Public Hearings

Section 4(b)(5)(E) of the Act requires that a public hearing be held if any person requests a hearing within 45 days of the publication of a proposed rule. In response to a request from the Inyo County Board of Supervisors, the Service will conduct one public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above.

Oral comments may be limited in length. Persons wishing to make an oral statement for the record are encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing, please contact the Nevada Fish and Wildlife Office (see **ADDRESSES** section).

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Jeannie Stafford at 775–861–6300 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposal is available in alternative formats upon request.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 21, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–19596 Filed 10–5–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Black-Footed Albatross (*Phoebastria nigripes*) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the black-footed albatross (*Phoebastria nigripes*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the black-footed albatross may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing the species is warranted. To ensure that the review is comprehensive, we are soliciting data and other information regarding this species.

DATES: The finding announced in this document was made on October 9, 2007. To be considered in the 12-month finding for this petition, data, information, and comments must be submitted to us by December 10, 2007.

ADDRESSES: The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, HI 96813. You may submit data, information, comments, or questions concerning this species or our finding, by any one of several methods:

1. *By mail or hand-delivery to:* Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850.

2. *By electronic mail (e-mail) to: fw1bfal@fws.gov.* Please include ''Attn: black-footed albatross'' in your e-mail subject header, preferably with your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling the Pacific Islands Fish and Wildlife Office at 808–792–9400. Please note that the e-mail address above will be closed at the end of the public comment period.

3. *By fax to:* the attention of Patrick Leonard at 808–792–9581.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**); by telephone (808–792–9400); or by facsimile (808–792–9581). Persons who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Information Solicited

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting additional information on the black-footed albatross. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the status of the black-footed albatross. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its breeding and foraging habitats. Of particular interest is information pertaining to the factors the Service uses to determine if a species is threatened or endangered: (A) Present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section). Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners that we determined to be reliable after reviewing sources referenced in the petition and information available in our files at the time of the petition review. We evaluated that information in accordance with 50 CFR 424.14(b). Our process in making this 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

Petition

On October 1, 2004, we received a formal petition dated September 28, 2004, requesting that we list the black-footed albatross (*Phoebastria nigripes*) as a threatened or endangered species, and that critical habitat be designated concurrently with listing. The petition, submitted by Earthjustice on behalf of the Turtle Island Restoration Network and the Center for Biological Diversity, identified itself as such and contained the names, addresses, and signatures of the requesting parties. The petition included supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, potential causes of decline, and active imminent threats. We sent a letter acknowledging receipt of the petition to Earthjustice on December 3, 2004. In our response, we advised the petitioners that we had determined that emergency listing was not warranted for the species at that time, and owing to a significant number of listing rules due in 2005 under court-order and court-approved settlement agreements, we had insufficient resources to initiate a 90-day finding at that time. This notice constitutes our 90-day finding for the petition to list the black-footed albatross.

Species Information

The seabird family Diomedeidae (albatrosses) contains four genera and as many as 24 species (Robertson and Nunn 1998, pp. 15–19), the majority of which breed and forage in the Antarctic and sub-Antarctic. The black-footed albatross is one of four species in the genus *Phoebastria,* all but one of which breed and forage exclusively in the North Pacific Ocean (the waved albatross, *Phoebastria irrorata,* nests on the equator in the Galapagos Islands and forages in the South Pacific along the Peruvian coast). Of the North Pacific albatrosses, the black-footed albatross is the only all-dark species; the plumage is uniformly sooty brown with a whitish ring at the base of the bill and a white patch behind the eye. As they mature, birds develop a white patch above and below the tail (Bourne 1982, cited in Hyrenbach 2002, p. 87). The wingspan of the black-footed albatross is 76 to 85 inches (193 to 216 centimeters) and its average weight is 6.17 pounds (2.30 kilograms) (Whittow 1993, p. 13).

