



# Friends of Minnesota Scientific & Natural Areas

August 28, 2023

Theresa Ebbenga  
Northwest Regional Director  
DNR NW Regional Office  
2115 Birchmont Beach Road NE  
Bemidji, MN 56601

Via Certified U.S. MAIL and E-mail  
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RE: Egret Island SNA – Proposal to Kill Cormorants with Lead Ammunition  
**Please Withdraw Proposal and Adopt Commissioner’s Designation Order**

Dear Ms. Ebbenga and Colleagues:

On behalf of the Friends of Minnesota Scientific and Natural Areas (FMSNA), I submit the following comments in opposition to the Minnesota Department of Natural Resources’ proposal to kill Double-crested Cormorants (*Nannopterum auritum* Lesson, 1841) – and particularly, with lead ammunition - on Egret Island Scientific and Natural Area (SNA), on Pelican Lake, Ashby, MN.

For the reasons stated below, FMSNA respectfully requests that the Minnesota Department of Natural Resources **withdraw this proposal** - and adopt a Commissioner’s Designation Order - as soon as possible.

## **Purposes and Intentions of Friends of Minnesota Scientific and Natural Areas**

Friends of Minnesota Scientific and Natural Areas (FMSNA) is a Minnesota non-profit, tax-exempt [“501(c)(3)”] corporation organized to protect and enhance Minnesota’s Scientific and Natural Areas (SNAs). SNAs are the “crown jewels” of Minnesota’s state land base, protecting some of Minnesota’s rarest and most sensitive plant and animal species and the ecosystems upon which they depend.

First, it is important to state that FMSNA recognizes and fully supports the Minnesota Constitution, including Article XIII, Section 12, which states: “Hunting

and fishing and the taking of game and fish are a valued part of our heritage that shall be forever preserved for the people and shall be managed by law and regulation for the public good.” [Emphasis added.]

FMSNA also recognizes that the science is clear. Lead is a potent neurotoxin, for which no safe exposure level exists. [Emphasis added.] <https://www.lung.org/clean-air/at-home/indoor-air-pollutants/lead> [Last visited 3/4/23.] FMSNA continues to be a forceful advocate for legislation and administrative rules to “get the lead out” of ammunition and fishing tackle.

Therefore, FMSNA submits the following comments, in part, to burnish the reputation of Minnesota’s fishermen and fisherwomen as true “conservationists”, who advocate to protect and support a naturally functioning ecosystem – i.e., to “manage” our fisheries “for the public good”, as the Minnesota Constitution provides.

## **Reasons to Withdraw Proposal to Kill Cormorants, with Lead Ammunition, on Egret Island SNA**

### **1. Violation of Minnesota Environmental Policy Act.**

The Minnesota Environmental Policy Act (“MEPA”), enacted in 1973 as Minnesota Statute Chapter 116D, establishes criteria that, if satisfied, requires that cormorants be protected and not be killed – especially with lead ammunition.

Minn. Stat. 116D.04, Subdivision 6, states:

“No **state action** significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resource management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or **destruction** of the air, water, land, or other **natural resources** located within the state, so long as there is a **feasible and prudent alternative** consistent with the reasonable requirements of the public health, safety and welfare and the state’s **paramount concern** for the protection of air, water, land, and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.” [Emphasis added.]

The statutory criteria are listed as follows:

- A. Certainly, the DNR’s proposal is a “state action.”
- B. Certainly, killing of cormorants, a Minnesota native bird, “destroys” a “natural resource.”

C. A “feasible and prudent alternative” is a “no action” alternative; i.e., to allow the balance of nature to assert itself, without human interference. There is no evidence in the record that suggests that the numbers of cormorants and walleyes are anything other than a natural cycle. If anything, human overfishing of walleyes could offset the natural balance.

D. Furthermore, it is the state’s “paramount concern” to protect this precious SNA from further degradation. As stated on the DNR website:

“One can still enjoy the spectacle of Egret Island by boat, for it is truly a sight to behold. Dr. Francesca Cuthbert, professor in the University of Minnesota Department of Fisheries, Wildlife and Conservation Biology, has studied colonial waterbird population dynamics throughout the Great Lakes and in Asia. She has a special appreciation for Egret Island. ‘If I would choose one colony in Minnesota as truly magical, that is the spot.’”  
<https://www.dnr.state.mn.us/snas/detail.html?id=sna00974>  
[Last visited: August 19, 2023]

E. Finally, in this case, an unquantified economic impact on the local fishery does not justify killing a species of native bird protected under the Migratory Bird Treaty Act (16 U.S.C. §§ 703-712.)

