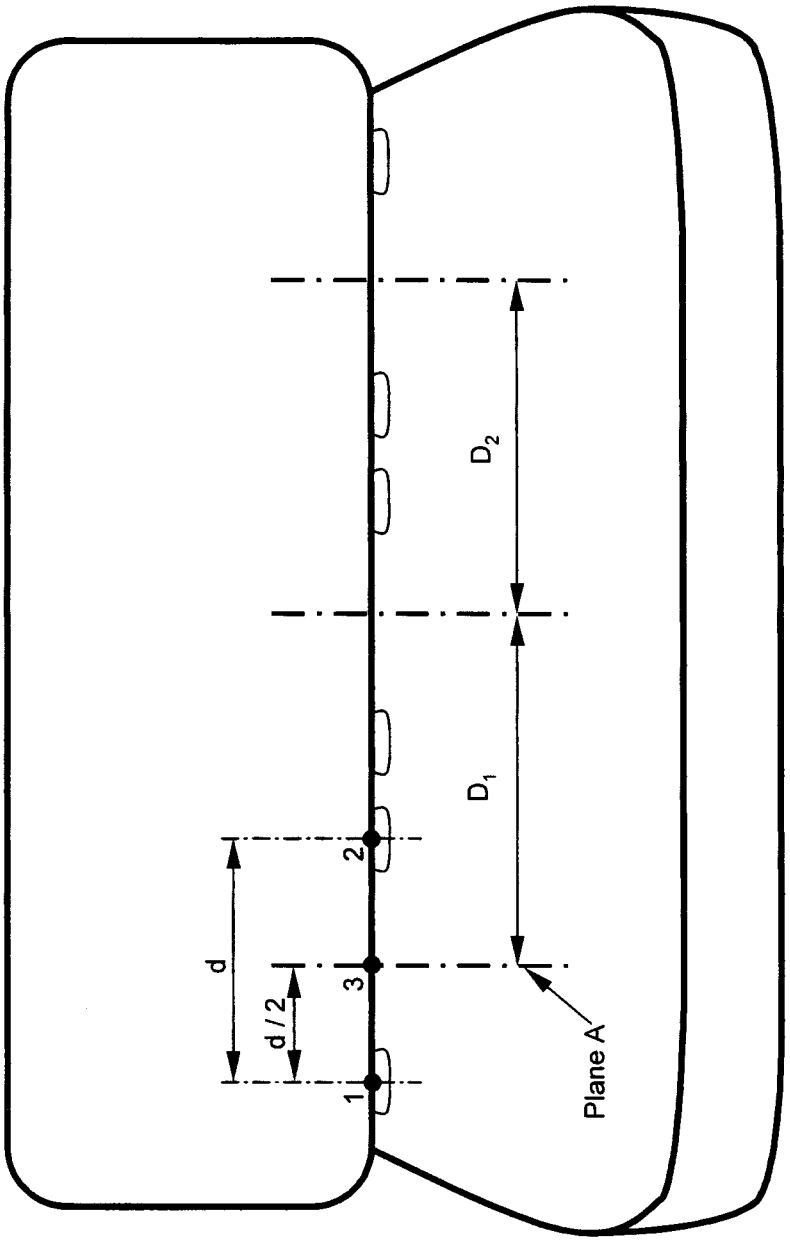

d = center to center distance between lower anchorages for a given seating position (nominally 280 mm).

D = distance between vertical longitudinal planes located midway between the anchorages for a given seating position.

Figure 20 -- Measurement of Distance Between Adjacent Seating Positions for Use in Simultaneous Testing

Issued on: July 25, 2000.

Rosalyn G. Millman,

Deputy Administrator.

[FR Doc. 00–19123 Filed 7–25–00; 5:00 pm]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE91

Endangered and Threatened Wildlife and Plants; Final Rule To List the Short-Tailed Albatross as Endangered in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act (Act) of 1973, as amended, we, the U.S. Fish and Wildlife Service (Service), extend endangered status for the short-tailed albatross (*Phoebastria albatrus*) to include the species' range within the United States. As a result of an administrative error in the original listing, the short-tailed albatross is currently listed as endangered throughout its range except in the United States. Short-tailed albatrosses

range throughout the North Pacific Ocean and north into the Bering Sea during the nonbreeding season; breeding colonies are limited to two Japanese islands, Torishima and Minami-kojima. Originally numbering in the millions, the current worldwide population of breeding age birds is approximately 600 individuals and the worldwide total population is approximately 1,200 individuals. There are no breeding populations of short-tailed albatrosses in the United States, but several individuals have been regularly observed during the breeding season on Midway Atoll in the northwestern Hawaiian Islands. Current threats to the species include destruction of breeding habitat by volcanic eruption or mud or land slides caused by monsoon rains, and demographic or genetic vulnerability due to low population size and limited breeding distribution. Longline fisheries, plastics ingestion, contaminants, and airplane strikes may also be factors affecting the species' conservation. This rule implements the Federal protection and recovery provisions provided by the Act for individuals when they occur in the United States.

DATES: This rule is effective August 30, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, Room G–62, Anchorage, AK 99501 (telephone 907/271–2888).

FOR FURTHER INFORMATION CONTACT: Greg Balogh, Endangered Species Biologist, at the above address or telephone 907/271–2778.

SUPPLEMENTARY INFORMATION:

Background

Taxonomy

George Steller made the first record of the short-tailed albatross in the 1740s. The type specimen for the species was collected offshore of Kamchatka, Russia, and was described in 1769 by P.S. Pallas in *Spicilegia Zoologica* (American Ornithologists' Union (AOU) 1997). In the order of tube-nosed marine birds, Procellariiformes, the short-tailed albatross is classified within the family Diomedeidae. Until recently, it had been assigned to the genus *Diomedea*. Following the results of genetic studies by Nunn *et al.* (1996), the family Diomedeidae was arranged in four genera. The genus *Phoebastria,* North Pacific albatrosses, now includes the short-tailed albatross, the Laysan albatross (*P. immutabilis*), the black-footed albatross (*P. nigripes*), and the waved albatross (*P. irrorata*)(AOU 1998).

Description

The short-tailed albatross is a large pelagic bird with long narrow wings adapted for soaring just above the water surface. The bill, which is disproportionately large compared to the bills of other northern hemisphere albatrosses, is pink and hooked with a bluish tip, with external tubular nostrils, and a thin but conspicuous black line extending around the base. Adult short-tailed albatrosses are the only North Pacific albatross with an entirely white back. The white head develops a yellow-gold crown and nape over several years. Fledged juveniles are dark brown-black, but soon develop the pale bills and legs that distinguish them from black-footed and Laysan albatrosses (Tuck 1978, Roberson 1980).

Historical Distribution

The short-tailed albatross once ranged throughout most of the North Pacific Ocean and Bering Sea, with known nesting colonies on the following islands: Torishima in the Seven Islands of Izu Group in Japan; Mukojima, Nishinoshima, Yomeshima, and Kitanoshima in the Bonin Islands of Japan; Kita-daitojima, Minami-daitojima, and Okino-daitojima of the Daito group of Japan; Senkaku Retto of southern Ryukyu Islands of Japan, including Minami-kojima, Kobisho, and Uotsurijima; Iwo Jima in the western Volcanic Islands (Kazan-Retto) of Japan; Agincourt Island, Taiwan; and Pescadore Islands, of Taiwan, including Byosho Island (Hasegawa 1979, King 1981). Other undocumented nesting colonies may have existed. For example, recent observations, together with records from the 1930s, suggest that the short-tailed albatross may have once nested on Midway Atoll. However, no confirmed historical breeding accounts are available for this area. Throughout this rule when we refer to Midway Atoll, we mean the complex of islets that occur within Midway Atoll that includes Sand Islet, Eastern Islet, and Spit Islet. Midway Atoll is located east of Kure Atoll, at the northwestern end of the Hawaiian Archipelago. A subset of atolls, islands, and reefs located north and west of the main Hawaiian Islands (Hawaii Island to Kauai Island) is known as the northwestern Hawaiian Islands (Nihoa Island to Kure Atoll).

