

December 3, 2021

Jerome Ford, Assistant Director, Migratory
Birds, U.S. Fish and Wildlife Service
Public Comments Processing

Attn: FWS–HQ–MB–2021–
0105; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church,
VA 22041–3803

Dear Mr. Ford,

On behalf of our organizations with a combined 1.3 million members, we appreciate the opportunity to comment on this notice. We support the Service codifying its interpretation of the MBTA as prohibiting incidental take and we agree that a common-sense approach is sorely needed for regulating incidental take that better protects migratory bird populations.

Our organizations are dedicated to the conservation of migratory birds and their habitats, and we are leaders in advancing or supporting policies and best practices that support the protection of birds under the MBTA, including reducing the incidental catch of seabirds in commercial fisheries. This is listed as Item (h) “marine fishery bycatch” in the list of activities for which the Service is considering general-permit-authorization regulations.

Background and context for the Service in codifying its interpretation of the MBTA as prohibiting incidental take in commercial fisheries

We begin by acknowledging the effective steps taken by the National Seabird Program¹, U.S. Fishery Management Councils, and fleets to reduce fisheries bycatch of seabirds, particularly for pelagic longlines, in the U.S.² and globally³. Driven primarily by enforcement of the listing in 2000 of the Short-tailed Albatross under the Endangered Species Act, bycatch reduction methods developed for and implemented in the Alaska longline fishery in 2002 saved about 10,000 seabirds each year⁴. Specific requirements include longline vessels over 26 feet in length must use single or paired streamer lines of a specified standard, based on the vessel length, fishing gear used, and area fished. In 2019, similar regulations were implemented for the West Coast ground fish fishery, primarily to avoid interactions with the endangered Short-tailed Albatross, but at the same time significantly reducing potential bycatch for other seabird species including

¹ Ballance, L. T., Benaka, L. R., Ellgen, S. U., Fitzgerald, S. M., Henry, A. E., Kim, M. A., Nathanson, S. L., and Joyce, T. W. 2019. National Seabird Program Five-Year Strategic Plan: 2020-2024. NOAA Tech. Memo. NMFS-F/SPO-202, 190 p.

² NOAA. Implementation of the U.S. National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries 2014.

³ Anderson, O. R., C. J. Small, J. P. Croxall, E. K. Dunn, B. J. Sullivan, O. Yates, and A. Black. 2011. Global seabird bycatch in longline fisheries. *Endangered Species Research* 14:91-106.

⁴ NOAA. Implementation of the U.S. National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries 2014.

Laysan and Black-footed Albatross⁵. We applaud the USFWS for this current effort to codify regulations that we hope will result in increased protections for MBTA seabird species and further cement the US as a global leader in developing and implementing fishery bycatch methods.

Yet, seabirds globally have declined by 70% between 1950 and 2010⁶ making them among the most threatened of all bird groups. Moreover, their conservation status has deteriorated more quickly in recent decades⁷. Much of this decline is due to bycatch in fisheries⁸ primarily pelagic longline and gill net fisheries, with trawl operations posing additional threats⁹. Globally, long line fisheries are estimated to kill approximately 160,000 birds per year (with an upper range of as much as 320,000) in reported fisheries. Unreported longline fisheries are harder to estimate but likely add another 80,000 – 160,000 birds killed per year¹⁰. The majority of these mortalities were in the albatross (Diomedidae), petrel and shearwater (Procellariidae) families¹¹.

In some fisheries, such as the Hawaiian deep-set longline fisheries, seabird interactions have increased significantly in recent years—more than eight-fold between 2004-2006 compared to 2017-2019 in the deep-set fishery¹². Globally, gill net fisheries are estimated to have an annual minimum bycatch of 400,000 birds per year¹³. Along the Pacific coast of the US and Canada, regulations have reduced gillnet bycatch from historical highs, but Zydelsis et al.¹⁴ estimate about 20,000 birds are caught annually in this region. However, there is no current estimate for Alaska, which has extensive gillnet fisheries and high seabird diversity and abundance.

Fortunately, as mentioned above, through decades of research and activities driven by the ESA there is a foundation in place for implementing an MBTA permit structure to minimize the incidental catch of seabirds in U.S.-based fleets. The non-discretionary Terms and Conditions in the Biological Opinions have resulted in the development and deployment of a suite of successful bycatch mitigation measures promulgated through the North Pacific, Pacific, and Western Pacific Fishery Management Councils. The regulations, continual iterative testing, analysis and voluntary best practices associated with implementing the Terms and Conditions dramatically reduced the capture of seabirds, especially all three species of North Pacific albatrosses. Second, the existence of observer coverage and logbook requirements for these fleets will support implementing an MBTA permitting approach.