## **2. Violation of the Statutory Requirements for the Scientific and Natural Areas Program, if a Permit is Granted.**

### **A. Killing cormorants violates the statutory purposes of a scientific and natural area:**

“Subd. 5. **State scientific and natural areas; purpose; resource and site qualifications; administration; designation.** (a) A state scientific and natural area shall be established to protect and perpetuate in an **undisturbed natural state** those natural features which possess exceptional scientific or educational value.” [Minn. Stat. 86A.05, Subd. 5 (a); emphasis added.]

Certainly, killing cormorants, with or without lead ammunition, – along with disturbing birds and other wildlife on Egret Island - fulfills the definition or “disturbance”, contrary to the legal purpose of a SNA.

### **B. Killing cormorants violates the statutory requirements to administer a scientific and natural area:**

"State scientific and natural areas shall be administered ... in a manner consistent with the purposes of this subdivision to preserve, perpetuate, and **protect** from **unnatural** influences the scientific and educational resources within them." [Minn. Stat. 86A.05, Subd. 5(c); emphasis added.]

Certainly, killing cormorants, with or without lead ammunition - along with disturbing other birds and wildlife on Egret Island - is an “unnatural influence”, contrary to the legal requirements to administer a SNA.

### 3. Violation of Minnesota Administrative Rules, if a Permit is Granted.

Minnesota Rule 6136.0550, Subpart 1.F, prohibits hunting and or possession of an uncased or loaded firearms on an SNA – unless authorized by a written permit or commissioner’s designation order.

The DNR proposal to kill cormorants (with or without lead ammunition) fails the requirements to issue a state permit, as described in Minnesota Rule 6136.0550, Subp.5. A. The rule is quoted below in **bold face**, with my comments in parentheses.

**“A. The commissioner may issue permits to conduct an activity otherwise prohibited, provided the activity would not harm the resources of a scientific and natural area.”** [Emphasis added.]

[Comment: Killing cormorants on the SNA completely fails this test. Killing obviously “harms” the cormorants – and “harms” other wildlife by the likely disturbance of mating and nesting activities.]

**“The permit application must be submitted on a form provided by the commissioner. The commissioner shall consider the following criteria to determine if a permit should be issued:**

**“(1) the activity will advance knowledge, understanding, interpretation, or management of scientific and natural areas;”**

[Comment: Killing cormorants will not advance the management of the SNA. The DNR only alleges that killing cormorants will advance knowledge and management of fish populations outside the SNA.]

**“(2) alternative locations for carrying out the activity are not available or not in close proximity;”**

[Comment: There is no evidence regarding whether or not other cormorants are “available” or “in close proximity.”]

**“(3) the activity will not substantially interfere with other public use, research, educational, or management activities;”**

[Comment: Killing cormorants will reduce the public enjoyment and research potential of: (a) a larger cormorant colony; and (2) other bird colonies that would be disturbed by the killing. As quoted previously, Dr. Cuthbert proclaims this is SNA is “... truly magical, ...”]

**(4) there are no reasonable alternatives for conducting the activity;**

[Comment: As stated above, a “feasible and prudent alternative” is a “no action” alternative; i.e., to allow the balance of nature to assert itself, without human interference. There is no evidence in the record, that suggests that the numbers of cormorants and walleyes are anything other than a natural cycle. If anything, human overfishing of walleyes could offset the natural balance.

In other words, a “feasible and prudent alternative” is to let the cormorants live - without human interference - and accept a reduction of walleye catch as a natural event.]

**and**

**“(5) the applicant is qualified to conduct the activities authorized by the permit.”**

[Comment: We reserve comment until additional facts are obtained.]

#### **4. Violation of Administrative Rules, if Allowed in a Future Commissioner’s Designation Order (CDO).**

It is notable that no CDO has been issued for Egret Island SNA, even though the land was transferred to the State of Minnesota, as a gift from The Nature Conservancy, in 2007. This is over 15 years ago!

If the DNR decides to allow shooting of cormorants via a future Commissioner’s Designation Order, the DNR will violate the following rules.

Minnesota Rule 6136.0550, Subpart 6, paragraph B, is quoted below in **bold face**, with my comments in parenthesis:

**“B. A designation order may allow exceptions to prohibited activities to enhance public use of a scientific and natural area or surrounding areas, if the activities are compatible with the purposes for which the scientific and natural area was acquired. The following criteria shall be considered to determine if exceptions to the prohibited activities should be allowed:”** [Emphasis added.]

