§ 373.201 Receipts and bills of lading for freight forwarders.

Each freight forwarder must issue the shipper a receipt or through bill of lading, covering transportation from origin to ultimate destination, on each shipment for which it arranges transportation in interstate commerce. Where a motor carrier receives freight at the origin and issues a receipt therefor on its form with a notation showing the freight forwarder's name, then the freight forwarder, upon receiving the shipment at the ''on line'' or consolidating station, must issue a receipt or through bill of lading on its form as of the date the carrier receives the shipment.

Issued on: March 30, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–7639 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS–R9–MB–2008–0109; 91200–1231–9BPP]

RIN 1018–AW11

Migratory Bird Permits; Revision of Expiration Dates for Double-Crested Cormorant Depredation Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; availability of final environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service, extend the expiration dates for two existing depredation orders for double-crested cormorants (*Phalacrocorax auritus*) for 5 years so that we can continue to authorize take of double-crested cormorants without a permit under the terms and conditions of the depredation orders. This action will continue to allow take of depredating double-crested cormorants to protect aquaculture, fish hatcheries, fish resources, other birds, vegetation, and habitats.

DATES: This rule will be effective on April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Terry Doyle, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1799.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). The MBTA authorizes the Secretary of the Interior, 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.

The double-crested cormorant (*Phalacrocorax auritus*), a long-lived, colonial-nesting waterbird native to North America, is a migratory bird that 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 and is included on the list of species protected by the MBTA at 50 CFR 10.13. Therefore, take of double-crested cormorants is strictly prohibited except as authorized by regulations implementing the MBTA.

Increasing populations of the double-crested cormorant have caused biological and socioeconomic resource conflicts. The species' diet primarily consists of fish, and double-crested cormorant populations can decrease fish populations in open waters and in aquaculture facilities. In addition, their guano can kill trees, shrubs, and other vegetation. In November 2001, the Service completed a Draft Environmental Impact Statement (DEIS) on double-crested cormorant management. The DEIS examined six management alternatives for addressing conflicts with double-crested cormorants: (A) No Action, (B) Nonlethal Control, (C) Increased Local Damage Control, (D) Public Resource Depredation Order, (E) Regional Population Reduction, and (F) Regulated Hunting.

On March 17, 2003, we published a proposed rule in the **Federal Register** (68 FR 12653) to implement the DEIS proposed action; Alternative D, Public Resource Depredation Order. A depredation order is a regulation that allows the take of specific species of migratory birds, at specific locations and for specific purposes, without a depredation permit. The proposed rule proposed revising the existing aquaculture depredation order to allow winter roost control; establishing a new depredation order to protect public resources from cormorant damages; and revising the Fish and Wildlife Service Director's Order 27 to allow lethal take of double-crested cormorants at public fish hatcheries.

On August 11, 2003, we published a notice of availability for a Final Environmental Impact Statement (FEIS) (68 FR 47603). In the FEIS, we assessed the impacts of the proposed depredation orders and determined that they would not significantly affect the status of the species. The selected action in the FEIS was Alternative D, Public Resource Depredation Order. This alternative was intended to enhance the ability of resource agencies to deal with immediate, localized damages caused by depredating double-crested cormorants by giving these agencies more management flexibility. The FEIS is available by contacting us at the address in **FOR FURTHER INFORMATION CONTACT.** Finally, on October 10, 2003, we published a final rule (68 FR 58022) that set forth regulations for implementing the FEIS preferred alternative: Alternative D (establishment of a public resource depredation order and revision of the aquaculture depredation order).

These depredation orders reside in part 21 of title 50 of the Code of Federal Regulations (CFR), which covers migratory bird permits. Subpart D of part 21 deals specifically with the control of depredating birds and currently includes eight depredation orders. The depredation orders at 50 CFR 21.47 (''Depredation order for double-crested cormorants at aquaculture facilities'') and 21.48 (''Depredation order for double-crested cormorants to protect public resources'') allow for take of the species under the provisions of our 2003 EIS. When we issued the final rule in 2003 we recognized the need for more information about double-crested cormorants and their impacts on resources across a variety of ecological settings, so we established an expiration date for the depredation orders of April 30, 2009, and included requirements for annual reporting to the Service of actions taken under the orders.

The data we have gathered since the issuance of the final rule in 2003, taken in concert with data from the 2003 EIS suggest that the orders have not had any significant negative effect on double-crested cormorant populations; data suggest that cormorant populations are stable or increasing with the orders in effect. Extending the orders will not, in the judgment of Service biologists, pose a significant, detrimental effect on the long-term viability of double-crested cormorant populations and will serve to mitigate the damage that these populations can cause to certain resources.

