

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*		*		*
BIRDS							
*	*	*	*		*		*
Tree finch, medium	<i>Camarhynchus pauper</i>	Ecuador (Galapagos Islands).	Entire	E		NA	NA
*	*	*	*		*		*

* * * * *

Dated: November 25, 2008.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E8-28998 Filed 12-5-08; 8:45 am]

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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:** Proposed rule; availability of draft environmental assessment; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to extend our two existing depredation orders for double-crested cormorants (*Phalacrocorax auritus*) in the Code of Federal Regulations (CFR) at 50 CFR 21.47 and 21.48 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 have prepared a draft environmental assessment (DEA) to analyze the environmental impacts associated with our proposed extensions. We invite the public to comment on the DEA and our proposed extension. The DEA is posted at <http://www.fws.gov/migratorybirds>.

DATES: We will accept comments on the DEA, the proposed extension, or both, that are received or postmarked on or before January 22, 2009.

ADDRESSES: You may submit comments on the DEA or the proposed extension by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: RIN 1018-AW11; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203-1610. We will not accept e-mails or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT:

Terry Doyle, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203-1610, or telephone 703-358-1825.

SUPPLEMENTARY INFORMATION:**Background**

The U.S. Fish and Wildlife 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). Part 21 of title 50 of the CFR covers migratory bird permits. Subpart D deals specifically with the control of depredating birds and currently includes eight depredation orders. 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 depredation orders at 50 CFR 21.47 and 21.48 for double-crested cormorants allow for take of the species under the provisions of our 2003 Environmental Impact Statement (EIS) (68 FR 47603), in which we assessed the

impacts of the depredation orders and determined that they would not significantly affect the status of the species. The EIS is available by contacting us at the address in the **FOR FURTHER INFORMATION CONTACT** section. The depredation orders are scheduled to expire in April 2009. We have no data to suggest that the orders have had any significant negative effect on double-crested cormorant populations. Extending the orders for an additional five years will not, in the judgment of Service biologists, pose a significant, detrimental effect on the long-term viability of double-crested cormorant populations.

Public Comments

You may submit your comments and materials concerning our proposed rule and DEA by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this proposed 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 would 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 would not have a significant economic impact on a substantial number of small entities. The proposed 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, would not significantly affect them economically. We certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

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

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

b. This proposed rule would 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 proposed rule would 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 proposed rule would not “significantly or uniquely” affect small governments. A small government agency plan is not required. Actions under the proposed regulation would not affect small government activities in any significant way.

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

Takings

In accordance with E.O. 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule does not contain a provision for taking of private property.

Federalism

This proposed rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the ability of States to manage themselves or their funds. No significant economic impacts are expected to result from the proposed change in the depredation order.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the proposed 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. There are no new information collection requirements associated with this regulations change.

National Environmental Policy Act

We have completed a Draft Environmental Assessment (DEA) on this proposed regulations change. The DEA is a part of the administrative record for this proposed 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 effects. This proposed rule would 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)

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule change would not be a significant regulatory action under E.O. 12866, nor would it significantly affect energy supplies, distribution, or use. This action would 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 have concluded that the proposed regulation change would not affect listed species.

Clarity of This Regulation

We are required by E.O.'s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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/finaeis/CormorantFEIS.pdf>.

List of Subjects in 50 CFR Part 21

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

For the reasons stated in the preamble, we propose to 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 number “2009” and adding in its place the number “2014.”

§ 21.48 [Amended]

3. Amend § 21.48(f) by removing the number “2009” and adding in its place the number “2014.”

Dated: November 25, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–29018 Filed 12–5–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS–R9–MB–2008–0064; 91200–1231–9BPP]

RIN 1018–AV66

Migratory Bird Permits; Removal of Rusty Blackbird and Tamaulipas (Mexican) Crow From the Depredation Order for Blackbirds, Cowbirds, Grackles, Crows, and Magpies, and Other Changes to the Order

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose a change in the regulations governing control of depredating blackbirds, cowbirds, grackles, crows, and magpies at 50 CFR 21.43. Because of long-term evidence of population declines throughout much of their ranges, we propose to remove the Rusty Blackbird (*Euphagus carolinus*) and the Mexican (Tamaulipas) Crow (*Corvus imparatus*) from the list of species that may be controlled under the depredation order. After this change, a depredation permit would be necessary to conduct control actions to take either of these species. We also propose to add a requirement to use nontoxic shot or bullets when a firearm is used to control any species listed under the order, and we propose to add a requirement to report on control actions taken under the order.

DATES: We will accept comments received or postmarked on or before March 9, 2009.

ADDRESSES: You may submit comments on the proposed rule by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AV66; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203–1610.

We will not accept e-mails or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide (see the Public Comments section below for more information).

Information Collection: See “Paperwork Reduction Act” in **SUPPLEMENTARY INFORMATION** for information on submitting comments on

the proposed information collection requirements.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610, or telephone 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife 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). Part 21 of title 50 of the Code of Federal Regulations covers migratory bird permits. Subpart D deals specifically with the control of depredating birds and presently includes eight depredation orders. 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 depredation order at 50 CFR 21.43 for blackbirds, cowbirds, grackles, crows, and magpies allows take when individuals of an included species are “found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance.”

Rusty Blackbird

The Rusty Blackbird is highly dependent upon wooded wetlands and breeds further north than any other blackbird in North America. It breeds mainly in Alaska and Canada and occurs in the contiguous United States during migration and winter. For a map of the species’ geographic distribution, go to: http://www.birds.cornell.edu/AllAboutBirds/BirdGuide/Rusty_Blackbird_dtl.html#range. Estimates of the Rusty Blackbird’s global breeding population have varied and continue to vary considerably. A good recent estimate is perhaps 1.3 million (P. Blancher, Environment Canada, unpublished data).

Greenberg and Droege (1999) wrote, “All of the evidence to date indicates that the Rusty Blackbird was once abundant but has been experiencing a chronic decline since the mid-1800s. This decline may be accelerating, with total decreases estimated at