

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the proposed action would not “significantly or uniquely” affect small governments, and will not produce a Federal mandate of \$100 million or more in any given year on local or State government or private entities. Therefore, this action is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

### Takings Implication Assessment

In accordance with Executive Order 12630, this proposed action does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this proposed action will help alleviate private and public property damage and allow the exercise of otherwise unavailable privileges.

### Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. While legally this responsibility rests solely with the Federal Government, in the best interest of the migratory bird resource, we work cooperatively with States and other relevant agencies to develop and implement the various migratory bird management plans and strategies. For example, in the establishment of migratory game bird hunting regulations, we annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

This proposed action does not have a substantial direct effect on fiscal

capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. It will allow, but will not require, States to develop and implement their own DCCO management program. Therefore, in accordance with Executive Order 13132, this proposed action does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

### Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951) and Executive Order 13175, we have determined that this action has no significant effects on federally recognized Indian Tribes. In order to promote consultation with Tribes, a copy of the DEIS was mailed to all federally recognized Tribes in the continental United States.

### Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this proposed action is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

### List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby propose to amend part 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### PART 21—[AMENDED]

1. The authority citation for part 21 is revised to read as follows:

**Authority:** Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108; sec. 3 of

the Migratory Bird Treaty Act (16 U.S.C. 704), 40 Stat. 755; and sec. 3 of the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712), 92 Stat. 3112.

2. In subpart D, revise § 21.47 to read as follows:

### § 21.47 Depredation order for double-crested cormorants at aquaculture facilities.

(a) *What is the purpose of this depredation order?*

The purpose of this depredation order is to help reduce depredation of aquacultural stock by double-crested cormorants at private fish farms and State and Federal fish hatcheries.

(b) *In what areas can this depredation order be implemented?*

This depredation order applies to commercial freshwater aquaculture facilities and to State and Federal fish hatcheries in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

(c) *What does this depredation order allow and who can participate?*

(1) This depredation order authorizes landowners, operators, and tenants (or their employees or agents) actually engaged in the commercial, Federal, or State production of freshwater aquaculture stocks to take, without a Federal permit, double-crested cormorants when they are found committing or about to commit depredations to aquaculture stocks. This authority is applicable only during daylight hours and only within the boundaries of freshwater commercial aquaculture facilities or State and Federal hatcheries.

(2) This depredation order authorizes employees of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service to take double-crested cormorants, with appropriate landowner permission, at roost sites in the vicinity of aquaculture facilities, at any time, day or night, during the months of October, November, December, January, February, and March.

(3) Authorized employees of the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service may designate agents to carry out control, provided these individuals act under the conditions of the order.

(d) *What are the terms and conditions of this order?*

(1) Persons operating under paragraph (c)(1) of this section may only do so in conjunction with an established nonlethal harassment program as certified by officials of the Wildlife