level of take per year would not be exceeded. While Alternative C also includes the component of a new state/tribal permit, the potential for exceeding the allowable take under the PTL is greater in this alternative than with the Preferred Alternative or Alternative B because of the increased complexity and burden associated with timely and accurate reporting of take under a new aquaculture depredation order. Exceeding the allowable take would have the greatest effect on the Southern cormorant population, with the Western cormorant population being the next most vulnerable. The Service also expects additional complexity with allocation and the ability of the Service to be able to adequately track take authorized by all current permit types (scientific collection, special purpose miscellaneous, and depredation), the new state/tribal permit, and an aquaculture depredation order.

The Service would have the greatest burden and the greatest challenge ensuring levels of authorized take stay within the allowable limit of the PTL under Alternative D (General Depredation Order). The Service expects that this alternative would have the greatest effect on all cormorant populations due to the expected increase in the difficulty of tracking and enforcing a maximum level of authorized take. In addition, the history of accurate reporting by participants under previous depredation orders was inconsistent.

Under the No Action Alternative E, the potential for exceeding the maximum allowable take lower than the other alternatives. However, the No Action Alternative E does not address the purpose and need of the

Project, as it does not enable states and tribes to address two key issues: (1) reduction of predation-related losses of wild and publicly stocked fisheries; and (2) increasing flexibility to federal, tribal, and state agencies to address spatial and temporal complexity of conflicts.

Other Agency Decisions

Wildlife Services may adopt all or part of the FEIS and issue its own Record of Decision. The responsible officials at Wildlife Services will adopt the process required in a Form 37 Permit review. This form is required for first-time applicants only of the new state/tribal permit. Permittees would be expected to continue working with Wildlife Services for review of management plans and remaining current on best practices regarding nonlethal take of cormorants.

Dated: _____.

Aurelia Skipwith,
Director, U.S. Fish and Wildlife Service