Accordingly, we published a proposed rule December 8, 2008 (73 FR 74445), to extend the depredation orders for double-crested cormorants at 50 CFR 21.47 and 21.48 for five more years. We believe it is prudent once again to establish an expiration date to ensure appropriate consideration of accumulated information. We proposed to extend these depredation orders so that we can continue to authorize take of double-crested cormorants without a permit under the terms and conditions of the depredation orders and gather data on the effects of double-crested cormorant control actions. If we do not extend these depredation orders, any action to control depredating double-crested cormorants will require a permit. We prepared a draft environmental assessment (DEA) to analyze the environmental impacts associated with our proposed extensions and invited the public to comment on the DEA and our proposed extension.

Effective Date

In accordance with paragraph (d)(3) and (d)(1) of the Administrative Procedure Act (5 U.S.C. 553), we find good cause to make this rule effective less than 30 days after publication. This substantive rule grants an exemption in that, if we do not extend these depredation orders, any action to control depredating double-crested cormorants will require a permit. As stated earlier in the preamble, we have no data to suggest that the depredation orders have had any significant negative effect on double-crested cormorant populations, and extending the orders will serve the public good by mitigating the damage that these populations can cause to certain resources.

Comments on the Proposed Rule

We received 18 comments on the proposed rule, including one from the Mississippi Flyway, four from State agencies, one from a Tribe, and two from interest groups. Major issues raised by commenters were the following:

Issue. *The Draft Environmental Assessment (DEA) is insufficient.*

''The Draft Environmental Assessment (DEA) on which it [the proposed rule] is based is an inadequate document. Our three organizations have long been concerned that the cormorant depredation orders have not been sufficiently based on science. We are writing to emphasize the importance of completing a Supplemental Environmental Impact Statement (SEIS) before reauthorizing these depredation orders.''

''USFWS needs to examine the full scope of the conflicts it seeks to evaluate and address. Set against the background of water pollution, dredging, non-native invasive species, unsustainable commercial take, development, erosion, loss of wetlands, climate change, and other factors, the cormorant/recreational fishing/public resource conflict is extremely complex. The DEA fails to demonstrate that killing cormorants and destroying their eggs and nests will provide relief to resources impacted in systematic and myriad ways. USFWS also needs to update any population dynamics models that are to be used to justify the take of cormorants and to share those models with concerned citizens for their comment.''

''It is especially disappointing that the DEA does not address the issues raised in the 'Review of the Double-crested Cormorant Management Plan, 2003: Final Report of the American Ornithologists' Union Conservation Committee's Panel.' Their conclusions and recommendations are still relevant today: 1. Public perceptions and public attitudes related to the natural history of cormorants need to be addressed. 2. Serious attention must be given to finding innovative and economically appropriate methods for excluding piscivorous birds from fixed site facilities, such as aquaculture ponds and hatcheries, or reducing the attractiveness of such sites. 3. Further study is needed to understand better the causes and possible mitigation of declining yields in sport-fishery. 4. Management planning would benefit from new data collection on fish take by cormorants in a variety of regions, including species and size/age classes, and the relationship between local take and fish densities, and dynamics at larger (fish population) scales. All these should be fully addressed in an SEIS.''

''I believe that a 5 year extension is unwarranted and should be shortened to the minimum time required to: (1) Analyze the extant data in depth, (2) publish that analysis in the open scientific literature where it can be reviewed by the broad community of wildlife and fishery population biologists, and (3) develop a real adaptive management plan that can be discussed by stakeholder groups, including those interested in the ethical issues arising from these proposed actions, not just those with economic or fish harvest objectives. I suggest a time frame of extending these orders on the order of 2 years to force the Federal management agencies (particularly the Fish and Wildlife Service * * *) to take these issues seriously and provide leadership on these issues.''

''The DEA fails to present critical information about the impact of the past five years of cormorant management.''

Response. Data collected in support of the 2003 EIS and since the completion of the EIS continue to suggest that the affected DCCO populations are stable or increasing. For example, a Great Lakes-wide census was conducted in 2005 and 2007 by Federal, State, tribal, and provincial agencies. The total take from 2004 through 2007 under the Public Resource Depredation Order published in October 2003 in Great Lake States was 30,353 birds, which amounts to an average annual take of 7,589 or 2.2% of the total Great Lakes population. Analysis of Double-crested Cormorant banding data for birds banded in the Great Lakes from 1979–2006 indicates that the depredation orders have likely had a negative effect on annual survival of ''hatch-year'' age-class cormorants in the Great Lakes. The effect of the orders on survival after that year was unclear. We also used annual counts of nests from the Lake Erie and Ontario from 1979–2007; annual harvests of cormorants from each lake in the Great Lakes from 2003–2007; the number of eggs oiled in each lake from 2005 to 2007; and the number of nesting individuals in each lake in 2005 and 2007 to model population dynamics. Our model estimates that, if harvest or cormorants and egg oiling remain at the current rates, the population would decline by approximately 20% by 2014 which is approximately three times the size of the population in the early 1990s.

