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106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–916

REGULATIONS FOR HUNTING SEASONS FOR DOUBLE-CRESTED CORMORANTS

SEPTEMBER 29, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 3118]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3118) to direct the Secretary of the Interior to issue regulations under the Migratory Bird Treaty Act that authorize States to establish hunting seasons for double-crested cormorants, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3118 is to direct the Secretary of the Interior to issue regulations under the Migratory Bird Treaty Act that authorize States to establish hunting seasons for double-crested cormorants.

BACKGROUND AND NEED FOR LEGISLATION

Double-crested cormorants (*Phalacrocorax auritus*) are large, greenish-black colonial waterbirds that have been protected under the Migratory Bird Treaty Act since 1972. There are about 30 species of cormorants worldwide, including six in North America, of which the double-crested cormorant is the most common. Their diet consists almost entirely of fish. The average cormorant weighs about 4.2 pounds and is capable of consuming about 25 percent of its weight each day in fish. The double-crested cormorant is found

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throughout much of North America at some time during the year. Cormorants nest from southwest Alaska, central Alberta and James Bay south to the Gulf of Mexico. Most cormorant populations migrate from northerly breeding grounds south to the Gulf of Mexico, but populations in Florida and much of the Pacific coast are resident year-round. Cormorants are gregarious, and almost always nest and roost in colonies close to a convenient food supply.

Called "duck-crows" by early settlers, cormorant populations have undergone dramatic changes over the last three decades. Cormorant populations crashed during the 1960s and 1970s, as a result of widespread use of toxic chemicals such as DDT and PCBs. DDT and its biological breakdown-products have been linked to reproductive failure and eggshell thinning in many species of birds, while PCBs have been linked to deformities. PCBs and DDT are persistent, fat soluble chemicals that accumulate in the food chain. Predators such as fish-eating cormorants concentrate these chemicals by consuming large quantities of contaminated fish. By 1973, cormorant nesting pairs decreased by 86 percent in the Great Lakes, from approximately 900 in the early 1950s to 125 in 1973. The cormorant disappeared on Lakes Michigan and Superior, and only about 10 pairs remained on Lake Ontario. Populations in other parts of the United States suffered a similar decline.

Cormorant populations recovered significantly following the banning of the sale of DDT and other persistent organic pollutants. Registration of all DDT products was discontinued in 1985. However, sales of existing stocks were allowed until December 31, 1990. Since 1990, the cormorant nesting population on the Great Lakes has increased to more than 93,000 pairs. The cormorant is now more numerous on the Great Lakes than at any time in recorded history. Likewise, populations in other areas have seen tremendous increases. The total population of double-crested cormorants in the U.S. and Canada is now estimated to be more than one million birds. The decline in contaminant levels since the 1970s is not the only factor that has allowed cormorant populations to increase at such a rapid rate. Scientists believe that increasing numbers of smaller fish, such as smelt and alewife in the Great Lakes, contributed to the bird's rapid population growth. In recent years, the rate of growth in the cormorant population of the Great Lakes appears to have slowed as a result of outbreaks of disease and a limited food supply.

Despite a slower growth rate, the existing large populations of cormorants have created conflicts between the birds, other wildlife and humans throughout the United States. Their ability to consume large quantities of fish is believed to affect sport fish populations and displace other waterbirds, such as herons and gulls. At aquaculture facilities, cormorants can consume large quantities of fish before they are ready for market. Their propensity to roost in large flocks and deposit large amounts of excrement in a single location has been cited for killing trees and other vegetation. Cormorants have also been blamed for creating "toxic islands" from the accumulation of their excrement in areas around the Great Lakes where they frequently roost.

The impacts of cormorant populations on sport fish in the Great Lakes and other areas is not completely understood. Anglers and some scientists believe that in addition to eating young sport fish

such as bass, lake trout, and Pacific salmon, cormorants compete with these fish in the Great Lakes for prey species such as smelt and alewife. Fishermen, resort owners, fish farmers, lakefront property owners, and others along the Mississippi River and the Great Lakes are calling for cormorant population reductions. Many natural resource managers believe that cormorants generally have only a minor impact on sport fish populations, but they recognize that cormorants may have a significant impact on sport fish populations in localized areas where fish or cormorants are concentrated in high densities, such as hatchery release sites and spawning areas. Research conducted by the New York State Department of Environmental Conservation (NYDEC) and the U.S. Geological Survey's Biological Research Division in 1998 established a link between cormorants and smallmouth bass in the eastern basin of Lake Ontario. The findings of this research suggested that excessive mortality of smallmouth bass occurred after the cormorant population exceeded 1,500 breeding pairs.

