

RECORD OF DECISION
FOR
UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)
ANIMAL AND PLANT HEALTH INSPECTION SERVICE (APHIS)
ANIMAL DAMAGE CONTROL (ADC)
GULL HAZARD REDUCTION PROGRAM
JOHN F. KENNEDY INTERNATIONAL AIRPORT
FINAL ENVIRONMENTAL IMPACT STATEMENT

Introduction

This decision concludes a complex evaluation process that explores alternatives which reduce or eliminate the hazard to aviation and human safety at John F. Kennedy International Airport (JFKIA) posed by the presence and activities of gulls, especially laughing gulls. The EIS identifies the severity and nature of the hazards created by gull-aircraft collisions at JFKIA. Until approximately the mid-1980s the hazards posed by gulls could, for the most part, be effectively controlled by conventional bird management activities on JFKIA: insect, water, vegetation, and sanitation management programs, and conduct of the Port Authority's Bird Control Unit (BCU). Throughout the late 1980s, the hazard to aviation grew as the presence of laughing gulls increased substantially concurrent with the growth of the laughing gull nesting colony in Jamaica Bay. In 1991, an experimental on-airport shooting program was initiated to augment the conventional control methods already in place at JFKIA. The shooting program was also conducted in 1992 and 1993.

Although an annual shooting program is quite effective in reducing gull-aircraft strikes, especially when it is conducted in combination with on-airport nonlethal approaches, its desirability as a long-term solution may be limited due to the large number of gulls killed. Accordingly, the EIS process was commenced in 1992 for the purpose of exploring alternatives to dealing effectively with the gull hazard situation at JFKIA in a way that takes into account all interests.

The Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act (NEPA) tell the decision maker what information must be included in records of decision. Section 1505.2 of the CEQ Regulations provides that records of decision contain:

- a statement of the decision;
- the identification of all alternatives considered by the agency, including the environmentally preferable alternative(s);
- a discussion of all factors - economic, technical, and mission-related as well as considerations of national policy balanced in the decision making process and how each factor weighs in the decision; and

- an explanation of whether the decision is designed to avoid or minimize environmental harm and, if not, why not.

Alternatives Considered

The EIS explores a wide variety of alternative approaches, that would occur both on JFK and off JFK property, including: the No Action alternative, On-Airport Shooting, the Port Authority of New York and New Jersey's (Port Authority) On-Airport Program, and other alternatives that are either lethal or nonlethal. The Integrated Management Program (IMP) includes the following components:

1. Continued Development of JFK's On-Airport Program
2. Reduction of Off-Airport Attractants
3. On-Airport Shooting of Gulls
4. Laughing Gull Nest/Egg Destruction in Jamaica Bay
5. On-Colony Shooting of Adult Laughing Gulls
6. Display of Gull Models to Harass Gulls

A total of 29 separate alternative methods are described and analyzed. Alternatives include those that would occur on JFK, on the Gateway National Recreation Area (GNRA), and at other off-airport sites. Both lethal and non-lethal methods of gull hazard control are contained in those alternatives. Major categories of alternatives are as follows: nesting habitat modifications, discouraging use of the nesting colony site through harassment, reduction of off-airport attractants, expansion of JFKIA's on-airport bird control program, airport operational strategies, aircraft engineering, laughing gull population reduction, and on-airport gull shooting and harassment.

Roles and Responsibilities

Decisions regarding the selection and conduct of alternatives are complicated by the fact that the cooperating Federal and New York State agencies have very different roles and responsibilities. In the past, APHIS, the Federal lead agency, has provided services (gull hazard control) to the Port Authority upon their request. APHIS' jurisdiction (and its choice among alternatives) is limited to deciding what wildlife control activities, if any, it should conduct when requested to assist public and private entities. On-airport gull control activities would be done at the request of the Port Authority of New York and New Jersey. The on-airport gull shooting program, a component of the IMP, would require the acquisition of permits from the USFWS and the DEC. The reduction of off-airport attractants would require the approval of the entities controlling those sites. On-colony activities would require the approval of NPS. The EIS considers all feasible alternatives, and among those alternatives, indicates which are the environmentally preferable alternatives. However, ADC does not

alone have the jurisdiction to select or implement any of those alternatives.

The USFWS has permitting authorities regarding the taking of Federally-protected migratory birds, and identifies conditions under which permits may be issued. The USFWS would evaluate permit applications for the following components of the IMP: on-airport shooting of gulls, on-colony shooting of adult laughing gulls, and laughing gull egg/nest destruction. The USFWS may identify conditions under which permits are issued.

The National Park Service (NPS) is responsible for managing GNRA pursuant to applicable laws, policies, and regulations. The NPS has decision-making authority regarding conduct of IMP components that would occur on NPS lands in Jamaica Bay. Those components of the IMP that would require authorizations from the NPS are: laughing gull nest/egg destruction, on-colony shooting of adult laughing gulls, and display of gull models to harass gulls.