[Comment: The DNR provides no evidence that public use will be “enhanced” by shooting cormorants. In fact, the shooting of cormorants will **detract** from a visitor’s experience and, for safety and aesthetic reasons, discourage them from visiting the SNA.]

**“(1) the activity occurred prior to designation;”**

[Comment: There is no evidence in the record that killing of cormorants has happened before on Egret Island.]

**“(2) the designation of specific areas for activities will help prevent damage to more sensitive areas;”**

[Comment: There is no evidence that shooting of cormorants will prevent damage to more sensitive areas. In fact, cormorants’ impact on their environment is not “damage”; it is part of a natural process.]

**“(3) the activity is needed to use a preexisting travel corridor to access land adjacent to a scientific and natural area for a special purpose;”**

[Comment: There is no preexisting travel corridor.]

**“(4) the activity will enhance access to or interpretation of the scientific and natural area;**

[Comment: Killing cormorants will not enhance access. Killing cormorants will be a sad distraction and detract from interpretation of this scientific and natural area.]

**“(5) allowing the activity will provide consistency with regulations of adjacent public lands;”**

[Comment: There are no adjacent public lands. This is an island.]

**“(6) the activity will help achieve management objectives for the scientific and natural area.”**

[Comment: The management objective for killing cormorants on Egret Island SNA is not for this SNA; it is for walleye fisheries off the SNA.]

In summary, a Commissioner’s Designation Order cannot legally include shooting cormorants as part of its Order.

## 5. Federal Requirements.

**A. Federal regulations require non-lethal methods first.** The U.S. Fish and Wildlife Services “special double-crested cormorant permit” regulation [50 CFR §21.123] states in paragraph (d)(1)(i):

“... States and Tribes must **implement nonlethal methods**, and independently determine that those methods are insufficient at resolving depredation conflicts, before taking double-crested cormorants.” [Emphasis added.]

While we oppose any form of control of cormorants on Egret Island SNA, the DNR would violate federal law if it does not first try non-lethal methods – on Egret Island - to control cormorants on this SNA.

**B. Federal regulations require non-toxic ammunition.** 50 CFR §21.123 states in paragraph (d)(1)(iv):

“Take using firearms (other than an air rifle or air pistol) must use nontoxic shot or nontoxic bullets (see § 20.21 of this subchapter).”

**C. Reservation of rights.** We reserve the right to comment on any federal permit application.

**D. Government Data Practices Act Request.** This letter constitutes a request, pursuant to the Minnesota Government Data Practices Act (Minn. Stat. Chapter 13), for a copy of any permit application to the U.S. Fish and Wildlife for a take permit under 50 CFR §21.123, the “special double-crested cormorant permit.”

**E.** We note that the rule establishing the “special double-crested cormorant permit” (50 CFR §21.123) was published in the Federal Register on December 29, 2020, **twenty-three days before the end of the Trump administration.**

## 6. Other Reasons to Withdraw the Proposal to Kill Cormorants on Egret Island SNA.

**A. Complete the Commissioner’s Designation Order (CDO).**

It has been over 15 years since The Nature Conservancy (TNC) gifted the property to the State of Minnesota in 2007. Yet, unfortunately, a Commissioner's Designation Order (CDO) has never been signed and published in the Minnesota State Register to make Egret Island a legal scientific and natural area.

This delay can be partially explained by the SNA acquisition backlog in the DNR Commissioner's office. For example, Icelandite Coastal Fen SNA was approved by the Cook County Board on September 28, 2021 – almost 2 years ago – and still does not have a CDO. [See Cook County Board minutes for September 28, 2021, attached as Exhibit 1.] In fact, only 6 acres have been designated as an SNA during the 4+ years of the Walz/Strommen administration. [See also "SNA Acquisition Shortfall (2014 – June, 2023)", attached as Exhibit 2.]

As FMSNA stated in an August 19, 2023 e-mail to Regional Director Theresa Ebbenga, we respectfully request to work with the DNR, and with other organizations such as TNC (the donor), Audubon, and the Minnesota Ornithologist's Union (MOU), to:

1. Provide comment on the draft CDO for Egret Island SNA, to ensure that Egret Island receives adequate protection of its birds, wildlife, and plants from human disturbance; and
2. Free up the SNA acquisition logjam, to enable the Egret Island SNA Commissioner's Designation Order to be signed by Commissioner Strommen and published in the Minnesota State Register as soon as possible.