Early naturalists, such as Turner and Chamisso, believed that short-tailed albatrosses bred in the Aleutian Islands because high numbers of birds were seen nearshore during the summer and fall months (Yesner 1976). Alaska Aleut lore referred to local breeding birds, and the explorer O. Von Kotzebue reported that Natives harvested short-tailed albatross eggs. However, while adult bones were found in Aleut middens (refuse heaps), fledgling remains were not recorded in more than 400 samples (Yesner 1976). Yesner (1976) believed that short-tailed albatrosses did not breed in the Aleutians but were harvested offshore during the summer, nonbreeding season. Given the midwinter constraints on breeding at high latitudes and the known southerly location of winter breeding, it is highly unlikely that these birds ever bred in Alaska (Sherburne 1993).

Additional historical information on the species' range away from known breeding areas is scant. Evidence from archeological studies in middens suggests that hunters in kayaks had access to an abundant nearshore supply of short-tailed albatrosses from California north to St. Lawrence Island as early as 4,000 years ago (Howard and Dodson 1933, Yesner and Aigner 1976, Murie 1959). In the 1880s and 1890s, short-tailed albatross abundance and distribution during the nonbreeding season was generalized by statements such as ''more or less numerous'' in the vicinity of the Aleutian Islands (Yesner 1976). They were reported as highly abundant around Cape Newenham, in western Alaska (DeGange 1981), and Veniaminof regarded them as abundant near the Pribilof Islands (Gabrielson and Lincoln 1959). In 1904, they were considered ''tolerably common on both coasts of Vancouver Island, but more abundant on the west coast'' (Kermode in Campbell *et al.,* 1990).

Historical Population Status

At the beginning of the 20th century, the species declined in population numbers to near extinction, primarily as a result of hunting at the breeding colonies in Japan. Albatross were killed for their feathers and various other body parts. The down feathers were used for quilts and pillows, and wing and tail feathers were used for writing quills; their bodies were processed into fertilizer and rendered into fat, and their eggs were collected for food (Austin 1949).

Pre-exploitation worldwide population estimates of short-tailed albatrosses are not known; the total number of birds harvested may provide the best estimate, since the harvest drove the species nearly to extinction. Between approximately 1885 and 1903, an estimated five million short-tailed

albatrosses were harvested from the breeding colony on Torishima (Yamashina in Austin 1949), and harvest continued until the early 1930s, except for a few years following the 1903 volcanic eruption. One of the residents on the island (a schoolteacher) reported 3,000 albatrosses killed in December 1932 and January 1933. By 1949, there were no short-tailed albatrosses breeding at any of the historically known breeding sites, including Torishima, and the species was thought to be extinct (Austin 1949).

The species persisted, however, and in 1950, the chief of the weather station at Torishima, Mr. M. Yamamoto, reported nesting of the short-tailed albatross (Tickell 1973, 1975). By 1954 there were 25 birds and at least 6 pairs (Ono 1955). These were presumably birds that had been wandering the North Pacific during the final several years of slaughter. Since then, as a result of habitat management projects, stringent protection, and the absence of any significant volcanic eruption events, the population has gradually increased. The average growth of the Torishima, Tsubamesaki colony, between 1950 and 1977 was 2.5 adults per year; between 1978 and 1991 the average population increase was 11 adults per year. An average annual population growth of at least 7.8 percent per year (Hasegawa 1982, Cochrane and Starfield in prep.) has resulted in a continuing increase in the breeding population to an estimated 388 breeding birds on Torishima in 1997–1998 (H. Hasegawa, Toho University, Chiba, Japan, pers. comm. 1999). Torishima is under Japanese Government ownership and management and is managed for the conservation of wildlife. At this time, there is no evidence that the breeding population on Torishima is limited by the number of nest sites; therefore, ongoing management efforts focus on maintaining high rates of breeding success.

Two primary activities have been undertaken to enhance breeding success on Torishima. First, erosion control efforts at the Tsubamesaki colony have improved nesting success. Second, an attempt to establish a second breeding colony on Torishima involved an experimental program for luring breeding birds to the opposite side of the island from the Tsubamesaki colony. Preliminary results of the experiment are promising; the first chick was produced in 1997. The expectation is that absent a volcanic eruption or some other catastrophic event, the population on Torishima will continue to grow, but that it will be many years before the breeding sites are limited (Hasegawa 1997).

In 1971, 12 adult short-tailed albatrosses were discovered on Minami-kojima in the Senkaku Islands, one of the former breeding colony sites (Hasegawa 1984). Aerial surveys in 1979 and 1980 resulted in observations of between 16 and 35 adults. In April 1988, the first confirmed chicks on Minami-kojima were observed, and in March 1991, 10 chicks were observed. In 1991, the estimate for the population on Minami-kojima was 75 birds and 15 breeding pairs (Hasegawa 1991). In 1999, the estimate for the population is 150 birds and 30 breeding pairs (H. Hasegawa pers. comm. 1999). There is no information available on historical numbers at this breeding site.

Short-tailed albatrosses have been observed on Midway Atoll since the 1930s (Berger 1972, Hadden 1941, Fisher in Tickell 1973, Robbins in Hasegawa and DeGange 1982), but there have never been more than two individuals reported on the Atoll during the same year, and no successful nesting has been confirmed on the Atoll. The islets of Midway Atoll are vegetated, flat coral sand. Three species of albatross (black-footed, Laysan, and short-tailed) occur on the islets. Black-footed and Laysan albatrosses are common, nesting everywhere on the islands except where ironwood trees dominate the habitat. About 160 people live on these islands, and a maximum of 100 visitors are allowed at any one time.

Midway Atoll is a National Wildlife Refuge managed by the Service for the conservation of seabirds and other fish and wildlife and their habitats. The Refuge consists of roughly 31 square kilometers (12 square-miles) of marine waters and 607 hectares (1,500 acres) of land consisting of three islets (Sand Islet, Eastern Islet, and Spit Islet). The Refuge is between 28°05′ and 28°25′ N latitude and 177°10′ and 177°30′ W longitude, 4,505 kilometers (km) (2,800 miles (mi)) west of San Francisco and 3,539 km (2,200 mi) east of Japan. Approximately two million black-footed and Laysan albatrosses nest at Midway.

The first short-tailed albatross recorded on the Midway Atoll spent two winters between 1938 and 1940, but was somehow injured and died (Richardson 1994). Successful nesting by one pair in 1961 and 1962 was reported, but the validity of the report has been disputed (Tickell 1996). The report was made by Dr. Harvey Fisher in a private letter written in 1983 to Dr. Hiroshi Hasegawa of Toho University in Japan (Richardson 1994). However, no photographs, observation records, or log entries have been found to verify this observation. In the years following the reported observation, the reported nest location on Sand Islet in the Midway Atoll was paved, and tens of thousands of albatrosses were exterminated from Sand Islet to construct an aircraft runway and to provide safe conditions for aircraft landings and departures. It is possible that, if any short-tailed albatrosses were nesting on the island, the individuals were either displaced or killed during this process (E. Flint, Service, Honolulu pers. comm. 1999).