Despite the uncertainty of cormorant populations on sport fisheries, cormorants have severe economic consequences on private aquaculture producers, particularly catfish farmers along the southern portion of the Mississippi River. Losses due to cormorant predation have been estimated to reach 3 to 7 percent of the catfish crop each year. Catfish farmers each spend thousands of dollars annually to harass and repel cormorants from their ponds. Several methods are available to alleviate depredation of cormorants on fish stocks, including nonlethal harassment, roost dispersal, oiling eggs to prevent hatching and other forms of lethal control. Nonlethal harassment techniques are widely used to move or deter cormorants from a particular area, but eventually the birds become habituated to the techniques, rendering them ineffective at preventing depredation on fish stocks. In such cases, lethal control may be necessary to supplement and enhance nonlethal control methods.

Since cormorants are protected by the Migratory Bird Treaty Act, their nests and eggs cannot be disturbed and birds cannot be captured or killed unless a depredation permit is obtained from the U.S. Fish and Wildlife Service (USFWS). Since 1972, USFWS has issued depredation permits to individual fish farmers on a case-by-case basis to control cormorant populations. In 1988, USFWS issued a Depredation Order permitting the take of double-crested cormorants at aquacultural facilities and State-operated hatcheries without a permit in 13 States, provided that lethal controls are used in conjunction with a nonlethal harassment program certified by the U.S. Department of Agriculture Wildlife Services. The Depredation Order applies to Alabama, Mississippi, Arkansas, Louisiana, Minnesota, Florida, Georgia, Kentucky, North Carolina, Oklahoma, South Carolina, Tennessee and Texas. In some of these States, a State depredation permit is still required. Aquaculture facilities outside these States need to apply for a depredation permit from the USFWS on a case-by-case basis to implement a lethal control program. Between 1994 and 1999, USFWS issued 1,479 depredation permits. Including cormorants harvested under the Order, the number of cormorants taken annually in each State has had no detectable effect on subsequent wintering populations.

Earlier this year, NYDEC issued a draft environmental impact statement (DEIS) with recommended alternatives for managing cormorants in the eastern basin of Lake Ontario, including lethal removal and nest suppression. The comment period for the DEIS closed on April 12, 2000. Implementation of the recommended alternative will require approval of the USFWS, which has the authority to regulate the harvest of birds under the Migratory Bird Treaty Act. Currently, there is no established hunting season for cormorants. The harvest of cormorants is strictly controlled by the USFWS through the use of depredation permits and the Depredation Order. USFWS issued permits to the States of Vermont and New York in 1999 allowing the oiling of eggs to protect avian and plant diversity on cormorant nesting islands.

It is unclear when the USFWS will issue its final regulations on the management of double-crested cormorants. This legislation is an interim solution to address this out-of-control population problem. It does not interfere in any way with the completion of the Draft Environmental Impact Statement which the USFWS will publish on this issue.

COMMITTEE ACTION

H.R. 3118 was introduced on October 20, 1999, by Congressman John M. McHugh (R–NY). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On May 11, 2000, the Subcommittee held a hearing on the bill. In his testimony, Mr. Daniel M. Ashe of the USFWS stated that "the Service does not oppose the idea of establishing a hunting season on double-crested cormorants." On July 20, 2000, the Subcommittee met to consider H.R. 3118. There were no amendments offered and the bill was reported favorably to the full Resources Committee by voice vote. On September 20, 2000, the full Resources Committee met to consider the bill. There were no amendments and the bill was ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 2000.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3118, a bill to direct the Secretary of the Interior to issue regulations under the Migratory Bird Treaty Act that authorize states to establish hunting seasons for double-crested cormorants.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3118—A bill to direct the Secretary of the Interior to issue regulations under the Migratory Bird Treaty Act that authorize states to establish hunting seasons for double-crested cormorants

H.R. 3118 would direct the Secretary of the Interior to issue regulations authorizing states to establish hunting seasons for double-crested cormorants. CBO estimates that implementing H.R. 3118 would have no significant impact on the federal budget. Within six months of the bill's enactment, the U.S. Fish and Wildlife Service would have to issue regulations under the Migratory Bird Treaty Act to carry out the legislation, but this would involve minimal expense.

The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 3118 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104—4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

The double-crested cormorant is a non-game, colonial nesting bird protected since 1972 under the Migratory Bird Treaty Act (MBTA, 16 U.S.C. 703–712). The majority claims that a resurgent double-crested cormorant population is solely responsible for declining sport fisheries throughout the bird's original and expanded range. They stress that the U.S. Fish and Wildlife Service (the Service) has ignored this problem for years and declined to take appropriate action to control cormorant depredation and other impacts. The only recourse acceptable to the majority is to amend the MBTA to authorize the Secretary of the Interior to issue regulations to allow the State to establish regulated hunts in order to cull the double-crested cormorant population, and theoretically, restore depleted sport fish stocks.

Unfortunately, this summation is a convenient simplification of the issue. H.R. 3118 is a flawed remedy not grounded in biological science, but based primarily on the speculation of sport anglers and outfitters. A broad-based hunt for double-crested cormorant would likely be both wasteful and ineffective, and we are deeply concerned that H.R. 3118 would purposely undermine the National Environmental Policy Act (NEPA) process as it applies to the protection and management of other non-game bird species listed under the MBTA.

