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This is a Comment on the **Fish and Wildlife Service (FWS)**
Notice: **Comment on this document for EIS No. 20200117, Draft,**
USFWS, REG, Regulations Governing Take of Migratory Birds,
Comment Period Ends: 07/20/2020

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Comment

See attached file

Attachments (1)

[FWS-HQ-MB-2019-0103.seggos](#)

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Mr. Jerome Ford
Assistant Director, Migratory Birds
United States Fish and Wildlife Service
MS:PRB
5275 Leesburg Pike
Falls Church, VA 22041-3803

RE: FWS-HQ-MB-2019-0103 Management of Double-crested Cormorants

Dear Mr. Ford:

The New York State Department of Environmental Conservation (DEC) appreciates the opportunity to comment on the proposed rule and Draft Environmental Impact Statement (DEIS) regarding Management of Conflicts Associated With Double-Crested Cormorants Throughout the United States. Although DEC would prefer that The U.S. Fish and Wildlife Service (the Service) issue a new Depredation Order similar to the former Public Resource Depredation Order, the Preferred Alternative which the Service has selected and the accompanying proposed rule would meet the current needs of New York in mitigating impacts of Double-crested Cormorants (DCC) to fisheries, sensitive habitats and rare species. We differ with the analysis in the DEIS which suggests that record-keeping and assessment of take is more challenging under an Order than a Depredation Permit. These process issues are easily resolved in the construct of an Order or Permit which are not exclusive to each other.

General Comments

DEC applauds the decision of the Service to align DCC management based on accepted sub-populations (Pacific, Interior, Atlantic, Southern) rather than on a strict Flyway approach. New York is unique in that we host cormorants from both the Atlantic and Interior populations. As such, the Service may want to consider how allocation of take may be administered in our situation. Flyway Council roles (if any) associated with permitting and assessment should be limited only to recommendations related to monitoring protocols as requested by the states and the Service.

We generally find the Potential Take Level (PTL) approach inappropriate for the management of DCC. PTL is better suited to species which are not at high abundance where sustainable take is desired. In the case of cormorants, consideration of take at levels which might reduce populations to some lower biologically sustainable level followed by application of PTL (to prevent further decline) is preferred. As written and proposed, the Service has provided no room to adjust for additional take should actions taken by the states and Tribes prove to not achieve minimization of impacts. We agree



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that proposed take limits are likely sufficient to mitigate impacts, but not without a level of uncertainty.

The concept of "adaptive management" appears only once in the DEIS (page 61), and only in reference to the perceived benefits of Alternative A in allowing flexibility in a state's/tribal authority's DCC control strategies to achieve desired fisheries benefits. While the DEIS acknowledges DCC population growth/range expansion and the associated resulting resource conflicts, this document fails to prescribe an adaptive management approach to DCC population management at the national/flyway level, and a potential future need to adaptively manage regional/continental DCC populations at lower but sustainable levels. In the Great Lakes, DCC populations increased dramatically due to reduced chemical contamination in fish coupled with high fish productivity and DCC habitat availability. Fish productivity, however, continues to decline as the lakes (excepting Lake Erie) are below Great Lakes Water Quality targets for open lake phosphorus levels (Lakes Michigan and Ontario are still declining), shifting the lakes further toward oligotrophy. As this shift progresses, fish production will decline further and result in greater negative fisheries impacts from a stable DCC population. Various wording throughout the documents such as "within" and "under" state or tribal jurisdiction make it unclear whether management interventions taking place on privately held lands are permitted when needed to protect state resources such as public fisheries or listed species. This should be clarified to include actions on lands not owned/controlled by the state or tribe when protecting resources managed by the state or tribe.

Authorizations in special state or tribal permits should be extended beyond listed species to Species of Greatest Conservation Need (SGCN) as identified in State Wildlife Action Plans.

Note: The numbering for comments below correlates directly to the Proposed Rule numbering and DEIS page numbering.