An adult short-tailed albatross was banded at Eastern Islet in Midway Atoll on March 18, 1966 (Sanger 1972). Beginning in November 1972 and continuing through at least February 10, 1983, an individual banded as a chick on Torishima in March 1964 (band number 558–30754) returned to the Midway Atoll during most or all breeding seasons, and was regularly observed on the west side of Sand Islet (Richardson 1994). An unbanded immature bird was observed on Sand Islet in February 1981, but was not seen again.

The first confirmed record of a short-tailed albatross nest and egg on the Midway Atoll occurred in 1993. The female was banded (Yellow 015) as a chick in Japan in 1982 and had been returning to the same location on Sand Islet during the breeding season each year since 1988. The nest was in a grassy space beside the southwest edge of the active runway on Sand Islet very close to several black-footed albatross nests. The female incubated the egg for at least 31 days, but eventually abandoned the nest, and the egg was collected by our biologists and determined to be inviable. Yellow 015 subsequently laid and incubated an egg in 1995 and 1997, but both eggs were inviable (N. Hoffman, Service, Midway Atoll National Wildlife Refuge pers. comm. 1999).

An adult short-tailed albatross, banded (White 000) as a chick at Torishima in 1979, was first recorded at Midway Atoll in November 1985. It returned to the same site each year in December and left each spring, usually in April, until early in the fall of 1994. Its pattern of behavior in the breeding season was to sit in the colony except for occasional trips of 2 to 3 days length out to sea. In March 1994, Dr. Lee Eberhardt observed and videotaped breeding displays between White 000 and Yellow 015 (Richardson 1994). White 000 returned to Midway in the fall of 1994, but failed to return after a routine foraging trip soon thereafter, and has not been sighted again.

A third adult short-tailed albatross, banded as Yellow 051 in 1989 on

Torishima Island in Japan, was first observed in January 1996 on Eastern Islet within the Midway Atoll. Yellow 051 was subsequently observed on Eastern Islet in December 1996 and in February 1997. A fourth short-tailed albatross, banded as Blue 057 in 1988 on Torishima Island in Japan, was first observed in February 1999 on Eastern Islet. Blue 057 was observed a second time in April 1999 on Sand Islet.

Observations of individuals have also been made during the breeding season on Laysan Island, Green Island at Kure Atoll, and French Frigate Shoals, but there is no indication that these occurrences represent established breeding populations (Sekora 1977, Fefer 1989).

The dramatic declines during the turn of the century and recent increases in numbers of short-tailed albatrosses were reflected in observations from the nonbreeding season. Between the 1950s and 1970, there were few records of the species away from the breeding grounds (Palmer 1962, Tramontano 1970). There were 12 reported marine sightings in the 1970s and 55 sightings in the 1980s; more than 250 sightings have been reported in the 1990s to date (Sanger 1972, Hasegawa and DeGange 1982, Service unpublished data). However, this observed increase in opportunistic sightings should be interpreted cautiously, because of the potential temporal, spatial, and numerical biases introduced by the opportunistic nature of the shipboard observations. Observation effort, total number of vessels present, and location of vessels may have affected the number of observations independent of an increase in total numbers of birds present. Moreover, the reporting rate of observations has likely increased with implementation of outreach efforts by Federal agencies and fishing interest groups in the last few years.

At-sea sightings since the 1940s indicate that the short-tailed albatross, while very few in number today, is distributed widely throughout its historical foraging range of the temperate and subarctic North Pacific Ocean (Sanger 1972; Service unpublished data) and is often found close to the U.S. coast. From December through April, distribution is concentrated near the breeding colonies in the Izu and Bonin Islands (McDermond and Morgan 1993), although foraging trips may extend hundreds of miles or more from the colony sites, if short-tailed albatross behavior is similar to black-footed and Laysan albatrosses. Recent satellite tracking of black-footed and Laysan albatrosses revealed that individuals of those species travel hundreds of miles from the breeding colonies during the breeding season (David Anderson, Wake Forest University, pers. comm. 1999).

In summer (the nonbreeding season), individuals appear to disperse widely throughout the historical range of the temperate and subarctic North Pacific Ocean (Sanger 1972), with reported observations concentrated in the northern Gulf of Alaska, Aleutian Islands, and Bering Sea (McDermond and Morgan 1993, Sherburne 1993, Service unpublished data). Individuals have been recorded along the west coast of North America as far south as the Baja Peninsula, Mexico (Palmer 1962).

Current Population

A worldwide population total may be coarsely estimated by combining information from a variety of sources. Estimates of total numbers of breeding age adults and immature birds may be obtained using a variety of different data and methods. We rounded the total estimates to the nearest hundred birds, reflecting the lack of precision in some of the data.

Breeding age population estimates come primarily from egg counts and breeding bird observations. Assuming 2 adults are present for each of the 212 eggs counted, 424 breeding adults would have been present on Torishima in 1998–1999 (H. Hasegawa pers. comm. 1999). Hasegawa (pers. comm. 1999) estimates there are currently 60 breeding adults on Minami-kojima. Based on these estimates, the total number of observed breeding birds is thought to be approximately 480. It has been noted that an average of approximately 25 percent of breeding adults may not return to breed each year (H. Hasegawa pers. comm. 1997). Therefore, a reasonable estimate is that approximately 120 additional breeding age birds may not be observed on the breeding grounds in a given year. Based on these estimates, we believe that there is a total of approximately 600 breeding age birds.

Estimates of the number of immature (nonbreeding) birds are more difficult to make because these individuals are rarely seen between fledging and breeding at approximately 6 years of age. We used two different methods to estimate the number of immature birds in the population: (1) Observational data of chicks fledged, and (2) modeling information. Both methods yielded similar results. H. Hasegawa (pers. comm. 1999) reports that 586 chicks were fledged from the Tsubamesaki colony on Torishima between 1993 and 1998. The only information on number of chicks from Minami-kojima is that ten chicks were counted by H. Hasegawa (pers. comm. 1997) in 1991. Over the past 6 years, therefore, assuming a stable population, an estimated minimum of 60 chicks may have fledged from Minami-kojima. Based on an assumed average juvenile (fledging to age of first breeding) survival rate of 94 percent (Cochrane and Starfield in prep.) and an average age of first breeding at 6 years (H. Hasegawa pers. comm. 1997), this technique yields an estimate of about 600 immature individuals in the population (rounded to tens). Alternatively, modeling information indicates that immature birds comprise approximately 47 percent of the total population in recent years, given current understanding of population dynamics. Breeding age birds are estimated at 600; therefore, based on the population modeling, we estimate that the immature birds also number approximately 600. The total population of short-tailed albatross is likely around 1,200 birds. No numerical estimates of uncertainty are available for this estimate.

The short-tailed albatross population on Torishima Island is growing at a fairly rapid rate, especially given that it is a long-lived and slow-to-reproduce species. Habitat management within the species main nesting colony has increased its nest success rate (H. Hasegawa, pers. comm. 1997) and probably its population growth rate as well. The recent annual population growth rate (Cochrane and Starfield in prep) in the Torishima short-tailed albatross colony (7.8 percent) approaches the maximum potential rate of increase (8 percent) that Fisher (1976) estimated for the Laysan albatross in the 1960s.

