

Questions and Answers

Final Environmental Assessment: Issuance of an MBTA Permit to the National Marine Fisheries Service Authorizing Incidental Take of Seabirds in the Hawaii-based Shallow-set Longline Fishery

Background: On August 10, 2011, the U.S. Fish and Wildlife Service (Service) received an application from the National Marine Fisheries Service Pacific Islands Regional Office (NMFS-PIRO) for a Special Purpose permit under the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-711; 40 Stat. 755; MBTA). The permit, upon issuance, will authorize incidental take of migratory birds, principally two species of albatrosses, in the shallow-set long-line fishery based in Hawaii. This fishery operates on the high seas and within the United States Exclusive Economic Zone (EEZ). The application requests a permit for the incidental take of five seabird species. Four have been taken in the fishery since 2004: Laysan albatross (*Phoebastria immutabilis*), black-footed albatross (*P. nigripes*), sooty shearwater (*Puffinus griseus*), and northern fulmar (*Fulmarus glacialis*). One additional species, the endangered short-tailed albatross (*Phoebastria albatrus*) is believed to be at risk of take, although no take of this species has been reported in this fishery.

The conservation of migratory birds is a fundamental responsibility of the Service. The Service is tasked with upholding the MBTA. This includes issuing permits "... for special purpose activities related to migratory birds ... which are otherwise outside the scope of the standard form permits" (Title 50 in the Code of Federal Regulations [CFR], section 21.27). The need for the Service's permitting action is to fulfill the Service's obligation to respond to the applicant's request for a Special Purpose permit under the MBTA, as set forth by the regulations found in 50 CFR 21.27.

Why is there an issue concerning fishing and seabirds?

Seabirds (as well as sea turtles and other non-target species) can be killed or injured on either the set or the haul when they are unintentionally hooked or entangled in fishing gear. Seabirds are hooked or entangled in lines during the set typically because they are pursuing baited hooks as they are cast into the water. The birds drown when they are dragged under the surface. Seabirds may also be hooked or entangled when fishing gear is retrieved from the water. Injury and mortality meet the definition of "take" for the purposes of the MBTA (50 CFR 10.12).

What bird species are most at risk?

Five species of seabirds have been taken or are at risk of take in the fishery. Two species, the Laysan and Black-footed Albatrosses, make up more than 99 percent of the birds taken since 2004.

Have there been efforts to reduce the take of seabirds?

Since 2001, NMFS has issued numerous NEPA documents and new regulations governing the operation of the Hawaii-based longline fishery (shallow- and deep-set sectors) and in particular to address take of protected species, including seabirds, in the fishery. The 2002 regulations codified the terms and conditions of the Service's first biological opinion on the impacts of the Hawaii-based longline fishery on the endangered Short-tailed Albatross.

The shallow-set fishery was closed by court order in 2001 in response to litigation over take of threatened and endangered sea turtles, and NMFS prepared a comprehensive Environmental Impact Statement analyzing impacts of all pelagic fisheries managed under the Fishery Management Plan. The current shallow-set fishery reopened in the fourth quarter of 2004 under new regulations intended to reduce the potential number and severity of interactions between fishing gear and sea turtles. These regulations included gear and bait requirements to reduce sea turtle interactions, limits on fishing effort (the number of shallow sets per year was capped at 2,120), and caps on sea turtle interactions which, if reached, would close the fishery for the remainder of the year (this occurred, for example, in 2006). NMFS issued a Supplemental Environmental Impact Statement on these regulations. In 2004, the rulemaking that reopened the shallow-set fishery included the requirement that longline gear be deployed or "set" one hour after local sunset to reduce the likelihood of seabird take (NMFS 2004), and in 2005, additional regulations added side-setting, or deploying longline gear from amidships instead of from the stern, an option that vessels could choose to employ to avoid and minimize seabird interactions.

Have these measures helped reduce seabird take?

Yes. A comparison of seabird take before the fishery was closed in 2001 and since it reopened in 2004 indicates that take of birds overall has declined substantially from pre-closure levels. Because the rate of observed take as well as the absolute numbers has declined, this decline was tentatively ascribed largely to the required use of seabird deterrent measures under NMFS regulations, especially night-setting, or deploying lines no earlier than one hour after local sunset.

Although regulations implemented by NMFS have led to an important reduction in take of migratory birds in this fishery, seabird take still occurs. Analyses of data collected by fishery observers, additional monitoring, consideration of recent studies and trials of new seabird deterrent measures, and consideration of new research and field trials may yield insights on how take of birds by this fishery might be reduced further. These possibilities as well as other aspects of the human environment were considered in evaluating a reasonable range of alternative permitting actions in response to the application from NMFS.

Why is this permit being issued?

The conservation of migratory birds is a fundamental responsibility of the Service. The Service is tasked with implementing the MBTA, including issuing permits “for special purpose activities related to migratory birds ... which are otherwise outside the scope of the standard form permits” (50 CFR 21.27). The need for the Service’s permitting action is to fulfill the Service’s obligation to respond to the applicant’s request for a Special Purpose permit under the MBTA, as set forth by the regulations found in 50 CFR 21.27. The Service has analyzed the impacts on the human environment, including seabirds, of the proposed permitting action submitted in the permit application. The Impacts Analysis in the EA found that none of the three alternatives it considered would have significant impacts to any of these aspects of the human environment. The three alternatives the Service analyzed included no action; issue the permit as requested; and issue the permit with additional conditions to conduct new research and to increase conservation benefit to seabirds.

Alternative 2, the selected alternative, will meet fully the purposes and needs of the proposed permitting action (described in more detail in Chapter 1 of the final EA). This alternative would not have significant adverse impacts to seabirds because the take of seabirds in this fishery is low. Laysan and Black-footed Albatrosses comprise roughly 99 percent of all take of migratory birds in the fishery. The projected take of these species in each year of the three-year term of a permit, and the slightly greater amount of annual take that would be authorized in a permit, would constitute less than 1 percent of the total estimated breeding population of each species each year. This level of take does not contribute substantially to the cumulative total take of these seabirds estimated to occur each year in all North Pacific longline fisheries.

Alternative 2 would also result in improved information about sources of take in the fishery and means of reducing take, but would not result in a reduction in take in the fishery during the three-year permit term. However, the long-term goal of this (and any subsequent) permitting action is the eventual reduction of seabird take in this fishery.