



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington D.C. 20240



IN REPLY REFER TO:  
FWS/AMB/076290

Catherine Kilduff  
Senior Attorney  
Center for Biological Diversity  
1212 Broadway, St. #800  
Oakland, CA 94612

Dear Ms. Kilduff:

The U.S. Fish and Wildlife Service (Service) received your petition dated December 6, 2021, requesting that we establish a rulemaking to issue permits authorizing the incidental take of migratory birds in commercial fisheries.

On October 4, 2021, the Service published an Advance Notice of Proposed Rulemaking (ANPR) announcing our intent to solicit public comment and information as we consider developing proposed regulations to authorize the incidental take of migratory birds under the Migratory Bird Treaty Act (MBTA). As noted in the ANPR, we had already considered regulation of marine fishery bycatch prior to receiving your petition. The goal of this rulemaking is to provide regulatory clarification by codifying our interpretation of the MBTA as prohibiting incidental take and to develop a commonsense approach for regulating incidental take to better protect migratory bird populations. As part of the development of these regulations, the Service is also preparing a draft Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act to identify impacts and reasonable alternatives to our proposed action.

The ANPR identified several activities, including marine fishery bycatch, as common sources of bird mortality with well-known, activity-specific beneficial practices to reduce incidental take. As indicated in the ANPR, we are considering developing permit authorization regulations for marine fishery bycatch of migratory birds under prescribed conditions. During the public comment period on the ANPR, we requested information and data regarding the cause of migratory bird deaths and activity-specific beneficial practices. We are in the process of reviewing comments, including those pertaining to marine fishery bycatch, and will consider the information provided in your petition as we promulgate proposed regulations.

The Service intends to publish a proposed rule and draft EIS for this rulemaking in Summer 2022, which will include authorization of the incidental take of migratory birds in commercial fisheries and thus serve to effectively grant your petition for rulemaking. We will be soliciting public comment on these documents and welcome additional feedback you may have on this topic during the public comment period. Thank you for your continued interest in migratory bird conservation.

Sincerely,

Jerome Ford  
Assistant Director  
Migratory Birds