

Questions and Answers

Draft 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, if issued, would 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-PIRO.

Why is this permit being considered?

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 will analyze the impacts on the human environment, including seabirds, of the proposed action submitted in the permit application.

The purposes of the proposed Federal action by the Service are to 1) ensure that issuance of a permit meets criteria established in our regulations under MBTA and does not violate our statutory responsibility to conserve migratory birds and 2) ensure the Service meets its responsibilities under Executive Order 13186 (EO) to protect migratory birds and avoid and minimize adverse impacts of our actions to these birds. In the commercial fishery under consideration for permitting, take of migratory birds is not the intent of this otherwise lawful activity, and cannot practicably be completely avoided. The take of birds in this fishery is ongoing, but has been substantially reduced since the 1990s owing to regulations issued by NMFS that require the use of specific seabird deterrent measures as part of the fishery’s operation (described above). Therefore, an additional purpose is to minimize unnecessary costs or burdens on the fishery itself, or on NMFS in its role as regulator, and also to identify the mechanisms underlying the take of migratory birds in the fishery and measures for NMFS and the fishery to implement that would further improve conservation benefit for birds, as mandated in the EO, and allow the fishery to operate legally under the MBTA.