Specific Comments on the Proposed Rule:

Enumerated items

1: "State and Tribes must use nonlethal methods...". "Use" should be changed to "evaluate and/or assess". In some situations (such as management with mixed species of waterbirds present), nonlethal measures have previously been shown to be ineffective or impractical. There is no need to "use" and redetermine nonlethal means to be ineffective in these situations.

4: The requirement to use nontoxic shot except when air rifles or air pistols are used needs to be expanded to include an exemption for rimfire firearms. Small caliber rimfire

firearms are commonly used to take cormorants. Availability of nontoxic rimfire ammunition is limited. By nature, .22 rimfire bullets do not readily fragment due to low velocity and design. Risk of ingestion of small particles by scavengers and foraging waterfowl is thus reduced. In contrast, some rimfire chambered in .17 caliber rimfire will fragment, but does not readily pass through the target animal. It is also an extremely effective load with no to minimal crippling. As birds taken lethally require disposition by burial or in the legal waste stream, any risk of non-target species exposure is extremely limited.

6: The requirement to use only 100% corn oil when oiling eggs is unnecessarily limiting. Soy and cottonseed oils are also exempted under FIFRA, may be more readily available, have similar efficacy, and no higher risk (all are food grade substances). Simply requiring food grade vegetable oils exempted under FIFRA is adequate to address any concerns related to oiling of eggs as a control measure.

13: The Service's position on regional and continental DCC populations is unclear in this section. The following is stated in paragraph 2: "Localized abundances of cormorants may decline as a result of these efforts, but regional and continental populations are not likely to be negatively impacted." In the following paragraph, however, it is stated: "As a consequence, 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." DEC strongly disagrees with the statement in paragraph 2, and as noted previously, we believe regional and continental DCC populations should be managed sustainably and adaptively potentially at lower levels. It is important to note that under the PRDO, negative impacts of DCC in New York were being successfully mitigated and DCC breeding numbers were more than sustainable. Since the vacation of the PRDO, DCC numbers and resulting negative impacts in New York have increased.

Required Determinations *Paperwork Reduction Act, (1) FWS Form 3-200-90 Permit Application*

"on lands under their jurisdiction": See comment above in **General Comments**. DEC urges the Service to clarify that actions may be taken on privately held lands (with permission) when reducing impacts to listed species (SGCN) or to protect depredations of wild and publicly stocked fish.

b. "A detailed statement showing that the double-crested cormorant management and take activities will address some or more of the issues specified above in paragraph 1." DEC cautions here that the standard used to assess the merits of this required statement not be set so high as to make permit approval difficult or particularly onerous to the states and tribes.

d. "A statement indicating what information will be collected to assess whether the management and take of double-crested cormorants is alleviating the damage or other conflict." As in "b" above, the standard of assessing this statement must be reasonable given the complexities, costs and difficulty in collecting definitive information.

Specific Comments on the DEIS:

P. vi: The desire to keep administrative burden low should be a priority.

P. vii: Statement regarding general Depredation Orders illustrates how options other than a PTL model (reduced cormorant populations) should have received consideration.

P. 9: See previous comments about PTL. This document was clearly written with a pre-determined mindset that "adverse" impacts to cormorant populations not be considered. A purpose of an EIS is not to explicitly avoid the adverse impact, but rather identify how an identified adverse impact will be addressed and/or limited.

P. 11: The last sentence of the first paragraph needs clarification for the part currently written as ".....or depredations of wild and publicly stocked fisheries stocked by state agencies or federally recognized tribes". DEC recommends clarifying this sentence by changing it to "or depredations of wild fisheries, publicly stocked fisheries, and fisheries stocked by state agencies or federally recognized tribes" and including the phrase "...specifically on state or tribal managed lands." As noted in the previous comment, please clarify that permits will allow for management on private lands when actions address rare species concerns or publicly stocked and wild fish depredations.

