

## Submitted Electronically via eRulemaking Portal

This is a Comment on the **Fish and Wildlife Service (FWS) Proposed Rule: Migratory Bird Permits: Management of Conflicts Associated with Double-Crested Cormorants (*Phalacrocorax auritus*) Throughout the United States**

For related information, [Open Docket Folder](#)

### Comment

USFWS:

On behalf of Texas Parks and Wildlife Department's (TPWD) Executive Director Mr. Carter Smith, I submit this letter in response to the proposed rule on the Management of Conflicts Associated with Double-crested Cormorants Throughout the United States. TPWD looks forward to future collaboration with the Service on this important topic that remains a concern for our constituents in Texas. Thank you.

Shaun L. Oldenburger  
Small Game Program Director, Wildlife Division, TPWD

### Attachments (1)

[RD 105 USFWS Public Comments Double crested Cormorants](#)

View Attachment: 

**ID:** FWS-HQ-MB-2019-0103-2246

**Tracking Number:** 1k4-9hvr-8rc9

### Document Information

**Date Posted:**

Jul 20, 2020

**RIN:**

1018-BE67

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July 17, 2020

Public Comments Processing  
ATIN: FWS-HQ-MB-2019-0103  
U.S. Fish and Wildlife Service Headquarters  
MS: JAO/IN  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

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Carter P. Smith  
Executive Director

Dear U.S. Fish and Wildlife Service:

The Texas Parks and Wildlife Department (TPWD) appreciates the opportunity to provide comments on the U.S. Fish and Wildlife Service's (Service) Proposed Rule [Docket No. FWS-HQ-MB-2019-0103; FF09M29000-201-FXMB1232090000] RIN 1018-BE67 concerning Management of Conflicts Associated With Double-crested Cormorants (*Phalacrocorax auritus*) throughout the United States.

In fulfilling our mission to manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations, TPWD considers both the complimentary and competing values associated with balancing nature-based recreation with sustainable wildlife stewardship. Both double-crested cormorants (DCCOs) and the fisheries resources upon which they prey contain inherent personal, cultural, economic, social, and biological values. In some cases, DCCOs cause significant mortality on fisheries resources in Texas and warrant some limited lethal take as part of a suite of integrated techniques. Unfortunately, lethal interventions in the form of more socially acceptable forms of take (e.g., egg manipulations and nest destruction) in breeding colonies are not employable for migrant DCCOs wintering in Texas, where limited take of adults is sometimes necessary to alleviate localized conflicts and increase efficacy of non-lethal harassment of habituated birds.

The Service acknowledges in the proposed rule and draft Environmental Impact Statement (DEIS) that significant mortality can occur on some fisheries due to predation by DCCOs, especially in smaller (< 100 surface acres) impoundments and aquaculture/hatchery settings. After careful consideration of the proposed options within the proposed rule and DEIS, and consistent with our March 6, 2020, comment letter on the earlier Advanced Notice of Public Rulemaking, TPWD prefers and recommends the Service adopt Alternative C, consisting of a combination of a Special Permit for States and Tribes and a new Aquaculture Depredation Order for the final rule making. Furthermore, TPWD believes the Service did not consider a wide enough scope for DCCO take to necessarily address common conflicts experienced by private landowners relevant to DCCO depredation on privately-owned and managed recreational fisheries in Texas. As such, TPWD responds below to the direct questions proposed by the Service in the proposed rule.

1) The balance we should seek between cormorant abundance and mitigation of conflicts with them:

As populations of both DCCOs and humans in the United States increase, we agree with the Service that more bird- and fish-related conflicts are probable. As such, we

concur with the Service's approach that balances cormorant abundance with mitigation of conflict via the proposed Potential Take Limit (PTL) analyses. Based on information presented within the DEIS, Texas would fall within the Mississippi and Central Flyway subunit, that would allow an authorized take of 77,050 birds from that "Interior" DCCO population. This authorized take would allow the Service and potential state fish and wildlife agencies to be more flexible than previous approaches under the 2017 Environment Assessment (51,571 to 74,396 [December 19, 2019 FR] across the eastern 37 U.S. states). The current PTL approach curtails population growth rates for DCCOs, while sustaining the current population. This increased flexibility would enable more bird- and fish-related conflict resolution with some level of authorized take on a permit basis, while integrated with non-lethal methods.