The DEC has permitting authority for the taking of migratory birds pursuant to New York State law. The DEC has decision-making authority regarding permitting of IMP components that would include taking of gulls: on-airport shooting of gulls, laughing gull nest/egg destruction, and on-colony shooting of adult laughing gulls.

The United States Department of the Interior's (USDI) recent statement of policy (Section 6.4.2 of the EIS) declares that IMP components 1-3 must first be conducted and proven ineffective before the USDI would initiate any components that would be conducted on NPS property and directed at relocating the Jamaica Bay laughing gull nesting colony away from its present location. Past experience with component 1-3 activities between 1991-93 indicates that these three components are effective in reducing bird-strikes at JFKIA.

Decision

The circumstances identified above require that the APHIS decision be bifurcated.¹ I will treat actions that must be taken in the near term separately from those that would be taken in the longer term.

Based upon the analysis contained in the environmental impact statement, I have determined that an integrated gull hazard control program at JFKIA is clearly superior. I have decided, in the

¹Based upon past experience, ADC determined that gulls are likely to create an extreme hazard to aviation before the close of the required 30-day period between issuance of the Notice of Availability of the Final Environmental Impact Statement (EIS) and the decision. Thus, ADC requested a 16-day waiver of that time period (Appendix 1) from the U.S. Environmental Protection Agency (EPA). EPA granted the waiver in a letter dated April 29, 1994 (Appendix 2).

context of the relationship between ADC and the Port Authority, that when ADC personnel determine, with the concurrence of the FAA and the Port Authority, that the number of gulls entering JFKIA airspace has reached an unacceptable level, ADC will begin an on-airport gull shooting program as described in Chapter 3 of the EIS, once the requisite Federal and New York State permits are issued to ADC. ADC will work with the Port Authority among others to enhance JFKIA's on-airport bird control program, improve the functioning of the Bird Hazard Task Force (BHTF), and reduce off-airport attractants. These non-lethal components will contribute to the reduction of gull mortality over the long term, but will not be as effective in achieving that objective as would be the relocation of the Jamaica Bay laughing gull nesting colony through conduct of IMP components 4-6. ADC believes such relocation is feasible and would be in the best interest of air travelers and the laughing gull population.

Short-Term: I have determined that the IMP represents the best available means of addressing the expected immediate need to reduce the potential for large numbers of gull-aircraft collisions at JFKIA in 1994. When ADC personnel determine, with the concurrence of the FAA and the Port Authority, that the number of gulls entering JFKIA airspace has reached an unacceptable level, ADC will begin an on-airport gull shooting program as described in Chapter 3 of the EIS, once the requisite Federal and New York State permits are issued to ADC. Whenever possible, ADC will continue to assist the Port Authority in implementing and improving the nonlethal components of the IMP, including the conduct and enhancement of: on-airport vegetation, water, insect, and sanitation management programs, improved operational functioning of the Port Authority BCU and the BHTF, and, wherever possible, the identification and reduction of off-airport bird attractants. Conduct of these activities will minimize the number of gulls taken in the on-airport shooting program.

The overriding factor that weighed in making this decision is human safety. Other considerations, including the minimization of adverse environmental impacts have been factored into this short-term decision to the fullest extent possible. Although I would have preferred a decision that included immediate efforts to relocate the laughing gull colony, the current circumstances do not favor those alternatives. Based upon past experience, the timing and nature of the gull-aircraft strike hazard will likely dictate that management action will be immediately necessary to protect human safety; other alternatives could not be fully implemented and still address this immediate need.

Long-Term: APHIS ADC supports the implementation of the six components of the IMP, with the long-term objective of relocating the laughing gull colony away from its present location. For the long term, reducing the potential for gull-aircraft collisions at JFKIA should be achieved through the IMP, with emphasis on non-lethal alternatives and on those alternatives that would accomplish

relocation of the Jamaica Bay laughing gull colony away from its present location. Conduct of the 6-component IMP provides a more complete opportunity to strike a balance between human safety and other public policies. The EIS adequately analyzes all alternatives, including those which APHIS and the State and Federal cooperating agencies would authorize. Although APHIS cannot authorize or pursue the alternatives that would occur on NPS property, it should be emphasized that the important factors of human safety and protection of wildlife can be achieved only through implementation of all components of the IMP.

The nature and extent of APHIS' role in JFKIA's Gull Hazard reduction program will be examined annually by APHIS ADC, which will report its findings to me and make them available to the public. The Port Authority's efforts to conduct non-lethal gull control methods and USDI's progress towards the conduct of the components that would occur on NPS property will be among the most important factors APHIS will consider. To reiterate, the environmentally preferred long term approach is the relocation of the laughing gull colony away from its present location at the end of the runway, in order to reduce the long term mortality of gulls, and to substantially reduce the potential for gull-aircraft collisions at JFKIA.