Demographic Information

Short-tailed albatrosses are long-lived and slow to mature; the average age at first breeding is 6 years old (H. Hasegawa pers. comm. 1997). As many as 25 percent of breeding age adults may not return to the colony in a given year (H. Hasegawa pers. comm. 1997). Females lay a single egg each year, which is not replaced if destroyed (Austin 1949). Survival rates for all post-fledging ages combined are high (96 percent; H. Hasegawa pers. comm. 1997). Actual juvenile survival rates are unknown, but are probably lower than adult survival rates. Cochrane and Starfield (in prep) assume a subadult survival rate of 94 percent. Breeding success (the percent of eggs laid that result in a fledged chick) varies between approximately 60 and 70 percent (H. Hasegawa pers. comm. 1997). Low

breeding success occurs in years when catastrophic volcanic or weather events occur during the breeding season.

Breeding Biology

At Torishima, birds arrive at the breeding colony in October and begin nest building. Egg-laying begins in late October and continues through late November. The female lays a single egg, incubation involves both parents and lasts for 64–65 days, eggs hatch in late December and January, and by late May or early June, the chicks are almost full grown and the adults begin abandoning their nests (H. Hasegawa pers. comm. 1997; Hasegawa and DeGange 1982). The chicks fledge soon after the adults leave the colony: by mid-July, the breeding colony is totally deserted (Austin 1949). Nonbreeders and failed breeders disperse from the breeding colony in late winter through spring (Hasegawa and DeGange 1982). There is no detailed information on breeding activities on Minami-kojima, but it is likely to be similar to that on Torishima.

Short-tailed albatrosses are monogamous and highly philopatric to nesting areas (returning to the same breeding site year after year). Chicks hatched at Torishima return there to breed. However, young birds may occasionally disperse from their natal colonies to breed, as evidenced by the appearance of adult birds on Midway Atoll that were banded as chicks on Torishima (H. Hasegawa pers. comm. 1997, Richardson 1994).

Breeding Habitat

Available evidence from historical accounts, and from current breeding sites, indicates that short-tailed albatross nesting occurs on flat or sloped sites, with sparse or full vegetation, on isolated windswept offshore islands, with restricted human access (Aronoff 1960, Sherburne 1993, DeGange 1981). Current nesting habitat on Torishima is steep sites on soils containing loose volcanic ash. The island is dominated by a grass, *Miscanthus sinensis* var. *condensatus,* but a composite, *Chrysanthemum pacificum,* and a nettle, *Boehmeria biloba,* are also present (Hasegawa 1977). The grass is likely to stabilize the soil, provide protection from weather, and minimize mutual interference between nesting pairs while allowing for safe, open takeoffs and landings (Hasegawa 1978). The nest is a grass or moss-lined concave scoop about 0.75 meters (m) (2 feet (ft.)) in diameter (Tickell 1975). The only terrestrial area within U.S. jurisdiction that is currently used by the short-tailed albatross for attempted nesting is the Midway Atoll.

Marine Habitat

Numerous records indicate that the short-tailed albatross frequents nearshore and coastal waters, which may explain why another common name for the species is the ''coastal albatross.'' However, the source of these records derives from boats that were near shore to begin with. The lack of more pelagic observations may say more about the distribution of boats than of albatrosses. Nevertheless, our short-tailed albatross at-sea sightings' database contains many observations of short-tailed albatrosses within 10 km (6 mi) of shore, and several observations of birds within 5 km (3 mi) of the shore (Terry Antrobus, Service, Anchorage, pers. comm. 2000). Their presence may coincide with areas of high biological productivity, such as along the west coast of North America, the Bering Sea, and offshore from the Aleutians (Hasegawa and DeGange 1982). The North Pacific marine environment of the short-tailed albatross is characterized by coastal regions of upwelling and high productivity and expansive, deep water beyond the continental shelf.

Specific geographic and seasonal distribution patterns within the marine range are not well understood. The short-tailed albatross is a frequent visitor to the productive waters in shelf break areas of the Northern Gulf of Alaska, Aleutians Islands, and Bering Sea. Historically, short-tailed albatrosses were found in middens in coastal areas, suggesting that they were available to hunters in kayaks close to shore. References from the early and mid-1900s suggest that short-tailed albatrosses were more coastal in distribution than black-footed or Laysan albatrosses. Very little information exists on the distribution of the short-tailed albatross in open ocean areas; few systematic scientific studies have been conducted in these areas. Observations over the last 10–15 years from vessels and fishery observers are concentrated in the shelf break areas. Distributional data suggests that this species utilizes coastal shelf break areas of the Aleutian Islands, Bering Sea, and northern Gulf of Alaska on a regular basis for foraging. However, it is not known how important these areas are to the species, what percentage of the population visits these areas, what amount of time the species spends in these coastal areas, or if it uses open ocean areas to the same degree. Additionally, the short-tailed albatross is known to forage in the waters surrounding Hawaii including Midway Atoll in the northwest Hawaiian Island chain. In summary, the marine range of the short-tailed albatross within U.S. territorial waters includes Alaska's vast coastal shelf break areas and the marine waters of Hawaii for foraging, but we do not know how much or to what extent it utilizes open ocean areas of the Gulf of Alaska, North Pacific Ocean, and Bering Sea. There is no information on specific habitat or area use patterns within the vast shelf break areas used by the species.

Diet

The diet of short-tailed albatrosses includes squid, fish, eggs of flying fish, shrimp, and other crustaceans (Hattori in Austin 1949, H. Hasegawa pers. comm. 1997). There is currently no information on variation of diet by season, habitat, or environmental condition.

Previous Federal Action

Currently, the short-tailed albatross is listed as endangered under the Act, throughout its range, except in the United States (50 CFR 17.11). The species was originally listed as endangered in accordance with the Endangered Species Conservation Act of 1969 (ESCA). Pursuant to the ESCA, two separate lists of endangered wildlife were maintained, one for foreign species and one for species native to the United States. The short-tailed albatross appeared only on the List of Endangered Foreign Wildlife (35 FR 8495; June 2, 1970). When the Act became effective on December 28, 1973, it superseded the ESCA. The native and foreign lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). When the lists were combined, prior notice of the action for the short-tailed albatross was not given to the governors of the affected States (Alaska, California, Hawaii, Oregon, and Washington), as required by the Act, because available data were interpreted as not supporting resident status for the short-tailed albatross. Thus, native individuals of this species were never formally proposed for listing pursuant to the criteria and procedures of the Act.

On July 25, 1979, we published a notice (44 FR 43705) stating that, through an oversight in the listing of the short-tailed albatross and six other endangered species, individuals occurring in the United States were not protected by the Act. The notice stated that our intent was that all populations and individuals of the seven species should be listed as endangered wherever they occurred. Therefore, the notice stated that we intended to take action to propose endangered status for

individuals occurring in the United States.

On July 25, 1980, we published a proposed rule (45 FR 49844; July 25, 1980) to list, in the United States, the short-tailed albatross and four of the other species referred to above. No final action was taken on the July 25, 1980, proposal. In 1996, we designated the short-tailed albatross as a candidate for listing in the United States (62 FR 49398; September 19, 1997). On November 2, 1998, we issued an updated proposed rule to list the short-tailed albatross as endangered in the United States (63 FR 58692; November 2, 1998).

The processing of this final rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Our first priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants (such as this final rule). Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority.

Summary of Comments and Recommendations

In the November 2, 1998, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, State governments, scientific organizations, and other interested parties were contacted and asked to comment. During the open public comment period, we solicited information from five independent scientists in compliance with our peer review policy (59 FR 34270; July 1, 1994). Three of the peer reviewers responded with comments. All three supported the listing of the short-tailed albatross as endangered throughout its range. We also solicited comments from the governments of Canada, the People's Republic of China, Vietnam, the Republic of Korea, the Phillippines, Norway, the Russian Federation, Japan, and Mexico. Comments were received from the Government of Mexico supporting the action; comments from the People's Republic of China were neutral, neither supporting nor objecting to the proposal. The comments from both Mexico and China were received after the close of the public comment period.

