

# Subcommittee on Federal Lands

Tom McClintock, Chairman  
Hearing Memorandum

February 9, 2018

To: All Subcommittee on Federal Lands Members

From: Majority Committee Staff—Will Layden  
Subcommittee on Federal Lands (x6-7736)

Hearing: **Legislative hearing on H.R. 4429 (Rep. Jack Bergman)**, To direct the Secretary of the Interior to reissue a rule relating to extension of the expiration dates for double-crested cormorant depredation orders, and for other purposes.  
**February 15, 2018, 2:30 PM; 1334 Longworth House Office Building**

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## H.R. 4429, “*Cormorant Control Act*”

### Summary of the Bill

H.R. 4429, introduced by Representative Jack Bergman (R-MI), directs the Secretary of the Interior to reissue the final rule extending two double-crested cormorant depredation orders vacated by a 2016 District Court ruling, and shields the rule from judicial review.

### Cosponsors

[8 Cosponsors](#)

### Witness

Mr. Randall M. Claramunt  
Lake Huron Basin Coordinator  
Michigan Department of Natural Resources  
Alanson, MI

### Background

Double-crested cormorants are large, matte-black migratory fishing birds abundant throughout the entire United States. Cormorants are excellent divers and are naturally adapted to foraging for fish under water, which historically has placed the bird in direct conflict with aquaculture, sustenance, sport fishing, and even endangered species in certain parts of the country. To quote the Fish and Wildlife Service (FWS), “Double-crested cormorant populations can decrease fish populations in open waters and in aquaculture facilities.”<sup>1</sup>

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<sup>1</sup> Fish and Wildlife Service, 2009 Federal Register 74 FR 15394, <https://www.fws.gov/policy/library/2009/E9-7650.html>.

Like many other migratory birds, the double-crested cormorant is protected by the Migratory Bird Treaty Act of 1918 (MBTA, 16 USC 703 et seq.), which prohibits any take (the killing, capture, selling, trading, or transport, etc.) of any protected species without prior authorization by FWS. Since the bird's addition to the MBTA in 1973, cormorant populations have grown significantly across the species range. In just the first thirty years after the cormorant addition to the MBTA, the bird's population grew from 200 nesting pairs to over 115,000 in 2000 in just the Great Lakes area alone. In recent years populations have continued to grow, with numbers in the Great Lakes and other regions reaching into the millions.<sup>2</sup>

Depredation permits are provided to individuals, private organizations, and other federal and State agencies, on a case-by-case basis for the lethal control of birds. In contrast, depredation orders establish conditions under which specified entities or individuals can take a covered species without obtaining an individual depredation permit. Both processes require compliance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.), public comment, and are subject to judicial review.

Citing increased human conflict due to the expanding cormorant population, FWS issued two environmental assessments and two subsequent depredation orders in 1998 and 2003, in attempts to provide increased flexibility to aquaculturists and State fish and game agencies struggling to manage the bird. Both depredation orders were then subsequently extended in 2009 and 2014.

In May 2016, pursuant to a lawsuit, the U.S. District Court for the District of Columbia remanded the FWS' 2014 Environmental Assessment (EA) and vacated two Depredation Orders for double-crested cormorants. The court concluded that FWS did not take a "hard look" at the effects of the Depredation Orders on cormorant populations and other affected resources, and failed to consider a reasonable range of alternatives under NEPA. The remanded orders covered cormorant management in 24 states in the Midwest, Southeast, and Northeast United States.

In November 2017, FWS released a supplementary EA, allowing for the reissuance of private depredation permits. Despite the reissuance of permits, cormorant populations remain abundant in North America, fisheries will continue to experience the impacts, and it is unlikely that the population will decline without more aggressive management.

H.R. 4429 allows FWS to reissue both 2014 depredation orders, which would provide for continued management of cormorants by both state fish and game agencies, as well as private aquaculture organizations. Furthermore, the legislation shields the reissuance from further judicial review, ensuring that FWS would not have to spend additional taxpayer dollars defending the orders in court.

## **Cost**

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<sup>2</sup> Dorr, Brian S., and David G. Fielder. "Double-Crested Cormorants: Too Much of a Good Thing?" *Fisheries* 42, no. 9 (2017): 468-77. doi:10.1080/03632415.2017.1356121.

A Congressional Budget Office cost estimate has not yet been completed for this bill.

**Administration Position**

The Administration's position is currently unknown.

**Effect on Current Law (Ramseyer)**

None.