According to the petition, recent breeding population estimates for the black-footed albatross range from 54,500 breeding pairs (The International Union for the Conservation of Nature and Natural Resources (IUCN) Red List 2003) to 64,500 breeding pairs (Brooke 2004). The most recent population assessment in our files falls squarely within this range, with a rough estimate of 61,000 pairs (U.S. Fish and Wildlife Service (USFWS) unpublished data 2006). The petition further states that the bulk of black-footed albatross today nest in the Northern Hawaiian Islands (Brooke 2004). Our information is in agreement, showing that approximately 97 percent of the breeding population nests in the predator-free Northwestern Hawaiian Islands, with most concentrated on two of these islands, Midway Atoll (35 percent) and Laysan Island (34 percent) USFWS unpublished data 2006). Approximately 3 percent of the world's black-footed albatross population nests on several remote islands in Japan. A few pairs nest on offshore islets in the main Hawaiian Islands, and from 1 to 3 pairs nest or attempt to nest annually on Wake Island in the Central Pacific, and on Guadalupe and San Benedicto Islands in Mexico.

Recent study of the mitochondrial DNA of black-footed albatrosses indicates that Hawaiian and Japanese birds are genetically distinct, and further research may indicate that taxonomic revision is warranted to reflect this difference, according to the petition (Walsh and Edwards 2004). Information in our files agrees with this assessment (Walsh and Edwards 2005, p. 293); however, at present the black-footed albatross continues to be treated by the taxonomic authorities as a single species (American Ornithologists' Union 2005; Integrated Taxonomic Information System 2007), therefore we treat it as such in this finding.

The petition describes the longevity and low reproductive rate of the black-footed albatross as factors that exacerbate their vulnerability to population impacts (Cousins and Cooper 1999; Walsh and Edwards 2004), and points out that for these reasons the species is highly sensitive to changes in adult survivorship (Lewison and Crowder 2003). Information in our files supports the petition's description of the life-history characteristics of this species. Black-footed albatrosses are long-lived (40 to 50 years) and slow to mature, with first breeding typically occurring at 8 to 10 years of age (Kendall *et al.* 2005, p. 11). The nesting phenology of the black-footed albatross is summarized by Whittow (1993, pp. 6–8). Pairs mate for life, and breed at a maximum of once each year (pairs skip years irregularly). Birds arrive at their nesting colonies in Hawaii and Japan in October, and most pairs produce their single egg by early December. Eggs hatch in January to February, and chicks fledge by mid to late July. Both adults take part in incubation and in brooding and feeding the chick.

As described in the petition, black-footed albatrosses that breed in Hawaii generally forage to the northeast, toward coastal waters of North America, and move further north in the summer (Brooke 2004). Information in our files agrees with this description of foraging behavior and range. Black-footed albatrosses forage throughout the North Pacific Ocean, frequenting coastal North America especially during the breeding

season (Fernandez *et al.* 2001, pp. 4–8). Foraging shifts north during the summer, after the breeding season, and black-footed albatrosses are the most abundant albatross species in the Gulf of Alaska and along the continental shelf south of the Aleutian Islands during this period (Suryan and Balogh 2005, pp. 1–5). The petition describes the black-footed albatross as a surface feeder and scavenger, seizing food and contact dipping primarily within 3 feet (1 meter) of the ocean's surface (Brooke 2004). The diet of adult albatross is primarily flying fish eggs, but also squid, fish, offal, and human refuse (Brooke 2004). The petition contends that scavenging is the activity that often brings the birds into contact with vessels. According to our files, the species' primary prey items are thought to be squid and eggs of flying fish (Whittow 1993, p. 3), but intensive diet studies are lacking. The information available in our files supports the petition's assertion that albatross are surface feeders and that their foraging behavior may expose them to vessels and fishing gear. Albatrosses scavenge food, will consume dead squid at the ocean surface (Pitman *et al.* 2004, pp. 162–164) and offal discarded from fishing vessels, pursue baited hooks as fishing gear is deployed, and opportunistically feed on fishery catch (e.g., swordfish; *Xiphius gladius*) that lies at the surface before it is brought on board (Duffy and Bisson 2006, p. 2).

