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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

The Service is the Federal agency with primary responsibility for managing migratory birds. Our authority is based on the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and Russia. The double-crested cormorant (DCCO) is Federally protected under the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico, as amended, 50 Stat. 1311, T.S. No. 912. The take of DCCOs is strictly prohibited except as authorized by regulations implementing the MBTA.

As we stated in the proposed rule published in the **Federal Register** in March 2003, the authority for the regulations set forth in this rule is the MBTA. The MBTA authorizes the Secretary, subject to the provisions of, and in order to carry out the purposes of, the applicable conventions, to determine when, if at all, and by what means it is compatible with the terms of the conventions to allow the killing of migratory birds. DCCOs are covered under the terms of the Convention for the Protection of Migratory Birds and Game Mammals with Mexico. The DCCO is a nongame, noninsectivorous bird for which the applicable treaty does not impose specific prohibitions or requirements other than the overall purpose of protection so as not to be exterminated and to permit rational utilization for sport, food, commerce, and industry. In the FEIS for this action, the Service has considered all of the statutory factors as well as compatibility with the provisions of the convention with Mexico. The Russian convention (Convention between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment, concluded November 19, 1976) provides an authority to cover DCCOs even though not listed in the Appendix. To the extent we choose to apply the convention, it contains an exception from the prohibitions that may be made for the protection against injury to persons or property. We note, therefore, that there is no conflict between our

responsibility for managing migratory birds and our selected action.

Regulations governing the issuance of permits for migratory birds are contained in title 50, Code of Federal Regulations, parts 13 and 21. Regulations in subpart D of part 21 deal specifically with the control of depredating birds. Section 21.41 outlines procedures for issuing depredation permits. Sections 21.43 through 21.47 deal with special depredation orders for migratory birds to address particular problems in specific geographical areas. Section 21.47 addresses DCCOs at aquaculture facilities.

While the Service has the primary responsibility for regulating DCCO management, on-the-ground management activities are largely carried out by entities such as State fish and wildlife agencies, the Wildlife Services program of the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS/WS), and, in some cases, by private citizens. APHIS/WS was a cooperating agency in the development of the DEIS and FEIS. Additionally, States and Canadian provinces were involved through the International Association of Fish and Wildlife Agencies.

On March 17, 2003 we published a proposed rule in the **Federal Register** (68 FR 12653). We solicited comments on the proposed rule until May 16, 2003. During that time, we received approximately 9,700 letters, emails, and faxes. About 85 percent of these comments were opposed to the proposed action, the vast majority of which were driven by mass email/letter campaigns promoted by nongovernmental organizations. This final rule reflects consideration of comments received on the proposed rule. The final rule promulgates regulations to implement the selected action described in the FEIS. We published the notice of availability for the FEIS in the **Federal Register** on August 11, 2003 (68 FR 47603). Copies of the FEIS may be obtained by writing us (see **ADDRESSES**) or by downloading it from our Web site at <http://migratorybirds.fws.gov/issues/cormorant/cormorant.html>. The Wires *et al.* report "Status of the double-crested cormorant in North America," mentioned in a **Federal Register** notice of November 8, 1999 (64 FR 60828), may also be downloaded at <http://migratorybirds.fws.gov/issues/cormorant/status.pdf>.

The FEIS examined six management alternatives for addressing conflicts with DCCOs: (A) No Action, (B) Nonlethal Control, (C) Increased Local

Damage Control, (D) Public Resource Depredation Order, (E) Regional Population Reduction, and (F) Regulated Hunting. The selected action in the FEIS is Alternative D, Public Resource Depredation Order. This alternative is intended to enhance the ability of resource agencies to deal with immediate, localized DCCO damages by giving them more management flexibility.

To address DCCO populations from a broader and more coordinated perspective, a population objectives approach will likely need to be considered over the long term. In the future, if supported by biological evidence and appropriate monitoring resources, the Service may authorize management that focuses on setting and achieving regional population goals. At that time, a cormorant management plan will be developed. Until then, our strategy will continue to focus on alleviating localized damages.

We acknowledge that there is a need for more information about DCCOs and their impacts on resources across a variety of ecological settings. We also recognize that more rigorous monitoring efforts would be helpful in thoroughly assessing the impacts of the selected action on DCCO populations. While DCCO populations are currently tracked by a number of regional and national surveys, the Service concurs with many reviewers of the proposed rule, and recognizes that better information on population status and trends is desirable. For this reason, consistent with program, Service, and Department goals and priorities and subject to available funds, the Service intends to use all reasonable means to implement an improved DCCO population monitoring program of sufficient rigor to detect meaningful population changes subsequent to implementation of this action. The Service's objective will be to use available resources to collect data that can be used to reassess the population status of DCCOs by 2009, in advance of a decision whether or not to extend the depredation orders. This assessment may involve a Service-sponsored technical workshop, with various agency and non-governmental representatives, to discuss optimum survey methodologies. Also as part of that assessment, we will compile and evaluate available data on population trends of other species of birds that nest or roost communally with DCCOs to determine if negative impacts might be occurring to these species.

The Service has weighed these deficiencies against the costs of taking no action, and we believe it is prudent to move forward as outlined in this final