Minimizing Environmental Harm

The primary adverse environmental impact of the gull hazard reduction program is the mortality of gulls. The continued development and conduct of the Port Authority's on-airport program that emphasizes non-lethal bird hazard control approaches, will contribute to the reduction of gull mortality. Conduct of the three IMP components that would occur on NPS property would reduce the need to conduct on-airport shooting programs, and would reduce over the long-term the mortality rate of gulls. The Port Authority and the USDI are encouraged to conduct these activities in order to reduce gull mortality in the short and long terms.

Chapter 7 of the FEIS identifies mitigation and monitoring strategies to be conducted to minimize the adverse impacts of alternatives. All APHIS-conducted gull hazard control activities will be conducted in such a manner that minimizes adverse environmental impacts and seeks to maximize human and aircraft safety at JFK. During the course of the shooting program, APHIS ADC will monitor the situation at the airport, including mitigation strategies, and report periodically (at least bi-weekly) to me. All such reports will be available to the public.

Lonnie King

Lonnie King
Acting Administrator, USDA APHIS

5/25/94

Date

FAX TRANSMITTAL

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Fish and Wildlife Service

Record of Decision on Gull Hazard Reduction Program for John F. Kennedy International Airport

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice

SUMMARY: The U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control (ADC) and the Port Authority of New York and New Jersey (PA) have applied for permits to take migratory birds, including several species of gulls at John F. Kennedy International Airport (JFKIA). The Lead Agency for this Final Environmental Impact Statement (FEIS) is the ADC. The U.S. Fish and Wildlife Service (Service) is a cooperating agency with jurisdiction by law and actively participated in the scoping, drafting and reviewing of the Draft Environmental Impact Statement (DEIS) and the FEIS. Pursuant to the Council on Environmental Quality Regulations (Part 1506.3, Title 40 CFR) for Implementing Provisions of the National Environmental Policy Act (NEPA), and the Department of Interior, Departmental Manual at 516 DM 1.1-6.6, the Service adopts the above FEIS as prepared by the U.S. Department of Agriculture. The Service used the information and analyses in the DEIS and FEIS to make its own, independent Record of Decision (ROD) for this project. Based on its independent evaluation and review, the Service has selected an alternative similar to the Integrated Management Program, Department of the Interior Policy (IMP/DOI) as its preferred alternative (FEIS, pp. 6-7 to 6-9). The conditions contained in the IMP/DOI are designed to minimize environmental harms and constitute an enforceable monitoring and enforcement program.

Background

JFKIA is one of three major airports in the New York Metropolitan Region, servicing approximately 28 million passengers per year. It is located at the eastern end of Jamaica Bay, immediately adjacent to the Jamaica Bay National Wildlife Refuge, which is part of Gateway National Recreation Area (GNRA) [administered by the National Park Service (NPS)]. The interaction of birds and aircraft at JFKIA is a serious problem, creating significant hazards to human safety, as well as causing financial losses due to aircraft destruction, equipment damage, runway closures, and associated personnel costs. The proximity of the airport and wildlife refuge in a coastal location has contributed to an unusually high incidence of bird strikes at JFKIA. As early as 1975, a Service study concluded that gulls (herring, ring-billed and great black-backed) constituted the principal bird hazard at JFKIA. This problem was severely exacerbated by the establishment and rapid growth of a breeding colony of laughing gulls on the salt marsh islands in Jamaica Bay located at the southeast end of Runway 22R/4L. As the colony grew from 15 pairs in 1979 to more than 7,000 pairs in 1990, the number of laughing gulls involved in bird strikes increased from 2 to as many as 187 per

year, and the percentage of bird strikes involving laughing gulls increased from less than 2 percent to approximately 50 percent. Other gulls accounted for approximately 25 percent of JFKIA's bird strikes. The 58 other bird species together (1979-93) have accounted for approximately 23 percent of the air strikes and 25 percent of the damage delays.

Throughout the 1960's, 1970's and 1980's, the PA and Federal, New York State and New York City natural resource management agencies have conducted activities to evaluate, control, and monitor JFKIA's bird strike hazard. These activities have included, but are not limited to the following: experimental laughing gull egg-oiling project; international panel review; ecological studies; non-lethal harassment programs; and interim shooting programs. Despite implementation by the PA of a multi-faceted bird hazard reduction program and closure of nearby landfills, strikes by laughing gulls continued to increase. In response to the increase, a temporary, on-airport gull hazard reduction program was conducted by the ADC unit of the U.S. Department of Agriculture from 1991 through 1993. Between May and August of each year, gulls entering JFKIA airspace were shot. ADC biologists killed 14,191 laughing gulls in 1991, 11,847 in 1992, and about 6,500 in 1993. By the third year, this program reduced the number of bird strikes involving laughing gulls by more than 90 percent in the late 1980's.