Threats Analysis

Section 4 of the Act and implementing regulations (50 CFR 424) set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, we evaluated whether threats to the black-footed albatross presented in the petition and other information available in our files at the time of the petition review may pose a concern with respect to the species' survival. Our evaluation of these threats is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petition states that the current range of the black-footed albatross represents a significant curtailment of its historic range, and that colonies have been extirpated by feather- and egg-hunters from Johnston Atoll, Wake Island, Taongi Atoll (Marshall Islands), Marcus Island (Minami Torishima), Iwo Jima, and the Northern Mariana Islands (Lewison and Crowder 2003).

Information in our files provides a review of evidence of the former nesting range of the black-footed albatross (Tickell 2000, pp. 217–218). The species' current range and documented extirpations from Marcus, Iwo Jima, and Agrihan (Northern Mariana Islands), and anecdotal observations from Johnston atoll and Wake Island are highly suggestive that the breeding range of the black-footed albatross once comprised a string of small islands spanning the Pacific north of 15 degrees North latitude and predominantly north of the Tropic of Cancer, however, little information exists with which to deduce the original size of the extirpated populations.

Although information presented in the petition, as well as information in our files, indicates that the distribution of the black-footed albatross is now disjunct, the petition does not present substantial scientific or commercial information indicating that the species' range is continuing to contract. Nor does the petition present substantial scientific or commercial information indicating that the species' continued existence may be threatened as a result of past range contraction.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition mentions the mass killing of black-footed albatrosses within the last 150 years by feather-hunters causing the extirpation of these birds from several breeding islands (Lewison and Crowder 2003), but concludes that such direct exploitation today is likely quite rare. We are not aware of any information indicating that present-day overutilization of black-footed albatross for commercial, recreational, scientific, or educational purposes is occurring and posing a threat to the species.

As a result, we have determined that the petition does not present substantial scientific or commercial information indicating that the continued existence of the black-footed albatross is threatened by overutilization.

C. Disease or Predation

The petition states that because the ranges of the short-tailed albatross (*Phoebastria albatrus*) and black-footed albatross overlap, much of the disease factors affecting black-footed albatross are the same as those described in the July 31, 2000, final listing rule (65 FR 46643) for the endangered short-tailed albatross. The petition states that the final listing rule for short-tailed albatross explains that avian pox has been observed in chicks of albatross species on Midway Atoll. The petition also mentions that currently proliferating pathogens such avian cholera and West Nile virus are a potential risk to black-footed albatross.

The final listing rule for short-tailed albatross states ''an avian pox has been observed in chicks of albatross species on Midway Atoll, but whether this pox infects short-tailed albatrosses or may have an effect on the survivorship of any albatross species is unknown (T. Work, D.V.M., U.S. Geological Survey (USGS), Hawaii; 65 FR 46643). The petition presents no evidence that disease may threaten the black-footed albatross. Information in our files indicates that no diseases are known to affect the endangered short-tailed albatross population today (USFWS 2005, p. 14). Chicks of the closely-related Laysan albatross (*Phoebastria immutabilis*) do contract avian pox (*Poxvirus avium*), a mosquito-borne disease, in certain areas at Midway Atoll where the insects are present, but black-footed albatrosses do not nest in these areas and their chicks have not been observed with pox lesions (J. Klavitter, USFWS, pers. comm. 2006). A study of this disease in the Laysan albatross found that most chicks with pox lesions recovered and fledged, and that pox infection did not significantly affect fledging success at one colony (Young and VanderWerf 2006). Of a total of 16 black-footed albatross chicks found on Lehua Islet (offshore of Niihau Island, Hawaii) in 2005, two were observed with small pox lesions, but the birds appeared to be healthy and in good condition otherwise, and were presumed to have developed normally and fledged (E. VanderWerf, Service, pers. comm. 2006).

Information in our files indicates that potentially fatal diseases such as avian cholera, avian influenza, and West Nile virus have not been observed in North Pacific albatrosses. No experimental or other data are available with which to assess the susceptibility of black-footed albatrosses to avian cholera or flu, and

no occurrence of either disease has been recorded in Hawaii.