We also published notices of the proposed rule in the Seattle Times and Anchorage Daily News on December 13, 1998, and in the Juneau Empire on December 15, 1998. In addition to the three comments received from peer reviewers, two additional comments were received during the comment period. All five of the comments supported the proposed listing. We received two comments after the comment period closed (in addition to those submitted by the People's Republic of China and Mexico); one was in support of the proposed listing, and one was neutral. No comments questioned the action proposed, the information upon which we based our conclusions, or any other matters relevant to the section 4 listing. Editorial and technical comments were made by some reviewers and were incorporated into the final rule, as appropriate. No public hearings were requested.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that endangered status for the short-tailed albatross should be extended to include the species range within the United States. Under the procedures found at section 4(a)(1) of the Act, and the regulations implementing the listing provisions of the Act (50 CFR part 424), a species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the short-tailed albatross (*Phoebastria albatrus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Short-tailed albatrosses face a significant threat to the primary breeding colony on Torishima due to the potential of habitat destruction from volcanic eruptions on the island. The threat is not predictable in time or in magnitude. Eruptions could be catastrophic or minor, and could occur at any time of year. A catastrophic eruption during the breeding season could result in chick or adult mortalities as well as destruction of nesting habitat. Additionally, breeding habitat and nesting birds are threatened by frequent mud slides and erosion caused by the monsoon rains that occur on the island. Significant loss of currently occupied breeding habitat or breeding adults at Torishima would delay the recovery of the species or jeopardize its continued existence.

Torishima is an active volcano approximately 394 m (1,300 ft) high and 2.6 km (1.6 mi) wide (H. Hasegawa pers. comm. 1997) located at 30.48° N and 140.32° E (Simkin and Siebert 1994). The earliest record of a volcanic eruption at Torishima is a report of a submarine eruption in 1871 (Simkin and Siebert 1994), but there is no information on the magnitude or effects of this eruption. Since the first recorded human occupation on the island in 1887, four eruptions have been recorded: (1) On August 7, 1902, an explosive eruption in the central and flank vents resulted in lava flow and a submarine eruption and caused 125 human mortalities; (2) on August 17, 1939, an explosive eruption in the central vent resulted in lava flow and caused two human mortalities; (3) on November 13, 1965, a submarine eruption occurred; and (4) on October 2, 1975, a submarine eruption occurred 9 km (5.4 mi) south of Torishima (Simkin and Siebert 1994). The literature also refers to an additional eruption in 1940, which resulted in lava flow that filled the island's only place suitable for vessels to anchor (Austin 1949).

Austin (1949) visited the waters around Torishima in 1949 and made the following observations: ''The only part of Torishima not affected by the recent volcanic activity is the steep northwest slopes where the low buildings occupied by the weather station staff are huddled. Elsewhere, except on the forbidding vertical cliffs, the entire surface of the island is now covered with stark, lifeless, black-gray lava. Where the flow thins out on the northwest slopes, a few dead, white sticks are mute remnants of the brush growth that formerly covered the island. Also on these slopes some sparse grassy vegetation is visible, but there is no sign of those thick reeds, or ''makusa'' that formerly sheltered the albatross colonies. The main crater is still smoking and fumes issue from cracks and fissures all over the summit of the island.''

In 1965, meteorological staff stationed on the island were evacuated on an emergency basis due to a high level of seismic activity; although no eruption followed, the island has since been considered too dangerous for permanent human occupation (Tickell 1973). In late 1997, Hiroshi Hasegawa observed more steam from the volcano crater, a more pronounced bulge in the center of the crater, and more sulphur crusts around the crater than were previously

present (R. Steiner, Alaska Sea Grant Program, pers. comm. 1998).

The eruptions in 1902 and 1939 destroyed much of the original breeding colony sites. The remaining site used by albatrosses is a sparsely vegetated steep slope of loose volcanic soil. The monsoon rains that occur on the island result in frequent mud slides and erosion of these soils, which can result in habitat loss and chick mortality. A typhoon in 1995 occurred just before the breeding season and destroyed most of the vegetation at the Tsubamezaki colony. Without the protection provided by vegetation, eggs and chicks are at greater risk of mortality from monsoon rains, sand storms, and wind (H. Hasegawa pers. comm. 1997). Breeding success at Tsubamezaki is lower in years when significant typhoons result in mud slides (H. Hasegawa pers. comm. 1997).

In 1981, a project was supported by the Environment Agency of Japan and the Tokyo Metropolitan Government to improve nesting habitat by transplanting grass and stabilizing the loose volcanic soils (Hasegawa 1991). Breeding success at the Tsubamezaki colony has increased following habitat enhancement (H. Hasegawa pers. comm. 1997). Current population enhancement efforts in Japan are concentrated on attracting breeding birds to an alternate, well-vegetated colony site on Torishima that is less likely to be impacted by lava flow, mud slides, or erosion than the Tsubamezaki colony site (H. Hasegawa pers. comm. 1997). Japan's ''Short-tailed Albatross Conservation and Management Master Plan'' (Environment Agency 1996) sets forth a long-term goal of examining the possibility of establishing additional breeding grounds away from Torishima once there are at least 1,000 birds on Torishima. Until other safe breeding sites are established, however, short-tailed albatross survival will continue to be at risk due to the possibility of significant habitat loss and mortality from unpredictable natural catastrophic volcanic eruptions and frequent mud slides and erosion that result from monsoon rains on the island.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* As described above under Historical Population Status, direct harvest of short-tailed albatrosses caused a catastrophic decline in population numbers (refer to the Historical Population Status section); today, direct harvest of short-tailed albatrosses is rare. Hasegawa (pers. comm. 1997) reports that some local Japanese fishermen in Izu and Ryukyuu Islands hunt seabirds and may take some short-tailed albatrosses, but the likelihood that short-tailed albatrosses are taken, or the level of such take, is not known. No other known direct take of short-tailed albatrosses occurs for commercial, recreational, scientific, or educational purposes.

C. *Disease or predation.* No known diseases affect short-tailed albatrosses on Torishima or Minami-kojima today. However, the world population is vulnerable to the effects of disease because of the small population size and extremely limited number of breeding sites. H. Hasegawa (pers. comm. 1997) reports that he has observed a wing-disabled bird every few years on Torishima, but the cause of the disability is not known. 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., USGS, Hawaii).

Several parasites have been documented on short-tailed albatrosses on Torishima in the past including: a bloodsucking tick that attacks its host's feet, a feather louse, and a carnivorous beetle (Austin 1949). However, current evidence suggests that no parasites affect short-tailed albatrosses on Torishima today, and no evidence indicates that parasites caused mortality or had population level impacts in the past (H. Hasegawa pers. comm. 1997).

Sharks (subclass elasmobranchii) may take fledgling short-tailed albatrosses as they desert the colony and take to the surrounding waters (Harrison 1979). Shark predation is well documented among other albatross species, but has not been documented for the short-tailed albatross. The crow, *Corvus* sp., is the only historically known avian predator of chicks on Torishima. Hattori (in Austin 1949) reported that one-third of the chicks on Torishima were killed by crows, but crows are not present on the island today (H. Hasegawa pers. comm. 1997). Black or ship rats were introduced to Torishima at some point during human occupation, but their effect on short-tailed albatrosses in unknown. Cats were also present, most likely introduced during the feather hunting period. They have caused damage to other seabirds on the island (Ono 1955), but there is no evidence to indicate an adverse effect to short-tailed albatrosses. Cats were present on Torishima in 1973 (Tickell 1975), but Hasegawa (1982) did not subsequently find any evidence of cats on the island.