In 1992, the concern for potential cumulative impacts associated with the shooting program demonstrated the need to explore issues involved in reduction of the hazards of gull/aircraft interaction at JFKIA. Consequently, the preparation of this Environmental Impact Statement (EIS) was initiated to explore all reasonable alternatives that might be implemented to reduce the number of gull/aircraft collisions at JFKIA in an effective, safe, environmentally sound manner that is in compliance with all applicable laws and regulations.

The EIS process, including early public participation, began in late 1992. The Notice of Intent to prepare the DEIS was published in the December 4, 1992 Federal Register. At that time, the Service became a cooperating agency. One scoping meeting and one public meeting were held at JFKIA. The Notice of Availability of the DEIS was published in the February 11, 1994 Federal Register. Prior to the release of the DEIS for public review, the Service reviewed several preliminary drafts. The comment period of the DEIS ended April 25, 1994, however, comments were accepted through April 28, 1994. The Service reviewed and commented on a preliminary FEIS, and all substantive comments were incorporated into the FEIS released to public. The Notice of Availability of the FEIS appeared in the May 6, 1994 Federal Register. The Environmental Protection Agency granted a 16-day waiver in the 30-day comment period for the FEIS on April 29, 1994.

The Preferred Alternative

The Service's Preferred Alternative closely resembles the IMP/DOI policy, which is set forth in pages 6.6 through 6.9 of the FEIS. The Preferred Alternative contains more specific actions and time frames than are found in the FEIS discussion of the IMP, which appears on

page 6-11. These more specific time frames are discussed below in the subsection entitled "Service Actions" within the "Findings and Decisions" portion of the ROD.

ADC's Proposed IMP in the FEIS identifies 6 elements. The Service has direct regulatory control or influence on 4 of these 6 elements. These specific elements are (1) continued development of JFKIA's on-airport program, (2) on-airport shooting of gulls, (3) laughing gull nest/egg destruction in Jamaica Bay, and (4) on-colony shooting of adult laughing gulls. The Service has no regulatory control or influence on (1) reduction of off-airport attractants and (2) display of gull models to harass gulls.

The IMP/DOI has been split into 2 separate categories. Category 1 elements address management actions off the GNRA and Category 2 elements address management actions on the GNRA.

Implementation of Category 1 elements will begin immediately, with all components monitored continuously by the Bird Control Unit (BCU) and evaluated at least annually by the Bird Hazard Task Force (BHTF). Category 1 activities would be continued until the annual reviews of these programs by the BCU and BHTF demonstrate that either Category 1 activities are no longer needed or that additional management is required. The BHTF will suggest improvements to this program, recommend additional research and monitoring needs and establish criteria to be used for initiation of Category 2 measures. The FEIS states that the National Park Service (NPS) will initiate steps to satisfy legislative and procedural requirements, as well as management review for on-colony elements (Category 2) whenever it is demonstrated that off-colony elements (Category 1) are ineffective. If initiation of Category 2 actions are justified, the NPS must define actions, analyze impacts and document decisions in the context of legal authorities and management policies in further NEPA analysis and documentation.

1. Category 1 actions include continued development of JFKIA's on-airport program, reduction of off-airport attractants, and the on-airport shooting of gulls.

a. Continued development of JFKIA's on-airport program with emphasis upon improvements to the BCU and the BHTF.

(1) Enhance the professional capability of the BCU

(2) Establish in-house capability within the BCU to assess and monitor effectiveness of control programs on target species.

(3) Prepare written plans for vegetation, insect control, solid waste, water management and other on-airport issues that address bird hazard management.

(4) Reorganize the BHTF to assist as an independent review body.

These above improvements will, by themselves, likely result in a marginal reduction in gull-aircraft interactions. However, their implementation will improve the decision-making and evaluation process and provide a mechanism for determination of when Category 2 elements need to be considered, while having low environmental impacts (FEIS 5.5 and 6.2.2). The Service Actions within the Preferred Alternative are presented in the Findings and Decisions section. These Actions explain what improvements to the JFKIA on-airport program will be implemented and when these Actions will be implemented.

b. Reduction of off-airport attractants (FEIS 5.4.2.4 and 6.2.1)

As the FEIS states at page 6-4, reduction of off-airport attractants can be achieved provided cooperation of outside agencies can be obtained. Implementation of this program will likely result in a low reduction in gull-aircraft interactions. However, considering the absence of substantial environmental impacts, it was included as support to other Category 1 elements.

c. Continue on-airport shooting of gulls (FEIS 5.7 and 6.3.2)

Among on-airport lethal alternatives, only shooting is considered a feasible and effective option. Its environmental impacts are relatively low, as long as not more than approximately 14,500 laughing gulls are shot annually (according to ADC in the FEIS, p. 5-42). The on-airport shooting program could affect local and New York State laughing gull populations, unless another nesting colony is established in the State. Computer simulations indicate regional populations would not be impacted by an on-airport shooting program restricted to this level.