The petition states that predation by naturally occurring and introduced predators pose a threat to the black-footed albatross. To support this claim the petitioners provide an excerpt from the short-tailed albatross listing rule (65 FR 46643), which mentions predation by sharks on fledgling albatrosses around their natal islands. Although black-footed albatrosses have been subject to predation by sharks, a natural phenomenon throughout their evolutionary history, the petition does not present substantial information indicating that this source of mortality may threaten the species.

We find that the petition does not present substantial scientific or commercial information to indicate that disease or predation threatens the continued existence of the black-footed albatross.

D. Inadequacy of Existing Regulatory Mechanisms

The petition provides credible scientific information that incidental mortality in commercial longline fisheries may threaten the existence of the black-footed albatross (Gales 1998; Cousins and Cooper 2000; Cousins *et al.* 2000; IUCN Red List 2003; Lewison and Crowder 2003). Mortality is described as resulting from albatross diving on the baited hooks that float on the ocean's surface, and then either swallowing the baited hook or being caught and pulled underwater to drown (National Marine Fisheries Service (NMFS) 2004). Information in our files supports the petition, indicating that albatross have a propensity for pursuing baited fishing gear, especially those deployed by longline vessels, which leads to their being hooked on weighted lines, dragged underwater, and drowned (Tasker *et al.* 2001, p. 532). Black-footed albatrosses show this tendency, as evidenced by their documented pursuit of baited longline hooks (Melvin *et al.* 2001, p. 14) and their mortality on longline gear (Melvin *et al.* 2001, pp. 2, 35; NMFS—Alaska 2006, pp. 9–11; NMFS—Pacific Islands Regional Office (PIRO) unpublished data 2006).

The petition describes the IUCN reclassification of the black-footed albatross from Vulnerable to Endangered in 2003 (BirdLife International 2003). This reclassification was based on observed and estimated mortality in domestic and foreign longline fisheries, extrapolations of total annual mortality, and the predicted population declines resulting from models based on these data and estimates (Cousins *et al.* 2000; Lewison and Crowder 2003). Information in our files confirms the estimates of mortality and predictions of population response published by Lewison and Crowder (2003, pp. 748–750) and cited by the petition. This study includes a bounded range of fishery-related mortality estimates, with a best-case scenario (the lower bound of estimated annual mortality) still resulting in a population decline of more than 20 percent over the next 60 years. The results of these modeling efforts indicate that the rate of mortality of black-footed albatrosses may be high enough to result in long-term population decline (Cousins *et al.* 2000, pp. 166–172; Lewison and Crowder 2003, pp. 748–750). Relevant to this issue is a Service-contracted formal status assessment of the black-footed (and Laysan) albatross that will include a synthesis and review of all existing data and other information about the species, including an assessment of fishery-related mortality and statistical models of the population status and trajectory. This assessment is currently undergoing peer review in preparation for publication. This population assessment will be useful in critically evaluating the population trend for the black-footed albatross and threats, as part of our 12-month finding.

The petition states that each year commercial fisheries in the North Pacific inadvertently kill from 1 to 5 percent of the global population of the black-footed albatross (Lewison and Crowder 2003). The petition describes the documented mortality of black-footed albatrosses in U.S.-based fisheries (e.g., Cooper 2000) and satellite telemetry studies that point to overlap between the foraging range of the black-footed albatross and the operation of foreign-flag longline fisheries (Hyrenbach and Dotson 2003). Data in our files includes new information from satellite telemetry studies and public domain data on fishery distribution and effort since the petition was written, and provides support to the information in the petition that foreign longline fisheries in the North Pacific overlap with the foraging range of black-footed albatrosses and that incidental mortality in these fisheries is likely to occur (e.g., SPC–OFP 2004; Suryan and Balogh 2005, p. 1 and maps; Rivera 2006, pp. 7–9).

The petition includes information on the inadequacy and ineffectiveness of existing regulations to minimize the mortality and injury of black-footed albatrosses in longline fisheries. The petition contends that inadequate regulations include the requirement that seabird deterrents be used in the Hawaii-based longline fishery only north of 23 degrees North latitude (asserted to be inadequate since black-footed albatrosses also forage south of this latitude). In addition, the petition explains that the effectiveness of these deterrents has not been established. The petition states that blue dye is a potentially effective deterrent when used on squid bait, but it does not adhere well to the scaly, fin-fish bait that is now required in the shallow-set fishery based in Hawaii (Gilman 2003) and that is commonly used in the deep-set sector of that fishery.