P. 14: There are several instances referring to "...wild or publicly stocked fisheries stocked by State agencies or federally recognized tribes...". Please note that the US Fish and Wildlife Service stocks millions of lake trout annually in Great Lakes waters, and is advancing efforts to institute large-scale coregonine stocking in the Great Lakes.

P. 30: "The majority of these studies continue to conclude that economically important sport or commercial fish species are an insignificant portion of the cormorant diet (Table 4)." Of the studies listed that provided comment on consequential effects, six indicated there was an effect, one indicated possible effect, five indicated no effect, and two indicated unlikely effect. The information as presented in Table 4 indicates 50% of the studies showed a consequential effect on economically important sport or commercial fisheries.

P. 31 Table 2: Please replace Johnson et al. 2010 with Johnson et al. 2002, which did demonstrate a consequential effect on sportfish. While cormorant diet did shift to round goby as noted in the 2010 study, it could be argued that round goby would not have

become as abundant in the absence of increased cormorant mortality on smallmouth bass and yellow perch.

Johnson, J.H., R.M. Ross, and R.D. McCullough 2002. Little Galloo Island, Lake Ontario: a review of nine years of Double-crested cormorant diet and fish consumption information. J. Great Lakes Res. 28(2):182-192.

P. 32: "In the Great Lakes, the alewife population collapsed in 2003 and has not recovered since." This statement applies only to Lake Huron.

"Where alewife are still abundant (e.g., parts of Lake Michigan)... Alewife remain relatively abundant in Lake Ontario as well.

"other studies have shown that....yellow perch,...walleye." Please include Burnett et al. 2002, Rudstam et al. 2004, VanDeValk et al. 2002.

P. 47: Lead Ammunition. See previous comment about exemption for use of lead ammunition in rimfire firearms.

P. 56: We disagree with the assertion that tracking take under Alternative A is less burdensome than for other alternatives. Reporting requirements under most alternative could be structured to equally assess take levels. This is a thinly veiled attempt to promote the preferred Alternative above others.

P. 57: Flyway Council involvement to assist in development of monitoring programs may be beneficial, however should not extend beyond that task. Flyway Council non-game technical sections have little relevant experience with management of overabundant species.

P. 58: Statement that the Service will have the most difficulty tracking take under Alternative D, General Depredation order is simply not true. With the previous orders the Service simply chose not to seriously track or enforce requirements to do so. This was not a fault of the Orders, rather on the part of the Service. If the Service does no better with Depredation Permits, the result will be the same.

P. 63: Discussion of lead ammunition impacts. See previous comments related to exemptions for use of rimfire firearms.

p. 111: Literature Cited. Correct citation for Johnson et al 2015, "From Yellow perch to Round Goby"; add highlighted; Johnson, Farquhar J. F, Klindt, Mazzocchi, Mathers.

Conclusion

DEC appreciates the opportunity to comment on the DEIS. We find the proposed action, a special State and Tribal Depredation Permit (with noted amendments) largely acceptable to meet the needs of New York in mitigating conflicts associated with abundant Double-crested Cormorants at present. However, we remain disappointed that the Service did not consider scenarios which include sustainable populations of cormorants at a reduced level. We are also concerned that, despite several previous offers to assist the Service in the development of integrated cormorant management, the Service did not seek more consultation with New York. New York has a long and continuous history of successful, goal oriented integrated cormorant management dating back to the mid 1990's, longer than any other state. We have an expertise in the development, planning and implementation of varied management strategies that arguably exceeds that of any other Agency. We understand the reluctance of the Service to engage with the states during development of the DEIS but note that two state natural resource agencies (Michigan and South Carolina) were sought for consultation in the process. Going forward, DEC encourages the Service to establish a higher level of collaboration with the individual states, including New York.

Sincerely,

A handwritten signature in black ink, appearing to read 'Basil Seggos', with a long horizontal flourish extending to the right.

Basil Seggos
Commissioner