We acknowledge that the double-crested cormorant population has recovered from its precarious status in the early 1970s and that now this species has re-colonized its historic range throughout much of coastal and interior North America. We also note that human activities (e.g., sport fish stocking, aquaculture and catfish farming, reduced use of pesticides and other toxic substances, habitat enhancement, etc.) have contributed significant towards the restoration of this population by creating favorable environmental conditions. As a result, some double-crested cormorant colonies may be perceived as nuisances in certain geographic areas of the United States, notably in the southeast and in the Great Lakes region.

However, the consensus of wildlife biologists, as demonstrated in surveys and the scientific literature, strongly refutes the majority's principal argument. The reality, as expressed in the 1999 scientific paper, Double-crested cormorant Impacts on Sport Fish: Literature Review, Agency Survey, and Strategies, is that [cormorant] depredation "in most natural situations has a minor impact on commercial or sport fish populations." Investigations of [cormorant] stomach contents indicate that fish species of value by commercial or sport anglers generally make up a very small proportion of a double-crested cormorant's diet, usually less than 3 percent in natural conditions. In fact, the amount of game fish consumed by double-crested cormorants has been found to be generally 5 percent of the total quantity caught by commercial and sport anglers. The report

concludes by stating that "a strategy of reducing cormorant populations to benefit sport fish populations is biologically unwarranted."

Also, contrary to the majority's assertions, the Service has taken actions to address nuisance double-crested cormorant depredation; especially depredation affecting catfish farms and other aquaculture operations in the southeastern United States. In 1986, the Service, in coordination with other Federal agencies and the States, began to issue depredation permits to allow the take of double-crested cormorants at aquaculture facilities where there were documented economic impacts. According to 1997 data, as of 1993–1994 close to 2,300 depredation permits had been issued by the Service which resulted in an annual take of approximately 8,200 cormorants per year. And in 1998, the Service issued a broad depredation order to allow catfish farmers and other commercial aquaculturalists in 13 States to take double-crested cormorant impacting their operations. The Service estimated that this standing order could produce an annual take of up to 92,000 cormorants, or roughly 10 percent of the continental population of the species if aggressively implemented by the State, the aquaculture industry and the U.S. Department of Agriculture Wildlife Services program.

Most recently, on November 8, 1999, the Service published a Notice of Intent to prepare an Environmental Impact Statement (EIS) and national management plan for double-crested cormorants. This action was intended to address various impacts caused by population and range expansion of the bird in the contiguous United States. The EIS is expected to identify and, where possible, quantify impacts caused by increasing cormorant populations. The EIS is also expected to suggest management strategies to resolve such conflicts and identify factors needed to justify the implementation of control measures. Over 1,450 comments were received during the public scoping period which ended on June 30, 2000. The Service expects to release its draft EIS for public review in November, 2000. The EIS will provide the requisite scientific analysis necessary to develop a comprehensive management strategy, including consideration of non-lethal control alternatives other than a regulated hunt that are more focused, less wasteful, and genuinely helpful towards the restoration of sport fisheries. We also not that the EIS could include recommendations for new depredation control activities. But at least in this instance, such proposals would be based on science and targeted to the areas that need action.

Simply because double-crested cormorants, as a small part of their diet, consume game fish cherished by sport anglers, that factor alone is not sufficient justification for Congress to authorize a hunt for a non-game bird protected under the MBTA. In fact, the longstanding policy of the Service is to deny such requests because rarely is there a verifiable biological connection or associated economic impact. Yet H.R. 3118 would overturn a prudent conservation policy in favor of a short-sighted management scheme. Moreover, this flawed strategy would inflict unnecessary mortality on non-nuisance cormorant colonies without any reasonable assurance that sport fish populations would actually recover. In fact, we suspect that sport fish populations might recover more quickly through the implementation of control measures to address other

deleterious human activities affecting sport fish populations, such as polluted run-off, aquatic nuisance species, acidification of lakes and ponds, and habitat loss.

These birds should not be unfairly singled out when no credible scientific evidence has been presented to the Committee to justify the authorization of a broad-based hunt, and especially, when a science-based national management strategy for double-crested cormorants is within reach. The Service has consistently communicated its strong preference to be allowed to complete this EIS free from congressional interference. Rather than default to the strategy proposed in H.R. 3118, we believe it would be far wiser for the Congress to suspend action until the full range of management alternatives in the EIS can be evaluated and a national strategy proposed. To that end, we urge the Service to expedite the completion of this important EIS.

GEORGE MILLER.
PATRICK J. KENNEDY.
MARK UDALL.
RUSH HOLT.
FRANK PALLONE, Jr.
DONNA CHRISTENSEN.
JOSEPH CROWLEY.

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