Information in our files confirms that the deep- and shallow-set sectors of the Hawaii-based longline fishery operate both north and south of 23 degrees North latitude (NMFS–PIRO unpublished data 2006), and incidental injury and mortality of black-footed albatrosses takes place north and south of 23 degrees North latitude as well (NMFS–PIRO unpublished data 2004). Since the petition was written, new regulations have been published that require the use of seabird deterrents by all shallow-set vessels based in Hawaii regardless of where they fish. However, deep-set vessels, which expend more fishing effort south of 23 degrees North latitude than shallow-set vessels (NMFS–PIRO unpublished data 2006), are not required to use deterrents when fishing south of that latitude (NMFS 2005 (70 FR 75075), p. 75080). Only 20 percent of this sector of the fishery is monitored by observers; therefore, we have incomplete information about compliance with regulations, effectiveness of seabird deterrents, and rates and distribution of albatross mortality and injury.

The petition describes the documented high mortality rate of black-footed albatrosses in Hawaii-based longline fisheries through 2001, especially shallow-set (or swordfish-target) fisheries. The petition reports mortality estimates of 3,200 black-footed and Laysan albatross a year on average, and indicates that this number may be underestimated by 30 to 95 percent since it does not include birds that drop off hooks or are taken by predators prior to being counted by observers (NMFS 2001b). Information in our files provides fleet-wide estimates of albatross mortality in the Hawaii-based fishery based on a statistical model built from analysis of spatial and temporal patterns in observed interactions between albatrosses and fishing vessels (McCracken 2001, pp. 1–26; NMFS–PIRO unpublished data 2006). Estimated mortality of black-footed albatrosses in the Hawaii-based longline fishery ranged from 1,000 to 2,500 per year in the mid-to late 1990s (McCracken 2001,

pp. 19–20; NMFS–PIRO unpublished data 2006). This mortality dropped beginning in 2001 (NMFS–PIRO, unpublished data 2006; NMFS–PIFSC 2003, p. 3), coincident with the closure of the shallow-set sector of the fishery by a Federal court order intended to protect listed sea turtles (NMFS 2001a (66 FR 31561)). The estimated incidental capture of black-footed albatrosses fleet-wide was 1,339 in 2000 and dropped to an estimated total of 258 in 2001 (NMFS–PIRO unpublished data 2006). When the petition was submitted, the shallow-set fishery had just been reopened on a limited basis after a 3-year hiatus, with new measures in place to reduce the take of sea turtles (NMFS 2004a (69 FR 17329)). In the following year, however, the incidental mortality of black-footed albatrosses increased from an estimated 16 in 2004 to an estimated 89 in 2005 (NMFS–PIRO unpublished data 2006). This fishery was closed again in March 2006 (NMFS 2006 (71 FR 14824)) because the limit on incidental capture of sea turtles established through the National Marine Fisheries Service (NMFS) consultation under section 7 of the Act had been reached. This temporary closure remained in effect until December 31, 2006. The shallow-set fishery reopened on January 1, 2007, with the same bycatch reduction measures in place to reduce the take of sea turtles as had been instituted previously.

The petition describes the documented mortality rate of black-footed albatrosses in Alaska-based demersal longline fisheries, and states that between 1993 and 2002, an observed 1,935 black-footed albatrosses were killed in Alaska-based fisheries (NMFS 2003). Although regulations promulgated in 2004 require measures to reduce the incidental mortality of seabirds in Alaska-based longline fisheries, including a suite of seabird deterrent devices and practices, the petition states that the rate of observer coverage is inadequate to monitor compliance with regulations requiring the use of seabird deterrents. According to information in our files, although all longline vessels greater than 26 feet (8 meters) in length operating out of Alaska are required to use seabird deterrents to minimize the incidental mortality of short-tailed albatrosses and other seabirds, vessels less than 26 feet (8 meters) in length are exempt from these requirements (NMFS 2004b, p. 1947). These seabird deterrents, particularly paired streamer lines, have proven to be highly effective under experimental conditions (Melvin *et al.* 2001, pp. 15–18), when constructed to appropriate specifications and deployed correctly (Melvin and Robertson 2000, p. 181). The largest vessels (greater than 125 feet (38 meters) in length; approximately 128 of which operate out of Alaska), are required to carry observers 100 percent of the time. However, the halibut fishery, which in 2004 comprised more than 1,000 smaller demersal longline vessels (J. Gharrett, NOAA Fisheries, pers. comm. 2006), is exempt from observer coverage (Alaska Fisheries Science Center (AFSC) 2006, p. 2).