D. *The inadequacy of existing regulatory mechanisms.* The short-tailed albatross is currently listed under the Act as endangered outside of the United States. Listing the species within the United States as endangered would provide more comprehensive and extensive protection for the species through sections 7, 9, and 10 of the Act, and through recovery planning.

The short-tailed albatross is listed as endangered on the State of Alaska's list of endangered species (State of Alaska, Alaska Statutes, Article 4. Sec. 16.20.19). This classification was supported by a letter to Commissioner Noerenberg from J.C. Bartonek (1972, *in litt.*) in which he recommended endangered status because the short-tailed albatross occurs or ''was likely'' to occur in State waters within the 3-mile limit of State jurisdiction (Sherburne 1993). Under the Alaska Endangered Species Act, endangered species may not be harvested, captured, or propagated, except under a special permit from the Alaska Department of Fish and Game. In addition, the law requires the commissioners of the departments of Fish and Game and Natural Resources to protect the natural habitat of endangered species on lands under their jurisdiction (Schoen 1996). The short-tailed albatross does not appear on the State list of Hawaii's list of threatened and endangered species.

The Japanese Government designated the short-tailed albatross as a protected species in 1958, as a Special National Monument in 1962 (Hasegawa and DeGange 1982) and as a Special Bird for Protection in 1972 (King 1981). Torishima was declared a National Monument in 1965 (King 1981). These designations have resulted in tight restrictions on human activities and disturbance on Torishima (H. Hasegawa pers. comm. 1997). In 1992, the species was classified as ''endangered'' under the newly implemented ''Species Preservation Act'' in Japan, which makes Federal funds available for conservation programs and requires that a 10-year plan be in place that sets forth conservation goals for the species. The current Japanese ''Short-tailed Albatross Conservation and Management Master Plan'' outlines general goals for continuing management and monitoring of the species, and future conservation needs (Environment Agency 1996). The principal management practices used on Torishima are legal protection, habitat enhancement, and population monitoring. Torishima and Minami-kojima are the only two confirmed breeding sites for short-tailed albatrosses, and both are under Japanese ownership and management. Of concern is that Minami-kojima has also been claimed by the Nationalist Republic of China and the People's Republic of

China. The situation may present logistical and diplomatic problems in attempts to implement protection for the colony on the island (Tickell 1975).

We were informed by the Endangered Species of Wild Fauna and Flora Import and Export Administrative Office that short-tailed albatross is listed as a national first-class wildlife species for protection in the Law of the People's Republic of China on the Protection of Wildlife that was promulgated in 1998 (Meng Xianlin, *in litt.* 1999). The hunting, capture, or killing of the short-tailed albatross is prohibited, and its habitats are legally protected.

On July 1, 1975, the short-tailed albatross was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is a treaty established to prevent international trade that may be detrimental to the survival of plants and animals. Generally, both import and export permits are required from the importing and exporting countries before an Appendix I species may be shipped, and Appendix I species may not be imported for primarily commercial purposes. CITES export permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade. The Migratory Bird Treaty Act of 1918, as amended (MBTA: 16 U.S.C. 703 *et seq.*), currently protects short-tailed albatrosses from taking in areas under its jurisdiction.

E. *Other natural or manmade factors affecting its continued existence.* Other factors potentially represent threats to the species conservation and recovery.

One of these factors is small population size; another is the fact that only two breeding populations exist. The worldwide breeding-age population of short-tailed albatrosses numbers approximately 600 individuals. A significant proportion of these individuals nest in the Tsubamezaki colony on Torishima. The remaining small number of breeding birds nest on Minami-kojima. Because the population size is small, and breeding is limited to only two colonies, a catastrophic volcanic or weather event on Torishima or Minami-kojima has the potential not only to significantly reduce the numbers of birds in the world, but also to reduce the worldwide breeding population to a level where the risk of extinction is high. Both the small population size and severely limited number of breeding colonies increases the vulnerability of the species to extinction caused by random stochastic events. The natural or artificial establishment of additional breeding colonies in protected habitats would help to secure the recovery of the species; however, such an effort is problematic. First, the population must be large enough to allow them to be available to colonize new sites through natural dispersal or allow humans to take birds from the wild to initiate such an effort. Secondly, we do not sufficiently understand the ecological requirements of breeding colony sites to allow us to undertake such an effort with confidence of success. Thus far, the only other known site where the birds have attempted to nest is on the Midway Atoll, where all those attempts have been unsuccessful. Until the population increases significantly in number and additional breeding colonies are established, the short-tailed albatross will remain vulnerable to extinction. Genetic diversity of the worldwide population may also be cause for concern since the species experienced a severe genetic bottleneck during the middle of this century.

The risk of extinction caused by a catastrophic event at either of the two breeding colonies is buffered by adult and immature nonbreeding birds that are at sea during the breeding season. An average of 25 percent of breeding age adults do not return to breed each year (H. Hasegawa pers. comm. 1997), and immature birds do not return to the colony to breed until at least 6 years after fledging (H. Hasegawa pers. comm. 1997). Modeling information suggests that about half of the current total worldwide population may be immature birds. If suitable habitat were still available on Torishima or Minami-kojima, these birds could recolonize in years following a catastrophic event.

Another potential threat to the species' conservation and recovery is damage or injury related to oil contamination, which could cause physiological problems from petroleum toxicity and by interfering with the bird's ability to thermoregulate. Oil spills can occur in many parts of the short-tailed albatrosses' marine range. Oil development has been considered in the past in the vicinity of the Senkaku Islands (Hasegawa 1981, *in litt.*). Future industrial development would introduce the risk of local marine contamination, or pollution due to blowouts, spills, and leaks related to oil extraction, transfer, and transportation. Historically short-tailed albatrosses rafted together in the waters around Torishima (Austin 1949), and small groups of individuals have occasionally been observed at sea (Service unpublished data). An oil spill in an area where a large number of individuals were rafting, such as near breeding colonies, could affect the population significantly. The species' habit of feeding at the surface of the sea makes them vulnerable to oil contamination. Dr. Hiroshi Hasegawa (pers. comm. 1997) has observed some birds on Torishima with oil spots on their plumage.

Consumption of plastics may also be a factor affecting the species' conservation and recovery. Albatrosses often consume plastics at sea, presumably mistaking the plastics for food items, or consuming marine life such as the eggs of flying fish that are attached to floating objects. Dr. Hiroshi Hasegawa (pers. comm. 1997) reports that short-tailed albatrosses on Torishima commonly regurgitate large amounts of plastics debris. Plastics ingestion can result in injury or mortality to albatrosses if sharp plastic pieces cause internal injuries, or through reduction in ingested food volumes and dehydration (Sievert and Sileo in McDermond and Morgan 1993). Young birds may be particularly vulnerable to potential effects of plastic ingestion prior to developing the ability to regurgitate (Fefer 1989, *in litt.*). Auman (1994) found that Laysan albatross chicks found dead in the colony had significantly greater plastics loads than chicks within the population as a whole. This comparison was based on examinations of chicks injured by vehicles, which is presumably unrelated to plastics ingestion, and therefore representative of the population. Hasegawa has observed a large increase in the occurrence of plastics in birds on Torishima over the last 10 years (R. Steiner pers. comm. 1998), but the effect on survival and population growth is not known.