The impact of the on-airport shooting program on herring, great black-backed and ring-billed gull populations has been minimal, e.g. the numbers of these species shot were 508, 128, and 59, respectively, in 1991; 1,338, 150 and 131 in 1992; and 554, 121, and 169 in 1993. Local, regional and national populations of these gull species would not be adversely impacted by the on-airport shooting.

2. Category 2 elements include laughing gull nest/egg destruction in Jamaica Bay (FEIS 5.6.1.2.1 and 6.3.1), on-colony shooting of laughing gulls (FEIS 5.6.2.2 and 6.3.1), and display of synthetic gull models to harass gulls FEIS 5.4.2.3 and 6.2.1).

If the potential risk to the flying public has been shown not to be reduced to acceptable levels as determined by the BHTF, the NPS will implement Category 2 control elements within the colony. On-colony actions will be proposed only after it has been judged that Category 1 actions have not been effective in reducing bird-aircraft interactions at JFKIA. The FEIS states that if initiation of Category 2 elements are justified, the NPS must define those actions, analyze those impacts and document its decision in the context of its legal authorities and its management policies and NEPA.

Other Alternatives Considered

Four alternatives, including the proposed action, were considered in the FEIS.

Alternative II. This alternative is the No-Action Alternative (FEIS 6.1), which involves the continuation of JFKIA'S on-airport program (vegetation management, water management, insect control, sanitation management, and BCU programs), without further expansion, and does not include the intensive on-airport shooting program that was conducted during the 1991-93 period. The No-Action Alternative will not sufficiently reduce the gull hazard or address the issue of public safety for the 28 million passengers that use JFKIA each year. Because it is not effective, the No-Action Alternative is not considered for implementation.

Alternative III. This alternative involves implementation of a nonlethal gull hazard control program (FEIS 6.2). Off the airport, it addresses nesting habitat modification, discouraging use of the laughing gull colony site through harassment, and reduction of off-airport attractants. On JFKIA, it addresses expansion of the JFKIA on-airport control program. Overall, this alternative was not selected due to substantial adverse environmental impacts. However, elements of this alternative were included in the Preferred Alternative.

Of the on-colony habitat modification elements of this alternative, all these elements were considered to present unacceptable environmental impacts, which cannot be substantially mitigated and are therefore not considered for selection as preferred alternatives. Those elements included marsh devegetation through mowing, herbicide, burning and excavation.

The only on-colony harassment element was display of synthetic models representing dead gulls. Although this element would not create substantial adverse ecological environmental impacts it is only moderately effective in reducing the gull hazard. The display of gull models was included as a Category 2 element of the IMP/DOI.

The reduction of off-airport attractants can be achieved provided cooperation of outside agencies can be obtained. The effectiveness in reducing gull/aircraft interactions is moderate to low and the environmental impacts of this element is very low. This element was included as a Category 1 element of the IMP/DOI.

The only on-airport element was the expansion of the existing on-airport program (Section I.a. of the Preferred Alternative). The expansion of the existing on-airport program was not considered as a preferred alternative by itself, because it had a low level of effectiveness. However, this element was included as a Category 1 element of the IMP/DOI.

Alternative IV. This alternative involves implementation of a lethal gull hazard control program (FEIS 6.3). Off the airport, it addresses population reduction of the laughing gull colony, including nest/egg destruction or oiling eggs, and population reduction of adults. On JFKIA, it addresses shooting and avicide application.

Several on-colony elements were considered. These elements included physical destruction of nests and eggs, oiling eggs, toxicant application to nesting adults, shooting of adults on the colony site, and introduction of predators to the nesting colony. None were considered effective enough individually to warrant consideration as a preferred alternative. However, shooting of adult gulls from blinds, and egg and nest destruction were included as Category 2 elements of the IMP/DOI.

Among JFKIA elements, only shooting was a feasible and effective option. The environmental impacts of this element for laughing gulls was low, as long as not more than 14,500 are shot annually. Populations of herring, great black-backed and ring-billed gulls would not be affected by this program. This alternative was included as a Category 1 element of the IMP/DOI.