The petition states that the black-footed albatross remains at considerable risk of mortality from international fleets that are not required to employ the same seabird bycatch mitigation measures as U.S. fisheries, and contends that foreign pelagic and demersal longline fisheries account for a significant portion of the global annual mortality of black-footed albatross (Cooper 2000; Lewison and Crowder 2003). Information in our files indicates that despite progress toward international seabird protection agreements, as of yet there is no binding treaty or law that requires international fleets to employ mitigation measures to reduce the incidental mortality of the black-footed albatross throughout its range (Hall and Haward, p. 183). Although, as the petition describes, direct records of black-footed albatross mortality rates in non-U.S. fisheries are lacking (Cousins and Cooper 2000, p. 62; Tasker *et al.* 2000, p. 532), references cited by the petitioners and in our files describe the distribution and effort of the largest of these fisheries based on data available from the Secretariat of the Pacific Community (Lewison and Crowder 2003, p. 744; SPC–OFP 2004). Furthermore, as indicated in the petition, data exists describing high rates of black-footed albatross mortality in U.S.-based longline fisheries. Information in our files indicates that non-U.S. longline fisheries combined represent an order of magnitude more fishing effort than the longline fisheries operating out of Alaska and Hawaii (e.g., Cousins *et al.* 2000, p. 165), and they are known to overlap with the foraging range of the black-footed albatross (e.g., Lewison and Crowder 2003, p. 745; Hyrenbach and Dotson 2003, pp. 396–398, 401), suggesting that the degree of incidental mortality resulting from international fisheries may likely be greater than that observed in U.S.-based fisheries.

Citing the results of studies that extrapolated total estimated mortality of black-footed albatrosses in all North Pacific longline fisheries, the petition states that the rate of mortality in U.S. and foreign longline fisheries in the North Pacific likely has population-level effects (Cooper 2000; Lewison and Crowder 2003). The petition notes that species with a low reproductive rate such as the black-footed albatross are susceptible to adult mortality, and even small changes in adult survival can affect population dynamics (Cousins and Cooper 2000; Lewison and Crowder 2003). The petition states that loss of breeding adults has a ''ripple effect'' in two ways: the current year's actual or potential breeding effort is lost (because a single adult cannot raise a chick) and several future years' effort is lost as well as the remaining adult seeks a new mate. Furthermore, incidental mortality of black-footed albatrosses in longline fisheries apparently is female-biased, thus exacerbating potential population level effects of fishery-related mortality on this highly monogamous species (Walsh and Edwards 2004).

The petition states that there are numerous international and multilateral initiatives and advisory groups that have made recommendations for decreasing the incidental mortality of black-footed albatrosses and other seabirds in North Pacific fisheries. However, no binding agreement or international law yet exists that requires or enforces the use of seabird deterrents and minimization of this mortality in high-seas fisheries (e.g., Cousins *et al.* 2000, pp. 167–168). The petition notes that mortality of black-footed albatrosses occurs incidental to fishing activities although the Migratory Bird Treaty Act of 1918 (MBTA), as amended, specifically prohibits take of migratory birds. The term ''take'' under the MBTA is defined as to ''...pursue, hunt, shoot, wound, kill, trap, capture, or collect...'' (50 CFR 10.12). The petition contends that the take prohibition of the MBTA has not been enforced, and that incidental take of black-footed albatross by the longline fishing industry has not been adequately regulated.