Another potential threat to short-tailed albatross conservation and recovery is mortality incidental to longline fishing in the North Pacific and Bering Sea. Short-tailed albatross mortalities occur in longline fisheries as a result of baited longline hooks that are accessible to foraging albatrosses, primarily during line setting. Five short-tailed albatrosses are known to have been taken by longline fisheries in Alaska from 1983–1996. In consultation with the National Marine Fisheries Service, we determined that the Alaskan groundfish and halibut fisheries are likely to adversely affect short-tailed albatrosses, but are not likely to result in an appreciable reduction in the likelihood of survival and recovery of the species (Service 1989 and amendments, Service 1998, Service 1999). Consultation under section 7 of the Act is now being conducted for the Hawaiian longline fishery; the amount

and likelihood of take in this fishery is difficult to determine because of the low rate of observer coverage (5 percent of fishing time is observed). No takes of short-tailed albatrosses in the Hawaiian longline fishery have been reported; however, black-footed albatrosses and Laysan albatrosses have been taken (E. Flint pers. comm. 2000). The National Marine Fisheries Service is currently investigating whether collisions with sonar cables (third wires) associated with commercial trawl vessels may be adversely affecting short-tailed albatrosses (K. Rivera, NMFS, pers. comm. 2000).

In general, seabirds are vulnerable to becoming entangled in derelict fishing gear. Laysan and black-footed albatrosses are occasionally entangled in derelict fishing gear on land and at sea in the Hawaiian Islands National Wildlife Refuge (E. Flint pers. comm. 2000). The magnitude of impacts caused by derelict gear from international longline fisheries is unknown. Hasegawa (pers. comm. 1997) reports that three to four birds per year on Torishima come ashore entangled in derelict fishing gear, some of which die as a result. He also stated that some take by Japanese fishermen (handliners) may occur near the nesting colonies, although no such take has been reported. There is no additional information on the potential effects of fisheries near Torishima on the species. Lost or abandoned fishing gear is a threat to the species throughout its range, and is not restricted to the short-tailed albatross colony around Torishima Island, Japan.

At the current population level and growth rate, the level of mortality resulting from longline fisheries is not thought to represent a threat to the species' continued survival, although it likely is slowing the recovery. In addition, in the event of a major population decline resulting from a natural environmental catastrophe or an oil spill, the effects of longline fisheries on short-tailed albatrosses could be significant.

We have documented seabird collisions with airplanes on Midway Atoll National Wildlife Refuge since operation of the airfield was transferred from the Department of Defense to the Department of the Interior in July 1997. Since acquiring the airfield, we have implemented several precautionary mechanisms to reduce and document seabird collisions. Transient aircraft (primarily U.S. Military or U.S. Coast Guard C–130 airplanes) are required to obtain prior permission before landing at the Midway Atoll National Wildlife Refuge. Aircraft are advised to land within the parameters provided by ground controllers to reduce air collisions with seabirds. Prior to any aircraft landing or takeoff, the runway and taxiways are ''swept'' to haze any birds resting on the airfield. Bird activity advisories are provided to the pilots, and recommendations are suggested to modify approaches and landings at the airfield to avoid collisions. During nesting seasons, runway sweeps become more involved with several crews hazing birds from the runway.

A female short-tailed albatross (band: yellow 015) has resided about 150 ft (50 m) from the end of the Midway Atoll National Wildlife Refuge runway since 1989. It is known to reside on the islet during the nesting season, from November to April. Although the bird is located close to the runway, aircraft are unlikely to collide with it because most landings and takeoffs, during November to April, occur at night when birds are less likely to be in flight. There have been no reports of Yellow 015 having a close encounter with aircraft, according to ground crews that monitor this bird during take-offs and landings (B. Dieli, Service, Midway Atoll National Wildlife Refuge pers. comm. 1999).

Summary

The worldwide population of short-tailed albatrosses continues to be in danger of extinction throughout its range due to natural environmental threats, small population size, and the small number of breeding colonies. Longline fishing, plastics pollution, oil contamination, and airplane strikes are not viewed as threats to the species survival, but we do consider them threats to the species conservation and recovery (*i.e.,* these factors, by themselves, will probably not cause the extinction of the species, but have the potential to slow down recovery of the species). We believe that these factors may hamper recovery not by adversly modifying or distroying habitat, but by affecting the survival of individual birds.

Most of the world's breeding population nests on Torishima Island in the Tsubamezaki colony. These individuals and the breeding habitat are at risk of measurable or significant population level impacts from a volcanic eruption on the island. The habitat at Tsubamezaki is further threatened by continued erosion and mud slides from monsoon rains despite the reduction of risk through habitat management. The only other known breeding location is on Minami-kojima, which is threatened by political unrest and internationally disputed ownership.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule. Based on this evaluation, we extend the listing of the short-tailed albatross as endangered to include its U.S. range. We are also correcting the information in the Historic Range column of the short-tailed albatross entry in the list of endangered and threatened species (50 CFR 17.11(h)). The information in this column currently indicates the species' historic range includes the North Pacific Ocean and Bering Sea, and lands and waters of Japan, China, Russia, and the United States. We will correct this entry to include Taiwan, Canada, and Mexico. This column is nonregulatory in nature and is provided for the information of the reader.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that we designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. Designation is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat is defined in section 3(5)(a) of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the November 2, 1998, proposed rule, we determined that designation of critical habitat was not prudent for the short-tailed albatross, based on our analysis and determination that such designation would not be beneficial to the species. With regard to breeding areas and potential breeding areas within the United States or under

United States jurisdiction, we concluded that there would be no additional benefit or protection conferred through the designation of critical habitat on the Midway Atoll National Wildlife Refuge over that conferred through the jeopardy standard of section 7 of the Act. With regard to foraging areas in the waters of the United States or under United States jurisdiction, we concluded there would be no additional benefit because there is currently no information to support a conclusion that any specific marine habitat areas within United States jurisdiction are uniquely important. More importantly, adverse effects that have occurred in the marine environment have been a result of activities, such as longline fishing, that threaten individual albatrosses rather than albatross habitat. These effects will be addressed through the jeopardy standard of section 7 of the Act and through the section 9 prohibitions of the Act. With regard to foraging areas in United States waters, the proposed rule also concluded there would be no additional benefit or protection conferred through the destruction or adverse modification standard for critical habitat under section 7 of the Act. We did not receive any comments during the public comment period on this proposed determination.

We believe that proposed determination was correct. Given the lack of habitat-related threats within U.S. territory for this species, the informational and educational benefits normally associated with critical habitat designation would not occur. Furthermore, there are no areas that we could identify as meeting the definition of critical habitat.

In accordance with the Act, a critical habitat designation can include areas outside the species current range if we determine that they are essential to the conservation of the species. We have not found any areas outside the current range of the species to be essential for the conservation of the species. Our best data suggests that the short-tailed albatross still occupies all of its marine-based historical range.

For areas within the geographical range currently occupied by the species, critical habitat is considered to be those areas that have the physical and biological features essential to the conservation of the species and require special management consideration or protection. Areas within the geographic range currently occupied by the species that might be considered to have the features essential for the conservation of the species and that might require special management or protection include both breeding and marine habitat.