We will obtain additional data on the population trend after the censuses to be conducted this year and in the future. The depredation orders require agencies taking action under them to provide to us report detailing activities conducted under the orders, including, by date and location, a summary of the number of double-crested cormorants killed and/or number of nests in which eggs were oiled. In addition, we have conducted Service-sponsored technical workshops have been conducted annually since 2005. Data on the impacts of control on other species of birds that nest with double-crested cormorants have been collected by Federal, State, and Canadian wildlife officials.

We recognize that it probably will be necessary to update the EIS at some time in the future. The data available to us suggest that double-crested cormorant populations have not been harmed by the orders in effect. We have complied with our goals stated in the 2003 EIS by making every effort to capture data from improved double-crested cormorant population

monitoring that will allow us to assess population changes subsequent to implementation of the depredation orders. The data that are available are summarized in the Environmental Assessment.

Issue. ''The DEA fails to evaluate any non-lethal alternatives. As they may prove to be more effective including cost effective, this is a serious omission.''

Response. An Environmental Assessment must consider a no-action alternative, which we did. The other alternatives considered were germane to the issue. We did not intend to expand double-crested cormorant management alternatives or to supplement the EIS at this time.

Issue. ''The very concept of granting states, tribes, and aquaculturists license to take cormorants without permit is a novel policy issue in that it sets a precedent for similar actions regarding other species of migratory fish-eating birds like pelicans, herons, and egrets. Many of those species were severely threatened by similarly large scale killing programs a century ago. Protection of those species in particular was a major impetus for developing the Migratory Bird Treaty under which FWS now operates. Is it now FWS policy that conserving migratory bird populations means nothing more than that those populations do not reach dangerously low, perhaps irreversibly low, levels so that they require action under the Endangered Species Act?''

Response. These depredation orders do not present a novel policy issue. We have had depredation orders for other species in place, some for many years. Depredation orders are a tool to manage migratory bird populations. Provided that we can ensure that the orders do not substantially harm the double-crested cormorant population, they are in keeping with our mandate to protect bird populations. The data do not indicate that the orders will substantially harm cormorant populations, nor cause them to reach dangerously low population levels. To the contrary, relevant data indicates that the cormorant population is stable or increasing increased since we authorized the depredation orders in 2003.

Issue. ''We hope the U.S. Fish and Wildlife Service would not use the 5 years as a waiting period, but instead starts the SEIS during this time [the proposed 5 year extension] so that the evaluation process is nearly completed by 2014.''

Response. We believe our experience under the current depredation orders and the data we have gathered since they went into effect support a five year extension. We expect to undertake a supplemental EIS if new data and population reports warrant it, but at this time, we cannot set a particular date to start that effort.

Issue. *Two commenters suggested that the depredation order should not have an expiration date.*

''Regulations such as the double-crested cormorant depredation orders should not have expiration dates. Revising the regulations and doing additional NEPA analyses when the regulations expire add additional expenses for the agency, and could interfere with other needed work. With the limited funding under which the Fish and Wildlife Service operates, the agency should not set arbitrary expiration dates for its regulations.''

Response. The five year limitation allows us to undertake a reexamination of the rule after a reasonable period of time. We will continue to review available information on cormorant populations, fish populations, habitat changes, possible cormorant exclusion measures, and other relevant factors. We believe it is prudent to establish an expiration date to ensure appropriate consideration of accumulated information at that time.

Issue. Government-to-government consultation.

''* * * the USFWS states that 'we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the ability of Tribes to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.' We believe that this statement is not completely accurate because the situation with cormorants nesting on Tribal lands on Leech Lake has raised many additional issues for us and our relationships with the general public, especially the resort community. It has also caused us to have to divert funding and other resources in an effort to address the issue to the satisfaction of the public. We therefore think that this section needs revised, because our tribe, and potentially others, are currently and are likely in the future to experience the effects of this federal action.'' (Leech Lake Band of Ojibwe)

Response. We recognize that the government needs to consult with Tribes on natural resource management issues that may affect them. However, we proposed only to extend a depredation order that allows control of problematic double-crested cormorant populations. Doing so would allow the Tribe to continue control actions; in this case the proposed action was simply to extend the depredation orders; no substantive regulations change was contemplated.

The Public Resources Depredation Order ensures each Tribe's ability to make decisions about control actions for double-crested cormorants on Tribal land. We understand the additional burdens that these decisions place on Tribes, and therefore our Regional Offices will continue to consult with Tribes during implementation of this public resources depredation order consistent with our Government-to-Government relationship.