⁵ 50 C.F.R. § 660.21, Seabird Avoidance Program (2019).

⁶ Paleczny, M., E. Hammill, V. Karpouzi, and D. Pauly. 2015. Population trend of the world's monitored seabirds, 1950-2010. *PLoS one* 10:e0129342.

⁷ Croxall, J. P., S. H. Butchart, B. Lascelles, A. J. Stattersfield, B. Sullivan, A. Symes, and P. Taylor. 2012. Seabird conservation status, threats and priority actions: a global assessment. *Bird Conservation International* 22:1-34.

⁸ *Ibid*

⁹ Weimerskirch, H., D. Capdeville, and G. Duhamel. 2000. Factors affecting the number and mortality of seabirds attending trawlers and long-liners in the Kerguelen area. *Polar Biology* 23:236-249.

¹⁰ Anderson, O. R., C. J. Small, J. P. Croxall, E. K. Dunn, B. J. Sullivan, O. Yates, and A. Black. 2011. Global seabird bycatch in longline fisheries. *Endangered Species Research* 14:91-106.

¹¹ *Ibid*

¹² National Marine Fisheries Service, NOAA. 2021. Seabird interactions and mitigation efforts in Hawaii longline fisheries, 2019 annual report. Pacific Islands Regional Office. National Marine Fisheries Service, NOAA.

¹³ Zydelsis, R., C. Small, and G. French. 2013. The incidental catch of seabirds in gillnet fisheries: a global review. *Biological Conservation* 162:76-88.

¹⁴ *Ibid*

Recommendations for next steps for the Service in codifying its interpretation of the MBTA as prohibiting incidental take in commercial fisheries

1. Include fishery bycatch in MBTA's prohibition of incidental take. In regards to the three mechanisms the Service is considering for authorizing incidental take, we believe that a general permit could be designed to appropriately permit incidental take in fisheries. We also believe that individual permits could be used to regulate incidental take in fisheries, but that general permits could better meet the goals of the program as expressed by the Service.
2. Expand and provide additional capacity for the interagency National Seabird Program and its National Plan of Actions¹⁵, and renew the interagency Memorandum of Agreement between the USFWS and NMFS that was put in place by the National Plan of Action and that would provide substantial support for seabird bycatch reduction actions and research. Many resources for these approaches exist through technical guidance and codified regulations^{16, 17}.
3. Consider both conservation fees and compensatory mitigation, prioritizing special conservation status species (ESA-candidate species; North Pacific albatrosses; Species of Special Concern, IUCN-near-threatened species.)
4. Establish a Fund to support conservation actions that result in net benefits to bird species impacted by incidental take. Actions could include management at colonies that reduce disturbance, removal from nesting islands of invasive species that impact birds, etc. Where effective restoration actions are not available, we recommend funds be used to research and develop improved methods to minimize take, but the priority should be to invest in projects that offset bird mortality. We believe the funds should be at levels that are sufficient to offset take that is not able to be minimized, and to invest in developing new tools to further minimize bycatch. We also believe supplemental funds should be made available to support vessels in purchasing any equipment required to minimize bycatch, including education on how to use and monitor the use of these tools. We support supplemental funds coming from public sources to lessen any financial impact on fishers.
5. Implement education and outreach to fishery applicants and permittees. This program should focus on the importance and need to minimize take, available options for minimizing take, and methods to best implement these options.

¹⁵ https://www.st.nmfs.noaa.gov/Assets/nationalseabirdprogram/longline_fisheries.pdf

¹⁶ <https://www.govinfo.gov/content/pkg/FR-2019-09-12/pdf/2019-19705.pdf>); Seabird bycatch solutions for fishery sustainability. (https://abcbirds.org/wp-content/uploads/2015/05/Seabird-Bycatch-Solutions_2016_InternetRequired_LowRes.pdf)

¹⁷ <https://www.fisheries.noaa.gov/feature-story/6-ways-us-fisheries-reduce-albatross-bycatch>

Thank you for your consideration of these recommendations. Please let us know if you have questions. We look forward to continued engagement with the Service in this important action.

Sincerely,



Brad Keitt
Oceans & Islands Director
American Bird Conservancy



Anna Weinstein
Director, Marine Conservation
National Audubon Society