2) Whether we sufficiently addressed a reasonable range of alternative management options:

Currently, the proposed rule and preferred alternative in the DEIS (Alternative A) would only allow authorized take of DCCOs through a proposed Special Permit for States and Tribes in the following situations: health and human safety, impacts to federally threatened and endangered species (as listed in the Endangered Species Act) and state-listed species identified in their state- or tribal-specific legislation as threatened or endangered, damage to state or tribal property, and depredations of wild and publicly stocked fisheries stocked (TPWD recommends editing this second use of the word "stocked" to "managed") by state fish and wildlife agencies or federally recognized tribes. TPWD believes that these situations may work well for many state fish and wildlife agencies, but it unnecessarily restricts the full breadth of depredation and conflict issues that state fish and wildlife agencies, private landowners, and the aquaculture community encounter on an annual basis.

We recommend the Service allow greater flexibility for state fish and wildlife agencies to authorize take of DCCOs that pose an immediate threat to Species of Greatest Conservation Need (SGCN) listed in their respective State Wildlife Action Plans. SGCN are listed as evidence that conservation actions must be taken to decrease the need for additional federal protections. Should a federally listed species be removed, state fish and wildlife agencies may resume primary stewardship of these species, potentially requiring management actions to curtail impacts by DCCOs.

TPWD urges the Service to address the issue of DCCO depredation on privately accessed and managed recreational fisheries. Man-made ponds, lakes, and reservoirs are ubiquitous water features across the Texas landscape. As a private lands state (95 percent) and with most of those smaller (< 100 surface acres) impoundments defined as privately accessed and managed waters, not public waters, TPWD addresses many concerns from our private landowners who manage most of our terrestrial and aquatic habitats across the state. In compliance with the Public Trust Doctrine, these private landowners invest significant resources, both time and monetary, into managing these habitats for the collective well-being of wildlife in Texas. An enduring concern by some of these private landowners is the depredation by piscivorous birds, including DCCOs, and their cost to manage these habitats, especially privately-stocked recreational fishing ponds and lakes. As outlined in the DEIS, private landowners would not be afforded any meaningful alleviation of these conflicts, as these fisheries

are excluded from consideration under the current proposed rule. As you may recall, this topic was raised by stakeholders and adequately discussed during the scoping sessions as summarized in Seng 2018 (Double-crested Cormorants and Free-Swimming Fish Regional Information – Meeting Summary). Assuming the Special Permit for States and Tribes continues to be a part of the final rule, we recommend the Service add a provision or option under state permits to authorize willing states to issue to sub-permittees, including private recreational pond owners, under Alternatives A or C.

We assume under a Special Permit for States and Tribes that the prioritization of issued take would ultimately be the responsibility of the respective state fish and wildlife agencies or tribes to manage accordingly, including reporting, thus the inclusion of take on private lands actually complements the Service's approach with balancing DCCO populations and managing conflict with DCCOs, fishery resources, and humans. We suggest the level of authorized take needed to alleviate conflicts experienced by private landowners can be met from within the state's total take allotment. Further, the integration of lethal take as an option serves to enhance the efficacy of non-lethal harassment techniques, the latter of which, DCCOs quickly become habituated in the absence of a lethal threat. Based on this information, there is minimal risk to the Service and to DCCO populations with regards to allowing more flexibility in this outlined scenario, such as on private waters, where authorized take may be allowed. We highly suggest that the Service reconsider the range of alternative management options, since conflicts on private waters will remain, and TPWD will continue to seek guidance from the Service on future potential solutions for these conflicts.

Lastly, TPWD recommends the implementation of an Aquaculture Depredation Order, as enabled in Alternative C of the DEIS. As previously stated in our letter to the Service, dated March 6, 2020, "This depredation order allows for the ability of business owners to protect their livelihoods. Aquaculture facilities in Texas produce products worth an estimated \$60 million annually (Treece 2017). Within these aquaculture facilities, Texas produces large amounts of catfish, marine shrimp, hybrid striped bass, and red drum. In addition, TPWD has nine (9) aquaculture facilities that produce 40 million fingerlings that assist in supporting 3.2 million anglers who spend \$2 billion annually in direct expenditures in Texas (USFWS 2011). As the federal government is aware, small business owners are a vital part to our economy's strength and resilience, thus TPWD believes all necessary actions must be taken to protect this industry."