Alternative methods. Twelve methods for gull hazard management on JFKIA were examined as possible alternatives to the IMP/DOI. These include planting laughing gull breeding areas with shrubs (FEIS 3.3.1.2), landform alteration by filling marsh (FEIS 3.3.1.3.1), landform alteration by physical obstruction (monofilament, cordage, or wire barriers) (FEIS 3.3.1.3.3), harassment of breeding laughing gulls by falconry (FEIS 3.3.2.1), harassment of breeding laughing gulls by dogs (FEIS 3.3.2.2), harassment of breeding laughing gulls by acoustics (FEIS 3.3.2.3), harassment of breeding laughing gulls by deterrent display of dead gulls (FEIS 3.3.2.4), harassment of breeding laughing gulls by radio-controlled model airplanes (FEIS 3.3.2.5), alteration of airport operations (numbers of aircraft using JFKIA, daily distribution of aircraft using JFKIA and types of aircraft using JFKIA) (FEIS 3.4.2.1), alteration of runway use patterns (FEIS 3.4.2.2), research and development into aircraft engineering to reduce air strikes (FEIS 3.4.3.2), and bird tracking and warning devices (FEIS 3.4.3.4). It was concluded that none of these alternatives would be effective in the control of the gull hazard at JFKIA.

Minimization of Impacts and Public Concerns

The Preferred Alternative incorporates a variety of measures to minimize the adverse environmental, social and economic impacts as described in the FEIS. Improvements to the bird hazard management program at JFKIA will permit the continuous monitoring and evaluation of this program. The Preferred Alternative significantly reduces the threat of bird/aircraft interactions at JFKIA for the 28 million travelers using that airport yearly through the implementation of the IMP/DOI. The IMP/DOI includes improvement of the on-airport management program and data collected for the evaluation of the on-airport and off-airport management programs. Specific measures to minimize impacts of and public concerns about the proposed action are identified in the Findings and Decision section of this document.

Service Authority

Statutory authority for the Service's actions is as follows:

Migratory birds listed in treaties with Great Britain (Canada), Mexico, Japan, and the former Soviet Union are protected and activities involving them are regulated in the United States by the Migratory Bird Treaty Act. The Secretary of the Interior under 16 United States Code (USC) Sections 703-712 has responsibility for management of those migratory birds, including the issuance of permits to take those birds. Criteria for issuance of Special Purpose permits is further defined by regulations found in Title 50 CFR Part 21.

Specifically, 16 USC 704 provides:

"Subject to the provisions and in order to carry out the purposes of the conventions, the Secretary...is authorized and directed from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine, when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow,... taking...of any such bird..."

Generally, all species of gulls are listed in the treaties and further identified in 50 CFR 10.13, List of Migratory Birds. Prohibited activities involving these listed migratory birds are more clearly identified in 50 CFR 21.11 which provides: "No person shall take... any migratory bird... except as permitted under the terms of a valid permit..."

The regulations then provide for issuance of permits for general standardized activities (import/export, banding and marking, scientific collecting, taxidermy, waterfowl sale and disposal, and falconry activities) utilizing standard form permits. They also provide for issuance of Special Purpose permits which authorize otherwise prohibited activities involving migratory birds, not otherwise covered by the standard form permits, when: "...an applicant...submits a written application containing the general information and certification required by part 13 [50 CFR 13] and makes a sufficient showing of... compelling justification." (50 CFR 21.27)

These Special Purpose Permit regulations give the Service broad authorities to address human safety issues at JFKIA. The Preferred Alternative is compatible with all conventions and treaties and the Service Actions identified within this Preferred Alternative are compatible with the intent of these conventions, treaties, and associated regulations. The compelling justification for these Service Actions is the issue of human safety at JFKIA.

Service Actions

On May 24, 1994 the Federal Aviation Authority (FAA) made a declaration "...that in the opinion of the Federal Aviation Authority an 'urgent situation' exists at JFK which requires

emergency actions which are necessary on a limited and temporary basis for the protection of life, health, and property or natural resources." As of this time, there is no effective short-term alternative to address the public safety risk presented by gulls within JFKIA airspace, except to permit limited shooting of gulls at the airport. As is explained below, the Service intends to permit shooting to proceed in May 1994, subject to certain permit conditions.

1994 Actions. The Service will issue Special Purpose Permits to ADC to permit the 1994 shooting program and to PA to permit the 1994 BCU program. Both permits will be non-renewable and ADC's permit will expire on August 20, 1994, by which time the peak of laughing gull strikes can reasonably be expected to have diminished. The PA's permit will expire on October 1, 1994, as is discussed in greater detail below. Non-renewable means that activity ends when the permit expires, and another permit must be issued before the activity can be continued (Title 50 CFR, Part 13.22).

The Service will take this action on the ADC permit, in consideration of the FAA's determination of a need for emergency actions at JFKIA and the information presented in the FEIS concerning the hazards presented by gulls at JFKIA. The Service will issue the ADC permit, after the Service has concurred with documentation provided by ADC that the number of birds flying into JFKIA airspace present a hazard to aircraft.

