

to play an important role either as a result of Federal forbearance or through the creation of opportunities to share in the implementation of federal wildlife programs.

Nowhere in the MBTA is the implementation of migratory bird management activities limited to the Federal Government. In fact, the statute specifically gives the Secretary of Interior the authority to determine when take of migratory birds may be allowed and to adopt regulations for this purpose. Additionally, we've ensured that this rule does not conflict with the Convention for the Protection of Migratory Birds and Game Mammals between the U.S. and Mexico (under which cormorants are protected). Finally, the depredation orders specifically limit the authority of non-Federal entities through the terms and conditions, including suspension and revocation procedures, advance notification requirements, and other restrictions. We would also note that we have the authority to amend this rule in the future if DCCO population status or other conditions demand it.

*Comment 31:* The Service should more fully consider the economic value of DCCOs and activities associated with them such as birding and photography.

*Service Response:* Assigning economic value to any wildlife species is difficult, and it is made all the more so when that species (such as the DCCO) is of little direct use to humans. However, this should not be read to imply that we have no regard for the indirect and intangible values of cormorants as a native part of the North American avifauna. As such, we stated clearly in the FEIS (p. 6) that DCCOs "have inherent value regardless of their direct use to humans." A quantitative analysis of the economic benefits associated with DCCO was not possible at this time due to lack of studies in this area. The Service welcomes submission of such studies and will consider them in its analysis of future depredation orders, if applicable.

*Comment 32:* In addition to the Service, States and APHIS Wildlife Service should have a say in revoking authority under the depredation orders.

*Service Response:* Since, under the MBTA, the Service is the chief agency responsible for migratory bird management, it is our responsibility to decide when to revoke an agency's or individual's authority under the depredation orders. We do, however, give agencies a chance to appeal any revocation decisions.

*Comment 33:* The public resource depredation order has no sound biological underpinning.

*Service Response:* We have analyzed the available biological information in the FEIS. We believe our decision is supported by the information available at this time.

*Comment 34:* Proposed rule contains too much "red tape."

*Service Response:* We can understand that some people see the rule as having too many mandatory terms and conditions but these are necessary to ensure that the depredation orders are used for their stated purposes and to safeguard cormorant populations and other Federal trust species (e.g., other migratory birds and ESA-protected species). We tried to make the final rule as flexible as we could without compromising these factors.

*Comment 35:* The public resource depredation order should be expanded to include damages to private property as well.

*Service Response:* The public resource depredation order does not provide direct relief to private landowners experiencing DCCO conflicts. This is partly because such conflicts have not been well-documented and partly because our practice is not to allow the take of migratory birds, a public resource, to alleviate minor damages to private resources (a similar example would be hawks that take privately owned game birds). While the biological and other justification for implementing the aquaculture and public resource depredation orders is strong, this is not necessarily the case for impacts to private resources. In cases of significant economic damage caused by DCCOs, private landowners may request a depredation permit from the appropriate Service Regional Migratory Bird Permit Office.

*Comment 36:* Requiring monitoring at all control sites is too much of a burden; agencies should be able to use best available information.

*Service Response:* We understand that strict monitoring requirements (i.e., population surveys) can be cost prohibitive and that, to a certain degree such monitoring is the Service's responsibility. It is important that agencies thoroughly evaluate the impacts of their management actions on DCCOs and, in some cases, on other resources, but we don't want these requirements to be so cost prohibitive that agencies are unable to take any action. Thus, in the final rule, we changed slightly the wording in § 21.48(d)(12) to account for this.

*Comment 37:* Monitoring should be required no less than once every 3 years.

*Service Response:* The Service currently surveys or sponsors surveys of colonial waterbirds every 5–10 years.

We believe that such frequency is adequate to ensure the long-term conservation of populations of DCCOs and other migratory birds.

*Comment 38:* The winter roost control season should be extended to include April.

*Service Response:* Since numbers of DCCOs at fish farms in the southern United States are known to peak in March and April, and to cause the most damage at that time, we added April to the months in which roost control can occur.

*Comment 39:* Monitoring requirements under the public resource depredation order are too vague.

*Service Response:* We may provide future guidelines for monitoring and evaluation for the benefit of other agencies. Until such guidelines are issued, the Service intends to rely on States, Tribes, and APHIS Wildlife Services to develop and implement protocols for evaluation of the effects of control actions.

*Comment 40:* The proposal is likely to inflame relations between tribal and nontribal interests.

*Service Response:* We have not seen sufficient evidence to evaluate whether or not this is indeed likely to occur.

*Comment 41:* The aquaculture depredation order should be expanded to include all 48 States.

*Service Response:* At this time, we do not believe the available evidence indicates that expansion beyond 13 States is necessary to further protect commercial aquaculture stock. The issuance of depredation permits for damage at private fish farms is a high priority and, therefore, it is generally a quick process for aquaculture producers to obtain a depredation permit through their Regional Migratory Bird Permit Office.

*Comment 42:* Under the public resource depredation order, nonlethal techniques (e.g., harassment) should not be prescribed as a mandatory first step at multispecies breeding colonies because of the risk of disturbance.

*Service Response:* We understand that harassment efforts can have secondary impacts on other colonially nesting birds and that is precisely why we did not require such efforts to be used first but rather stated that they be used "when these are considered effective and practicable by the responsible Agency." We have since changed it to read that agencies "should first utilize nonlethal control methods such as harassment and exclusion devices when these are considered effective and practicable and not harmful to other nesting birds."