- 3) The level of interest and participation in use of a new special permit by states and tribes and the potential issues that entities would need to address if they availed themselves of such a permit:

As stated above, TPWD supports a Special Permit for States and Tribes, along with an Aquaculture Depredation Permit Order, as outlined in Alternative C, to deal with the bird- and fish-related conflicts. However, as stated in our response above under #1, TPWD supposes that those Special Permits for States and Tribes should allow state fish and wildlife agencies and tribes to have the flexibility to issue them to sub-permittees for alleviation of conflicts experienced by private landowners.

We do not believe that the request from private landowners to alleviate depredation concerns would be overwhelming to either the Service or TPWD. For instance, from 2011 – 2016, TPWD issued an average of 134 permits to private landowners with an average annual take of approximately 4,000 DCCOs (see below; per March 6, 2020 letter):

FY11 = 152 permits with 6,051 cormorants reported  
FY12 = 126 permits with 4,033 cormorants reported  
FY13 = 141 permits with 2,906 cormorants reported  
FY14 = 89 permits with 4,079 cormorants reported  
FY15 = 161 permits with 3,781 cormorants reported  
FY16 = 136 permits with 3,475 cormorants reported

Documenting measurable impacts to fish populations by avian predators can be challenging in large (> 1000 surface acres), public, Southern U.S. reservoirs, especially those experiencing confounding fishery influences. Further, many large Southern U.S. reservoirs are highly productive and may be more resilient to avian predation compared to other waters, such as small impoundments, river systems, and aquaculture ponds. Under a Special Permit for States and Tribes, we anticipate the greatest potential need for resolving bird depredation using lethal control would be for protecting hatchery fingerlings at nine TPWD facilities and at intensively stocked fisheries in small, public impoundments, including 18 Neighborhood Fishing Program locations.

- 4) Limitations as to the scope and scale (e.g., geographic, seasonal) under which cormorant control activities should be conducted:

TPWD recommends that control activities should be allowed during all months and across all lands and waters, public or private, within the state boundaries under the Special Permit for States and Tribes. Although Texas has limited nesting DCCOs, only a few DCCOs may cause substantial depredation issues during the summer months, especially in TPWD fish hatcheries. Authorizing take throughout the calendar year, if necessary, allows the greatest flexibility for reducing conflicts, while not appreciably increasing risk to DCCO populations.

- 5) The best means to monitor cormorant take and abundance to ensure the Service and its partners meet objectives of reducing conflicts and maintaining sustainable abundances of cormorants:

We concur with the Service's statement within the *Federal Register* that "convene meetings with the flyways and other relevant stakeholders to develop a specific cormorant population monitoring plan" is a sound way forward on this issue to ensure that adequate monitoring and reporting occurs to manage both take and the DCCO population. However, we do caution that state resources remain limited, especially with the current economic recession and decrease in state funding.

Similarly, state fish and wildlife agencies, as well as the Service, issue many permits on an annual basis that require private individuals to provide accurate and timely reporting to maintain compliance with permit provisions. Renewal of sub-permittee

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authority would be conditional on timely and accurate reporting. For reporting, steps must also be explicit to ensure data collection is timely, accurate, and completed by all persons authorized to take cormorants under this proposed rule. A potentially applicable example is the reporting process used under the Resident Canada Goose Nest and Egg Depredation Order (50 CFR § 21.50). Commercial aquaculture facilities and private landowners could be required to report quarterly, at a minimum.

Per monitoring and as stated in our March 6, 2020, letter, “ If TPWD determined the burden to be minimal, we could offer the following: 1) to report the level of take by permit to USFWS annually, and 2) to incorporate cormorants during our Midwinter Waterfowl Survey to estimate a minimum number of cormorants present during early January in Texas. Furthermore, TPWD requests that USFWS provide states seeking permits with a guide or Best Management Practices on non-lethal methods to protect their resources.”

We support the Service’s efforts to engage in rulemaking concerning issues of piscivorous bird predation on fisheries resources. Finally, we applaud the Service for holding multiple scoping meetings in the form of webinars. TPWD remains committed to continued engagement and partnership with the Service as a new regulatory approach is developed and implemented. Thank you.

Sincerely,



Carter Smith  
Executive Director

CS:lam

cc: Mr. Clayton Wolf  
Mr. Robin Riechers  
Mr. Craig Bonds  
Mr. John Silovsky