Although mitigation measures have reduced mortality of black-footed albatrosses in some (U.S.-based) fisheries, the information in the petition indicates that fishery-related threats to the species throughout its range are ongoing. We find that the petition presents substantial scientific or commercial information to indicate that the inadequacy of existing regulatory mechanisms may threaten the continued existence of the black-footed albatross.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition describes the high levels of contaminants, such as heavy metals

and organochlorines (e.g., polychlorinated biphenyls (PCBs) and dichloro-diphenyl-trichloroethane (DDT)), found in black-footed albatross tissue (Jones *et al.* 1994; Ludwig *et al.* 1998). These substances have been correlated with egg-shell thinning and embryo death in the black-footed albatross and are found in concentrations that have caused reproductive and neurological problems in other species (Jones *et al.* 1994; Ludwig *et al.* 1998).

Information in our files indicates that black-footed albatross are exposed to contaminants via their diet (Finkelstein *et al.* 2006, p. 681). Contaminants such as organochlorines and mercury biomagnify up the marine food chain and are at higher concentrations in long-lived marine predators (Finkelstein *et al.* 2006, pp. 678–679). Biomagnified concentrations of organochlorines and mercury are higher in North Pacific albatrosses than in species in the Southern hemisphere (where ambient levels of these contaminants are lower overall) (Guruge *et al.* 2001, p. 392). In the North Pacific, concentrations of these contaminants are higher in black-footed than in Laysan albatrosses (Guruge *et al.* 2001, p. 392; Finkelstein *et al.* 2006, p. 680). As described in the petition, the organochlorine and mercury levels found in black-footed albatrosses in 1992 and 1993 were high enough to pose a toxicological risk and interfere with reproduction (Ludwig *et al.* 1998). Information in our files supports the petition's contention that these contaminants may pose a threat to black-footed albatross. Since the petition was written, new information indicates that concentrations of PCBs and dichloro-diphenyl-dichloroethylene (DDE) in black-footed and Laysan albatrosses were reported to be 160 to 360 percent higher in samples from 2000 and 2001 than in samples from 1992 and 1993 (Finkelstein *et al.* 2006, p. 684). The proportional increase found in the black-footed albatross over this time period was twice that observed in the Laysan albatross (Finkelstein *et al.* 2006, p. 684). Results of recent studies indicate that these contaminant levels are associated with altered immune function in black-footed albatrosses (Finkelstein *et al.*, in review). In addition, black footed albatrosses are carrying organochlorine burdens at concentrations that have caused endocrine disruption and altered immune function in gulls and terns from the Great Lakes (Myra Finkelstein, University of California at Santa Cruz, pers. comm. 2006).

We find that the petition presents substantial scientific or commercial information to indicate that the ingestion of a variety of contaminants, such as organochlorine compounds and heavy metals, may pose a threat to the continued existence of the black-footed albatross.

Finding

We have reviewed the petition, literature cited in the petition, and information in our files. The petition presents reliable information to indicate that the lack of adequate regulatory mechanisms to minimize incidental mortality in commercial fisheries and the ingestion of environmental contaminants may threaten the black-footed albatross. The information in our files at this time supports the petition's statements regarding these threats to the black-footed albatross. Thus, on the basis of our review, we find that the petition presents substantial scientific or commercial information indicating that listing the black-footed albatross as threatened or endangered may be warranted, and we are initiating a status review of the species. At the conclusion of the status review which will involve a review of the information in, and results of, our status assessment currently being peer reviewed, we will issue a 12-month finding, in accordance with section 4(b)(3)(B) of the Act, as to whether or not the Service believes a proposal to list the species is warranted.

We have reviewed the available information to determine if the existing and foreseeable threats pose an emergency. We have determined that although there are apparent threats to the species, they do not appear to be of such a magnitude as to pose an immediate and irreversible threat to the species such as to warrant emergency listing at this time. However, if at any time we determine that emergency listing of the black-footed albatross is warranted, we will seek to initiate an emergency listing.

References Cited

A complete list of all references cited herein is available, upon request, from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section above).

Author

The primary author of this notice is the staff of the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 27, 2007.

Kenneth Stansell,

Deputy Director, Fish and Wildlife Service.

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