Critical habitat cannot be designated within foreign countries or in other areas outside of United States jurisdiction (50 CFR 424.12(h)). Thus, we would only consider for designation any habitats on United States land, in United States territorial waters, within the United States Exclusive Economic Zone from 0–321 km (0–200 mi) from shore, or in other areas within the jurisdiction of the United States. This albatross comes ashore primarily for breeding. The only areas where the short-tailed albatross successfully breeds is on the Torishima and Minami-kojima Islands of Japan. The only area within U.S. jurisdiction where albatross have attempted breeding is Midway Atoll. However, there is no current breeding population on Midway, and no evidence that a breeding population existed there in the past. We currently do not consider Midway Atoll to provide important breeding habitat for the species. Given the short-tailed albatross' apparent failure to successfully colonize Midway Atoll, we find that it does not contain features essential to the conservation of the species at this time. Based on this information we determined that Midway Atoll does not constitute critical habitat for this species at this time. However, should these circumstances change, such as with successful breeding, we will reevaluate the contribution of this area to the conservation and recovery of the species.

With the exception of Midway Atoll, the short-tailed albatross habitat within United States jurisdiction is almost entirely marine (rare sightings of transient birds are made on other Hawaiian Islands). The species uses marine habitat for foraging. Marine habitats occupied by short-tailed albatrosses within United States jurisdiction are vast. Areas with essential physical and biological features are likely to occur throughout the temperate and subarctic North Pacific Ocean, along the west coast of North America as far south as the Baja Peninsula, Mexico. Individuals are widely distributed throughout this vast marine range. Because of the species' highly mobile, pelagic nature, any individual short-tailed albatross has the potential to occur at any location throughout its marine range. In addition to the species being highly mobile, its prey species (*e.g.*, squid, fish, and eggs of flying fish) are also highly mobile, exhibiting seasonal and inter-annual variations in distribution. Available albatross observation data suggests that the short-tailed albatross concentrates its feeding efforts along the shelf-break areas in the Bering Sea and along the Aleutian Islands. However, the vast majority of these observations are made from commercial fishing vessels plying these waters; few vessels from which we have requested observation data operate very far from these shelf break areas. Some of these vessels have reported that short-tailed albatross are much more common during some years than others, suggesting that most of the birds are feeding elsewhere. Furthermore, we have recorded several short-tailed albatross observations made by individuals aboard research vessels far from the shelf-break areas frequented by commercial fishing vessels, suggesting that the birds do forage away from the shelf-break areas as well.

We note that this species has historically been referred to as the coastal albatross. However, there is no objective data to suggest that this species used coastal areas more heavily than offshore areas. That it was historically sighted from shore was likely an artifact of its once-large population size; given 5 million short-tailed albatrosses wandering across the North Pacific, many were bound to have been observed from shore.

The recent rate of annual growth in the Torishima short-tailed albatross colony (7.8 percent) approaches the maximum potential rate of increase (8 percent) that Fisher (1976) estimated for Laysan albatross in the 1960s, before fisheries bycatch and contaminants affected that population. The fact that the short-tailed albatross' population is growing at a rate that is probably near its maximum biological capacity for growth, allows us to infer that nothing about the bird's marine habitat is limiting population growth. Because the North Pacific Ocean and Bearing Sea once supported millions of short-tailed albatross, we believe that this species is not anywhere near its habitat carrying capacity, and it will be some time before any feature of its marine habitat becomes a critical limiting factor to population growth. Thus, we conclude that there is no need for special management or protection of any marine habitat feature with regards to the short-tailed albatross. Indeed, if we were able to increase the amount of forage fish throughout the species entire range, this action may not result in an appreciable increase in the population growth rate of short-tailed albatross, given that the species population is already growing at a rate that may be approaching its maximum biological capacity. To increase the availability of prey species within U.S. waters only would be even

less likely to result in an increase in population growth rate, yet this is the only portion of its global range for which we can designate critical habitat and enact special management or protections.

Because this species' precarious situation derives entirely from historical harvest of the birds themselves, and not from any action that caused habitat degradation, and because marine habitat does not appear to be a factor limiting current population growth rate, we do not believe that there are areas within the United States that contain features that are essential to the conservation of the species that require special management or protection. Special management or protection is defined by regulation as ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.'' Because this species population growth is not limited by its marine habitat, nor do we believe that it will become limited by its marine habitat in the foreseeable future, we find that there are no methods or procedures that would be useful in protecting the physical and biological features of the marine environment. Therefore, we conclude that there are no areas within this environment that need special management or protection.

In summary, we do not find any habitats within the jurisdiction of the United States that meet the definition of critical habitat, *i.e.*, habitats within United States that contain the features essential for the conservation of the species and require special management and protection. Because there is no habitat that meets the definition of critical habitat, we find that it is not prudent to designate critical habitat for the short-tailed albatross.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat.

Federal agency actions that may require consultation as described in the preceding paragraph include National Marine Fisheries Service's Fishery Management Plans, management practices at the Midway Atoll National Wildlife Refuge, permits or authorization for oil tankering within the range of short-tailed albatrosses, and oil spill contingency plans.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of prohibitions and exceptions that apply to all endangered species of wildlife. All prohibitions of section 9(a)(1) of the Act, implemented by 50 CFR 17.21, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States, to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt to engage in any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits for endangered wildlife are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget Clearance number 1018–0094.

Our policy (59 FR 34272; July 1, 1994) is to identify to the maximum extent practicable, at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The known non-Federal activities that may result in incidental take of short-tailed albatrosses are State-managed hook-and-line longline fisheries. Activities that are not expected to result in any take of short-tailed albatrosses include: (1) Fishing activities in Alaska and Hawaii other than hook-and-line longline fishing; (2) lawfully conducted vessel operations such as transport, tankering, and barging; and (3) harbor operations or improvements. Questions regarding whether other specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Anchorage Field Office (See **ADDRESSES** section).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species law. Hawaii's endangered species law states, ''Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Federal Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *'' (HRS, sect. 195D–4(a)). Therefore, Federal listing will accord the species listed status under Hawaii State law. State law prohibits export, take, possession, processing, selling, delivering, carrying, transporting, or shipping of any listed species. The State law encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, sect. 195AD–4 and 5).

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Anchorage Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Janey Fadley, U.S. Fish and Wildlife Service, Juneau Fish and Wildlife Service Office, 3000 Vintage Park Blvd, Suite 201, Juneau, Alaska 99801, telephone (907) 586–7242.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), the table entry for ''Albatross, short-tailed'', under BIRDS, is revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Albatross, short-tailed.	*Phoebastria* (=*Diomedea*) *albatrus.*	North Pacific Ocean and Bering Sea-Canada, China, Japan, Mexico, Russia, Taiwan, U.S.A. (AK, CA, HI, OR, WA).	Entire	E	3,700	NA	NA
*	*	*	*	*	*	*	

Dated: July 25, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–19223 Filed 7–28–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 072100C]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of General category daily retention limit on previously designated restricted fishing days.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category restricted-fishing day (RFD) schedule should be adjusted; i.e., certain RFDs should be waived, to allow for maximum utilization of the General category June-August subquota. Therefore, NMFS increases the daily retention limit from zero to one large medium or giant BFT on the following, previously designated RFDs for 2000: July 30 and 31, and August 6, 7, 13, 14, 20, 21, 27, and 28.

DATES: Effective July 26, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. General category effort controls (including time-period subquotas and RFDs) are specified annually under §§ 635.23(a) and 635.27(a). The 2000 General category effort controls were implemented July 7, 2000 (65 FR 42883, July 12, 2000).

Adjustment of Daily Retention Limit for Selected Dates

Under § 635.23 (a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds, NMFS has determined that adjustment to the RFD schedule is necessary to allow for full use of the subquota while ensuring an August fishery. Therefore, NMFS adjusts the daily retention limit for July 30 and 31, and August 6, 7, 13, 14, 20, 21, 27, and 28, 2000, previously identified as RFDs