Comment. ''The original PRDO [Public Resource Depredation Order, 50 CFR 21.48], implemented in 2003, has provided NYSDEC with very acceptable latitude in the management of cormorants relative to identified public resource concerns. We applaud the Service for taking the necessary steps to enact this rule. We also strongly support the continuation of the authorities provided in the PRDO. As an aside, we have found the Service's oversight of the PRDO to be simple, clearly defined, and without undue burden. We believe the PRDO has allowed NYSDEC to address our resource needs while ensuring viable cormorant populations on the landscape.'' (New York State Department Environmental Conservation)

Comment. ''The Illinois Department of Natural Resources strongly supports Alternative B: Five-year Extension. This alternative * * * is in our opinion, the best recourse for the near future in Illinois.''

''A five-year extension of the depredation orders would allow us to pursue our goals of providing for a healthy sport fish population in the State of Illinois, and to assure that there are no detrimental effects on the viability of double-crested cormorant populations.''

Comment. ''The Department supports Alternative B * * *. Continued mechanisms to facilitate take are needed to ensure that fish, wildlife, and vegetation resources can be effectively managed and protected. A limited term extension to the Public Resource Depredation Order provides the states with the ability to manage cormorants while also working with the Fish and Wildlife Service to develop a long term, regional management framework.'' (State agency)

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is

not significant under E.O. (E.O.) 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions).

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act and have determined that this action will not have a significant economic impact on a substantial number of small entities. The rule would allow small entities to continue actions they have been able to take under the regulations—actions specifically designed to improve the economic viability of those entities—and, therefore, will not significantly affect them economically. Because of the structure of wildlife damage management, the economic impacts of our action will fall primarily on State governments and the Wildlife Services Division of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service. These do not qualify as ''small governmental jurisdictions'' under the Act's definition. Effects on other small entities, such as aquaculture producers, will be positive because such facilities may continue to control depredating cormorants without having to obtain a permit from the Service, but are not predicted to be significant. We certify that because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)).

a. This rule will not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, Tribal, or local government agencies; or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Actions under the regulation will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It will not be a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property. In fact, this action will help alleviate private and public property damage and allow the exercise of otherwise unavailable privileges.

Federalism

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the MBTA. 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. This 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 double-crested cormorant management programs. Therefore, in accordance with Executive Order 13132, this 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

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

We examined these proposed regulations under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We may not collect or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget control number. The Office of Management and Budget approved the information collection requirements for this part, and assigned OMB Control Number 1018–0121, which expires December 31, 2009. There are no new information collection requirements associated with this regulations change.

National Environmental Policy Act

We have completed a Final Environmental Assessment (FEA) on this proposed regulations change. The FEA is a part of the administrative record for this rule. In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.* and Part 516 of the U.S. Department of the Interior Manual (516 DM), extension of the expiration dates of the depredation orders will not have a significant effect on the quality of the human environment, nor would it involve unresolved conflicts concerning alternative uses of available resources; therefore, preparation of an Environmental Impact Statement (EIS) is not required.

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), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that there are no potential significant effects. This rule will not interfere with the ability of Tribes to manage themselves or their funds or to

regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule change will not be a significant regulatory action under E.O. 12866, nor would it significantly affect energy supplies, distribution, or use. This action will not be a significant energy action, and no Statement of Energy Effects is required.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). We consulted on threatened and endangered species when we completed the 2003 EIS, and precautions to protect wood storks (*Mycteria americana*), bald eagles (*Haliaeetus leucocephalus*), piping plovers (*Charadrius melodus*), and least terns (*Sternula antillarum*) are in place in the depredation orders. We have concluded that the regulation change will not affect listed species.

Literature Cited

U.S. Fish and Wildlife Service. 2003. Final Environmental Impact Statement: Double-crested Cormorant Management. Available at *http://www.fws.gov/migratorybirds/issues/cormorant/finaleis/CormorantFEIS.pdf*.

List of Subjects in 50 CFR Part 21

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

Regulation Promulgation

■ For the reasons stated in the preamble, we hereby amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

■ 1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

§ 21.47 [Amended]

■ 2. Amend § 21.47(f) by removing the phrase ''April 30, 2009'' and adding in its place ''June 30, 2014.''

§ 21.48 [Amended]

■ 3. Amend § 21.48(f) by removing the phrase ''April 30, 2009'' and adding in its place ''June 30, 2014.''

Dated: March 30, 2009.

Will Shafroth,

Assistant Secretary.

[FR Doc. E9–7650 Filed 4–3–09; 8:45 am]

BILLING CODE 4310–55–P