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TESTIMONY OF MATT HOGAN DEPUTY DIRECTOR, U.S. FISH AND WILDLIFE SERVICE

BEFORE THE HOUSE RESOURCES SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS HEARING ON H.R. 3320, THE AMERICAN AQUACULTURE AND FISHERY RESOURCES PROTECTION ACT

JUNE 24, 2004

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to provide the Administration's views regarding H.R. 3320, the American Aquaculture and Fishery Resources Protection Act. As discussed in more detail below, the Administration opposes H.R. 3320 because it is unnecessary, because of its potential impact on the management of all migratory birds, and because it exempts migratory bird management activities performed by the Animal and Plant Health Inspection Service (APHIS) from review under the National Environmental Policy Act (NEPA).

Background

Migratory birds play a significant ecological, economic and cultural role both domestically and internationally. The U.S. Fish and Wildlife Service (Service) has the primary authority to manage migratory bird populations in the United States. The Service's authority comes from the Migratory Bird Treaty Act (MBTA), which was signed in 1918. The Migratory Bird Treaty with Great Britain on behalf of Canada in 1916 was the foundation for the MBTA, and, along with 3 other subsequent treaties, with Mexico, Japan, and the Soviet Union, imposed certain obligations on the United States for the conservation of migratory birds. The Service's Migratory Bird Management Program is responsible for monitoring and surveying populations; developing and implementing local, regional, national and international bird management plans; issuing permits related to activities affecting migratory birds; and setting hunting frameworks.

The Service works with APHIS's Wildlife Services (WS) in the Department of Agriculture, and other federal agencies, state and local governments, private landowners, and other partners to conserve, protect, and manage migratory bird species. The Service believes that this interagency cooperation has allowed us to effectively address migratory bird management concerns. Statewide permits, standard depredation permits and depredation orders are available to assist APHIS-WS in carrying out their mandate in a timely manner. An APHIS-WS State Director may obtain a statewide permit to take, possess, or transport migratory birds, parts, nests, or eggs, for control activities that APHIS-WS conducts in a particular state, or a particular group of states. The statewide permits are unique, and are only issued to APHIS-WS. The activities covered under such a permit may include control work for public or private entities, and will cover all the control work the APHIS-WS State Director anticipates conducting in that state, or group of states, over a 12-month period. An APHIS-WS State Director may also obtain standard depredation permits for individual depredation control projects to take a specified number of migratory birds for a specific depredation problem at a specific location. Priority is given to processing all APHIS-WS applications for depredation permits. APHIS-WS can also work under several depredation orders discussed below – the Aquaculture Depredation Order and the Public Resources Depredation Order. In this vein, the Service and APHIS-WS have worked cooperatively on the management of a number of species, including Canada geese and double-crested cormorants.

Double-crested Cormorants

While the language of H.R. 3320 is very broad, and would appear to impact the management of all bird species covered by the MBTA (i.e., over 900 species of migratory birds), we understand that H.R. 3320 was intended to address the management of double-crested cormorants and their impacts on aquaculture and fishery resources. With this in mind, I would like to take a moment to discuss the Service's efforts related to the management of double-crested cormorants.

The double-crested cormorant (*Phalacrocorax auritus*) is a long-lived, colonially-nesting waterbird native to North America. One of six species of cormorants found in North America, it is the most common species found inland, often in large flocks. Cormorant populations increased after the 1970s, and by the 1990s populations consisted of tens of thousands of wintering birds. Today, there are approximately 400,000 nesting pairs in the United States and Canada. Like other colonially-nesting waterbirds, protection of nesting habitat, a decline in the shooting of cormorants, and banning of certain chemicals, such as DDT, have all contributed to double-crested cormorants' population increases. Double-crested cormorants are protected under the Migratory Bird Treaty Act. As a protected migratory bird, cormorants cannot be taken or killed except through permits or regulations set by the Service.

As double-crested cormorant populations have grown, there has been increasing conflict between double-crested cormorants and other resources, including the aquaculture industry, sport fisheries, and other bird species. As a result, the Service has been actively working with our partners at the national, regional, and local levels to address these issues. For example, in 1998, the Service established an Aquaculture Depredation Order to allow commercial freshwater aquaculture producers in 13 states in the Service's Southeast Region (as well as Texas, Minnesota, and Oklahoma) to take an unlimited number of double-crested cormorants without a federal permit to help alleviate the economic impact of cormorant depredation on their stocks.

Further, in 2003, the Service established a Public Resource Depredation Order to allow APHIS-WS, state wildlife agencies, and tribes more flexibility to manage cormorants where they cause damage to public resources such as fisheries, vegetation, and other bird species. The 1998 Aquaculture Depredation Order was expanded at this time to allow the take of double-crested cormorants at winter roost sites, in addition to fish farms in 24 states in the Service's Southeast and Midwest regions (as well as Kansas and Vermont). Without these depredation orders, agencies and individuals would need a federal permit for each double-crested cormorant control action. APHIS-WS was a cooperator with the Service in the development of the depredation orders, and we continue to work with them on this issue. In our view, the legislation is unnecessary.

H.R. 3320, The "American Aquaculture and Fishery Resources Act"

As previously noted, the Administration opposes H.R. 3320. As currently drafted, the legislation would affect a wide array of migratory bird species nationwide by broadly authorizing APHIS-WS personnel who "carr[y] out any activity relating to migratory bird management" the authority to issue depredation permits and otherwise take and manage migratory birds. Under the MBTA, the Service has the responsibility for the conservation and management of migratory birds in the United States. We are concerned that this provision of H.R. 3320 would undermine the Service's ability to effectively conserve and manage healthy migratory bird populations.

APHIS-WS's primary responsibility, with regard to migratory bird management, is to reduce or minimize damage to agricultural crops, property values and human health and safety in the United States. Unlike the Service, APHIS-WS has no overall responsibility for the conservation of migratory birds. It is inevitable that giving two agencies with differing responsibilities and mandates overlapping authority to manage the same resource will only result in confusion and conflict.

Moreover, the Administration does not support exempting from NEPA migratory bird management activities because, in the Service's experience, the NEPA process aids in interagency coordination and public participation in migratory bird management decisions and in analyzing the environmental effects of bird management activities.

Conclusion

Mr. Chairman, this concludes my prepared statement. Thank you again for the opportunity to testify at today's hearing. I would be pleased to respond to any questions you or the Subcommittee Members may have.