The Service will condition the PA permit to authorize PA personnel to (1) kill non-endangered and non-threatened species of migratory birds, except eagles and all species of gulls, as provided by 50 CFR 21.41 (c)(2), when they are creating or about to create a hazard to aircraft; (2) all carcasses collected under this permit must be donated to a public/scientific institution or destroyed by burial/incineration; and (3) maintain records as required per 50 CFR 13.46. This gull restriction in the PA permit is based upon a State of New York limitation. The Service will condition the ADC permit to authorize ADC personnel to (1) kill no more than 14,500 laughing gulls, 1,500 herring, 200 great black-backed and 200 ring-billed gulls, when found flying into JFKIA airspace and creating a hazard to aircraft, using shotguns with steel shot; (2) all specimens collected under this permit must be donated to a public/scientific institution or destroyed by burial/incineration; and (3) maintain records as required per 50 CFR 13.46. The validity of both permits is also conditioned upon strict observance of all applicable foreign, state, local or other Federal law.

The restrictions placed upon the take of herring, black-backed, and ring-billed gulls under the 1994 ADC permit reflect approximate past performance under the 1991-93 permits, because these takes have been demonstrated to have no impacts on local, state, or regional populations (FEIS, pp. 3-92 to 3-93). The restriction for shooting no more than 14,500 laughing gulls for the 1994 ADC permit is based on the results of population modeling (FEIS pp. 3-4 to 3-9 and p. 5-42) which suggest that the current Massachusetts/New York/New Jersey population could sustain a maximum annual loss of approximately 14,500 birds to shooting every year.

The Service will entertain an application from the PA for a Special Use Permit to support the activities of their BCU for the remainder of 1994 provided that they have agreed to the improvements to the BCU, BHTF and JFKIA management programs and the schedule for these improvements to be completed on or before September 15, 1994. The Service will monitor the compliance of the PA to implementation of these improvements. Future permits will not be issued if improvements are not implemented according to the implementation schedule.

Consistent with IMP/DOI policy to enhance the professional capability of the BCU and to establish capability within the BCU to assess and monitor the effectiveness of control programs on target species, the Service has determined that the PA must fundamentally change the staff, functions and size of the existing BCU to insure that the BCU's capabilities and functions are improved prior to any application by the ADC or the PA for any permit for 1995. The Service has determined that the time frames set forth in Section 6.4.3.2 are inadequate. Therefore the Service has determined that the following measures shall be implemented by the dates set forth below:

1. Enhance the professional capability of the BCU

The PA will hire a person trained in ornithology, or wildlife biology, or in a related field as the supervisor for the BCU by August 1, 1994. This supervisor will be trained to the Master of Science level in either ornithology or wildlife biology and will be capable of developing and evaluating the bird hazard management program at JFKIA and developing monitoring programs for birds in the JFKIA area.

The PA must apply to the Service for the October 1994 BCU permit by September 15, 1994, and should indicate in its application how it has complied with hiring the BCU supervisory biologist (#1 above) and the reorganization of the BHTF. With this application the PA may include its assessment of the BCU's personnel capabilities and expertise. This assessment, if provided, should address needs for increases in staff size, changes in professional capabilities of staff, and training. It should also identify BCU equipment and support requirements, as well as document how the BCU will conduct the collection of biological field data, surveys and monitoring programs described in the IMP/DOI and this document.

2. Reorganize the BHTF to assist as an independent review body.

The PA will reorganize the BHTF to serve as an advisory committee to the Port Authority for the evaluation of the BCU program and the gull shooting program by August 1, 1994. The BHTF will suggest improvements to this program, recommend additional research and monitoring needs and establish criteria to be used for initiation of Category 2 measures. The agencies currently composing the BHTF would remain. The chairmanship would be rotated on an annual basis; however, the Service would chair the task force during this reorganization period.

On May 17, 1994, the Port Authority provided the Service with a letter indicating significant disagreement concerning those measures needed to implement the IMP/DOI. The Service wants a competent, professional, fully-staffed BCU in place before the Spring of 1995. Based upon the Service's evaluation of the current capabilities of the BCU and the improvements required to implement the IMP/DOI, the Service has identified additional organizational improvements. The Service will evaluate subsequent requests for special permits in light of the PA's implementation of the tasks set forth above, the measures described below, advice from the BHTF, and any other information submitted by the PA. Additional measures to improve the capabilities of the BCU include the following:

1. Additional enhancement of the professional capability of the BCU.

The PA will increase staff size for the BCU to 10 permanent, full-time members by November 1, 1994. All BCU employees will be qualified to consistently and accurately collect biological field data and to conduct surveys and monitoring programs with the minimum professional training of a Bachelors of Science or equivalent substantive course work and field experience. The BCU will include at least one person trained in entomology and pesticides.