**B. There is no data to determine whether or not increased fishing pressure caused a decline in walleye production.**

**C. The reason for killing cormorants appears to be driven by people who fish for walleyes on Pelican Lake – and have an expectation to catch more fish. There is no ecologically-based reason to kill cormorants.**

**D. There is no explanation regarding why the fish management goal cannot be lowered ("revised") to conform to a realistic walleye population.**

**E. There is no evidence on record that the fluctuation of walleyes is anything other than a natural cycle.**



**F. Using lead ammunition is contrary to precedent established by the DNR’s July 10, 2023 order that required hunters on 56 SNAs to use “non-toxic ammunition” only.** On July 10, 2023, the DNR published an Order in the Minnesota State Register, stating that “... hunters taking game on any of the fifty-six (56) Scientific and Natural Areas ("SNAs") designated as open to hunting by Commissioner's Order are required to use nontoxic ammunition.”

The present proposal conflicts with the July 10, 2023 Order.

**G. Bad optics.** It doesn’t look good to propose using lead ammunition to kill cormorants, on a yet-to-be designated SNA, due to local fishing interests.

**H. Unnecessary expense to the taxpayers.** According to the DNR website, “Contracted cormorant control can be expensive and may be required annually depending on how the cormorant population and walleye fishery responds to management. Lethal control would cost \$10,000 per day minimum; one day of lethal control is anticipated for Pelican Lake. The DNR would need to conduct additional fish and waterbird surveys on Pelican Lake, supply data analysis and future permit applications. DNR funding to conduct control is limited, as is staff time for this work. There are several options for funding that will need to be considered if control is conducted.” <https://engage.dnr.state.mn.us/cormorant-management-on-egret-island-pelican-lake-ashby-mn> [Last visited 8/19/23]

The DNR must describe the source of funding – and an accounting for the costs of all the staff time and other expenses incurred during this process, including public meetings, review of comments, etc.

**I. Sets a Bad Precedent.** Acquiescing to the demands of local fishing interests will set a bad precedent for efforts to protect the ecology of a state-wide natural resource.

**J. Other factors that may cause a walleye decline.** The Minnesota Department of Natural Resources states on its website:

“Cormorant foraging can, under the right combination of circumstances, potentially have a negative impact on recreational fishing at a localized level. Such impacts are very difficult to detect and measure, as many factors operating within the ecosystem can affect fish populations. Such factors include fish stocking, fishing regulation changes, invasive species introductions and population expansion, normal variability in year-class strength, predation, competition, loss of critical habitat caused by shoreline development, and excessive commercial and/or sport fishing pressure by people.” [ <https://www.dnr.state.mn.us/birds/doublecrestedcormorant.html> Last visited August 19, 2023]

K. More biological surveys are necessary to understand the full extent of the ecology of this SNA. The DNR website for Egret Island SNA has an extensive bird checklist, updated in 2023. However, the website states that wildflower and ferns, tree and shrubs, and grasses and sedges are “not documented.”

<https://www.dnr.state.mn.us/snas/detail.html?id=sna00974> [last visited 8/19/23]

## Summary

The proposed killing of cormorants on Egret Island SNA is:

1. An unnecessary and significant adverse impact on one of Minnesota’s crown jewels;
2. A violation of Minnesota statutes and regulations, including the Minnesota Environmental Policy Act;
3. A waste of taxpayer dollars;
4. An adverse precedent - inspiring other local fishing interests to request similar cormorant kills - by allowing a local demand for more walleyes to fish affect the ecological integrity of a state-wide resource;
5. Premature, until a Commissioner’s Designation Order is signed and published; and
6. Bad optics, when the DNR has recently required non-toxic ammunition on 56 SNAs.

On behalf of the Friends of Minnesota Scientific and Natural Areas, I **thank you** in advance for **withdrawing** the proposal to kill cormorants on Egret Island SNA and working with conservation organizations to **adopt** a Commissioner’s Designation Order that will adequately protect Egret Island SNA from adverse human impacts.

Please send a copy of your Findings of Fact and Order to the address below.

Sincerely yours,

*Thomas E. Casey*

Thomas E. Casey, Board Chair  
Friends of Minnesota Scientific and Natural Areas

*Minnesota DNR*  
*August 28, 2023*

Please send correspondence to:  
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cc: Board of Directors, Friends of MN Scientific and Natural Areas  
file

Enclosures:

Exhibit 1 – Cook County Board Minutes (September 28, 2021)  
Exhibit 2 – SNA Acquisition Shortfall (January, 2014 – June 30, 2023)