

economically significant. DCCOs move extensively within the lower Mississippi valley during the winter months (Dolbeer 1990). In the delta region of Mississippi, cormorants have been found to forage relatively close to their night roosting locations with most birds traveling an average distance of less than 20 km from their night roosting locations to their day roosts (King *et al.* 1995). Cormorants that use day roosts within the catfish-producing regions of the delta typically forage at aquaculture facilities; USDA researchers concluded that as much as 75 percent of the diet of DCCOs in these areas consists of catfish (Glahn *et al.* 1999). Losses from cormorant predation on fingerling catfish in the delta region of Mississippi have been estimated at approximately 49 million fingerlings each winter, valued at \$5 million. Researchers estimate the value of catfish at harvest to be about 5 times more than the replacement cost of fingerlings, placing the total value of catfish consumed by DCCOs at approximately \$25 million (Glahn *et al.* 2000). Total sales of catfish growers in Mississippi amounted to \$261 million in 2001 (USDA-NASS 2002).

Revisions to the aquaculture depredation order in this proposed rule would authorize APHIS/WS personnel to conduct winter roost control in the area of aquaculture facilities. In recent years, APHIS/WS has been involved extensively with nonlethal roost harassment efforts to reduce DCCO depredation on aquaculture facilities in the southern U.S. The Service trusts APHIS/WS personnel to decide which damage management techniques are most appropriate in a given situation and is therefore not requiring that nonlethal strategies be used first.

Hatcheries. DCCO impacts to hatcheries are related to predation, stress, disease, and financial losses to both hatcheries and recipients of hatchery stock. Hatchery fish may be stressed by the presence of DCCOs, wounds caused by unsuccessful attacks, and noisemakers used to scare away DCCOs. This stress can lead to a decrease in growth factors as feeding intensity decreases. Additionally, disease and parasites can be spread more easily by the presence of fish-eating birds. State and Federal hatchery managers, particularly in the upper midwest (*e.g.*, Wisconsin, Michigan) and the south (*e.g.*, Arizona, Louisiana, Oklahoma, Texas), have reported significant depredation problems at hatcheries (USFWS 2001). Currently, Director's Order No. 27, "Issuance of Permits to Kill Depredating Migratory Birds at Fish Cultural Facilities,"

dictates that "kill permits (for fish-eating birds) will be issued for use at public facilities only when it has been demonstrated that an emergency or near emergency exists and an (APHIS/WS) official certifies that all other deterrence devices and management practices have failed." The two depredation orders that we are proposing would supercede this Director's Order (for DCCOs only) by giving managers at State and Federal fish hatcheries more authority to control DCCOs to protect fish stock.

Environmental Consequences of Proposed Action

We analyzed our proposed action in the DEIS. We predict the proposed action will not have significant negative impacts on DCCO populations, will benefit fisheries in some situations, will not adversely affect federally protected species (*i.e.*, those protected under the MBTA or the Endangered Species Act), will contribute to protection of vegetation and habitat in some situations, and will help reduce depredation at private aquacultural facilities and State and Federal hatcheries.

References

A complete list of citation references is available upon request from the Division of Migratory Bird Management (*see ADDRESSES*).

Public Comment Solicitation

If you wish to comment on this proposed rule, you may submit your comments by any one of several methods. We may accept comments on the degree to which the rule's data sources comply with Service information quality guidelines (these guidelines can be found at <http://irm.fws.gov/infoguidelines/>). You may mail comments to the location listed in **ADDRESSES**. You may also comment via the Internet to: cormorants@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AI39" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us by phone at 703/358-1714. You may also fax your comments to 703/358-2272. Finally, you may hand deliver comments to the location listed in **ADDRESSES**. Our practice is to make comments, including names and addresses of respondents, available for public review, by appointment, during regular business hours. Individual respondents may request that we withhold their home

address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organization or businesses available for public inspection in their entirety.

Cormorant Regulations Under the Proposed Action

This proposed rule would implement the DEIS proposed action in the following ways: it would (1) revise the 1998 aquaculture depredation order that allows APHIS/WS to protect public and private aquacultural stock in the 13 States listed in 50 CFR 21.47 by also allowing the take of DCCOs at winter roost sites; and (2) establish a new depredation order authorizing State fish and wildlife agencies, federally recognized Tribes, and APHIS/WS to take DCCOs without a Federal permit to protect public resources on public and private lands and freshwaters in 24 States (the 13 States listed in 50 CFR 21.47 and 11 additional States with significant resource threats). Both of the actions would amend subpart D of 50 CFR part 21.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR parts 1500-1508), we prepared a DEIS in November 2001, followed by a 100-day public comment period. This DEIS is available to the public (*see ADDRESSES*).

Endangered Species Act Considerations

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1543; 87 Stat. 884) provides that "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out...is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *." We have initiated Section 7 consultation under the ESA for this proposed rule. The result of this consultation will be included in the final Environmental Impact Statement.