

## FINDING OF NO SIGNIFICANT IMPACT (FONSI)

### Issuance of an MBTA Permit to the National Marine Fisheries Service Authorizing Take of Seabirds in the Hawaii-based Shallow-set Longline Fishery

The U.S. Fish and Wildlife Service (Service) evaluated several alternatives for the proposed issuance of a permit under the Migratory Bird Treaty Act for incidental take of seabirds in the shallow-set longline fishery based in Hawaii. The analysis of alternatives is documented in an environmental assessment (EA) that is incorporated here by reference. Our need in conducting this evaluation was to address an application received from the National Marine Fisheries Service (NMFS) for a permit under the Migratory Bird Treaty Act (MBTA) to authorize incidental take of seabirds in the shallow-set sector of the Hawaii-based longline fishery. The purposes of our permitting action include: (1) ensuring that any permit issued meets the criteria established in our regulations under MBTA and does not violate our statutory responsibility to conserve migratory birds; (2) ensuring the Service and NMFS meet their responsibilities under Executive Order 13186 (E.O.) to protect migratory birds and avoid or minimize adverse impacts of our actions to these birds; (3) identifying the mechanisms underlying the take of migratory birds in the fishery; developing, in cooperation with the Service, measures for NMFS and the fishery to implement that would reduce that take or otherwise improve conservation benefit for birds; and (4) minimizing unnecessary costs or burdens on the fishery itself, or on NMFS in its role as regulator. We analyzed three alternatives in the EA:

1. *No action.* Under the No Action alternative, we would deny the permit application and not issue a permit to NMFS. We rejected consideration of a separate alternative of literally taking no action, and not even responding to the permit application, because it is our policy to process all applications received as quickly as possible (50 CFR 13.11(c)).
2. *Issue permit as requested (selected alternative).* The permit would reflect the current operation of the fishery, including the seabird-deterrent measures currently required by NMFS regulations and the Service's Biological Opinion (Service 2012a), with no changes, regulatory or otherwise, to the operation of the fishery during the permit period. No new regulations governing the operation of the fishery would be proposed. The permit would authorize the observed and reported take of specific numbers of each species, and would include conditions requiring NMFS to analyze observer data and fishery practices to elucidate how and when take is occurring now and identify measures that could reduce this take in the future. In addition, NMFS would be required to provide instruction regarding the importance of seabird data collection to observers and include specific discussion at Protected Species Workshops for fishers of how and when seabird interactions occur during shallow-set fishing. The permit would specify requirements for reporting the progress on data analysis and identification of additional potential measures for reducing take and the extent of training and information-exchange activities. Reporting would also describe research, if identified, needed to help develop measures that could reduce this take in the future. Compliance with these requirements would be considered in a future permit renewal.

3. *Issue permit with additional conditions to conduct research and to increase conservation benefit to seabirds.* Rather than analyze existing and future observer data and elicit additional information from observers and fishers (as in Alternative 2), Alternative 3 would require research and field trials of new deterrent methods and technologies or those already in use in the industry to develop means to reduce take in the fishery during the three-year term of the permit. Alternative 3 is otherwise the same as Alternative 2.

### **Internal scoping and public involvement**

We solicited comments on an internal draft of the EA from other programs within the Service, and provided responses in a final draft EA that was available to the public from January 9 through February 9, 2012. During the public-comment period we received a total of eight comment letters: one from a federal agency, one from a Fishery Management Council, one from a fishery industry organization, two from conservation organizations, and three from private citizens. The final EA incorporates minor changes to address technical comments and provides responses to substantive comments. Some of these comments touch on policy and legal questions that are raised or implied by, but that do not themselves affect, our permitting action. However, none of the commenters provided additional information that (1) changed the outcome of our analysis or (2) required a finding that our action would have a significant impact.

### **Impact Analysis**

The Impacts Analysis in the EA considered direct, indirect, and cumulative effects of the alternatives on seabirds, the fishery and economic environment, and cultural resources. We found that none of the alternatives would have significant impacts to any of these aspects of the human environment. The alternatives 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. The other three seabird species analyzed in the EA are the Sooty Shearwater, Northern Fulmar, and the endangered Short-tailed Albatross. The shearwater and fulmar are represented by one individual bird each in the data on observed take in the fishery. Although no Short-tailed Albatrosses have been reported taken in the fishery, impacts of the fishery to this species have been evaluated under the Endangered Species Act, and take at a rate of one bird every five years has been authorized under the Endangered Species Act in the Service's Biological Opinion.

The beneficial impacts of the action involve only seabirds. These beneficial impacts are minor. Although either Alternative 2 or 3 would result in improved information about sources of take in the fishery and means of reducing take, neither would 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.

The alternatives do not have a significant impact on the fishery or economic environment. Although the alternatives variously may result in slight changes in costs to NMFS (for example, to analyze data or conduct field trials), none of the alternatives would result in any major change in the operation of the fishery. No cultural resources as defined under the National Historic Preservation Act are significantly affected by the alternatives because the fishery operates in the 200-mile U.S. Exclusive Economic Zone and on the high seas, far from historic sites.

### **Determination**

Alternative 2 will meet fully the purposes and needs of the proposed permitting action described above (and described in more detail in Chapter 1 of the final EA). We determine that implementation of Alternative 2 does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an environmental impact statement is not required. The environmental assessment for the proposal has been prepared and is available on line at <http://www.fws.gov/pacific/migratorybirds/nepa.html> or upon request from the Division of Migratory Birds and Habitat Programs, Pacific Region, 911 NE 11th Ave., Portland, Oregon, 97232, (503)231-6164.

### **Public Notice**

An electronic copy of this FONSI has been posted on Service's Region 1 website: <http://www.fws.gov/pacific/migratorybirds/nepa.html>. Notice of the FEA and FONSI was published in the Federal Register on August 17, 2012. A final decision as to which alternative will be selected for implementation will be prepared in a Decision Notice and made available to the affected public at the same time as this FONSI.

### **References**

Final Environmental Assessment: Issuance of an MBTA Permit to the National Marine Fisheries Service Authorizing Take of Seabirds in the Hawaii-based Shallow-set Longline Fishery. May 2012.

  
Acting \_\_\_\_\_ Regional Director

8/16/12  
Date