The PA will provide sufficient equipment and vehicles to support the improved BCU by November 15, 1994. This includes equipment to disperse water following rain storms, pyrotechnics, speaker systems in all vehicles, firearms, and safety equipment.

The PA will train and authorize all BCU employees to conduct all harassment methods, including the firing of firearms for lethal and non-lethal harassment by November 15, 1994. This includes the development of a training plan for all employees.

The BCU staff requires 7 people to perform its bird harassment responsibilities (1 supervisor, 2 employees per shift, 2 shifts per day, 7 days a week). In order to increase the capability of the BCU, the Service has determined that three additional people are required, as well as improving the professional training and capabilities of the BCU and assuring that the BCU is adequately equipped to do its job.

2. Establish in-house capability within the BCU to assess and monitor effectiveness of control programs on target species.

On or before January 31, 1995, the PA will develop and implement monitoring programs to assess the following: (1) evaluation of the effectiveness of the gull shooting program and JFKIA's bird hazard management program; (2) identification of criteria that could be used to determine when a gull shooting program should begin or end; (3) identification of criteria, with the involvement of the BHTF, that could be used to determine when Category 1 elements have become ineffective; (4) evaluation of off-airport attractants that encourage gulls to fly through JFKIA airspace; and (5) continuing evaluation of potential on-airport attractants.

3. Prepare written plans for vegetation, insect control, solid waste, water management and other on-airport issues that address bird hazard management.

The PA will produce written management plans for vegetation, insect, water, and solid waste management on JFKIA by December 29, 1994. These plans will document the existing programs and the overall management strategies for these programs.

The Service has determined that these written plans are needed as part of the Service's monitoring and enforcement program for this permit. The PA has actively addressed these management issues on JFKIA, as documented in FEIS (Section 3.2); however, poor documentation for these programs makes interpretation and monitoring impossible at this time.

4. As a part of the effort to develop data on bird species contributing to hazards at JFKIA and to a determination of when Category 2 measures may be appropriate, the NPS is committed to participating in seasonal surveys in 1994 to monitor gull populations and distribution in the Jamaica Bay area and will provide these data to the BCU and BHTF.

1995 Actions. For the 1994-95 period, the Service will monitor the above described implementation schedule and will not consider applications for Special Purpose Permits for either the PA or ADC in 1995, unless all of the above specified improvements are implemented according to the above schedule or unless a deviation from these conditions has been expressly permitted by the Service.

The Service has ascertained that these specific improvements are needed under the IMP/DOI element dealing with continued development of JFKIA's on-airport program. The Service has determined that these programs are needed to support the Service's monitoring and enforcement program for this permit. These improvements will, by themselves, likely result in a marginal reduction in gull-aircraft interactions. However, their implementation will improve the decision-making and evaluation process, and will provide a mechanism for determination of when Category 2 elements need to be considered. In addition, the NPS has committed to participate in seasonal surveys in 1995 to monitor gull populations and distribution in the Jamaica Bay area, as part of this program, and will provide these data to the BCU and BHTF to support this monitoring and enforcement program.

1996 Actions. In 1996 and subsequent years, the Service will review data collected by the BCU and recommendations made by the BHTF, as part of the annual review process for issuance of Special Purpose Permits. These future permit decisions and any restrictions placed upon future permits will be guided by this improved data collection and analysis system implemented by the PA for JFKIA in 1994.

Findings and Decisions

Having reviewed and considered the FEIS for the gull hazard management program at JFKIA and the public comments thereon, the Service finds as follows:

1. The requirements of NEPA and implementing regulations have been satisfied; and
2. Consistent with social, economic, programmatic and environmental considerations from among the reasonable alternatives thereto, the Preferred Action alternative with the Service's conditions described above is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects discussed in the FEIS; and,
3. Consistent with the social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the EIS process will be minimized or avoided by incorporating as conditions those mitigative measures identified in the Preferred Alternative in the FEIS and its supporting appendices; and,
4. The limitations on the numbers of gulls which may be taken under this permit are compatible with the terms of the Migratory Bird Conventions and are made with due regard to their distribution, abundance, breeding habits, and migratory patterns; and
5. The ADC and the PA have made a sufficient showing of compelling justification for these permits; and
6. All improvements to the BCU, BHTF, and JFKIA management programs, as specified in above in the Service Actions section during the term of each permit are hereby adopted as part of this finding and will be used to guide future migratory bird permit decisions.

Having made the above findings, the Service has decided to proceed with implementation of the Preferred Alternative with the above conditions.

This Record of Decision will serve as the written facts and conclusions relied on in reaching this decision. This Record of Decision was approved by the Regional Director of the Service on May 25, 1994.

Dated: May 25, 1994



Ronald E. Lambertson
Regional Director