

concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns or individuals (or both), with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-267; FCC 97-68]

Implementation of the AM Expanded Band Allotment Plan

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In Implementation of the AM Expanded Band Allotment Plan, FCC 97-68, the Federal Communications Commission granted in part and denied in part petitions for reconsideration of Comments in Response to Reconsideration of Implementation of the AM Expanded Band and Allotment Plan, FCC 96-113, April 18, 1996 (61 FR 16878), and Public Notice, Mass Media Bureau Announces Revised Expanded AM Broadcast Band Improvement Factors and Allotment Plan, DA 96-408 (released March 22, 1996). By this action the Commission rescinds the second allotment plan for the AM expanded band, i.e., 1605-1705 kHz, modifies the frequency preclusion program, and eliminates software and coding errors in the frequency preclusion and allotment computer programs. This action was taken to

ensure that the stations assigned expanded band frequencies would protect existing stations, conform to international agreements, and provide interference-free reception within their service areas.

EFFECTIVE DATE: March 17, 1997.

FOR FURTHER INFORMATION CONTACT:

Peter H. Doyle, Audio Services Division, Mass Media Bureau, (202) 418-2625.

SUPPLEMENTARY INFORMATION:

Concurrent with the release of Implementation of the AM Expanded Band Allotment Plan, the Commission's Mass Media Bureau released a Public Notice announcing a revised eighty-eight station Expanded Band Allotment Plan in the frequency band between 1605 and 1705 kHz. The Revised Expanded Band Allotment Plan identifies stations eligible for specific allotments. See Public Notice DA 97-537, released March 17, 1997. Such licensees will also be notified individually by letter. Identified stations are afforded until June 16, 1997 to file an application for construction permit on the allotted channel. Applications will be subject to petitions to deny but not to competing applications. Each Expanded Band permittee, following grant of construction permit applications and construction of authorized facilities, will be required to file an application for covering license on FCC Form 302. Expanded Band licensees will receive authorizations permitting dual frequency operations for a period not to exceed five years. The full text of the Implementation of the AM Expanded Band Allotment Plan, FCC 97-68, adopted February 27, 1997 and released March 17, 1997 is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. (See MM Docket 87-267). The complete text of this order may also be purchased from the Commission's copy contractor, International Transcription Service (ITS), 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-10844 Filed 4-28-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970226037-7094-02; I.D. 022197F]

RIN 0648-AJ39

Fisheries of the Exclusive Economic Zone Off Alaska; Management Measures to Reduce Seabird Bycatch in the Hook-and-Line Groundfish Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to require operators of hook-and-line vessels fishing for groundfish in the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA), and operators of hook-and-line vessels that are required to obtain a Federal permit and are fishing for groundfish in Alaskan waters adjacent to the BSAI and to the GOA, to conduct fishing operations in a specified manner, and to employ specified bird avoidance techniques to reduce seabird bycatch and incidental seabird mortality. This measure is necessary to mitigate hook-and-line fishery interactions with the short-tailed albatross, an endangered species protected under the Endangered Species Act (ESA), and other seabird species. This measure is intended to accomplish the objectives of the ESA and of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs) with respect to the management of the GOA groundfish fishery and the BSAI groundfish fishery and the marine environment.

EFFECTIVE DATE: May 29, 1997.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the final rule may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501-2252; telephone: 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907-586-7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the GOA and the BSAI in the Exclusive Economic Zone

are managed by NMFS under the Groundfish FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*; Magnuson-Stevens Act) and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

Recent takes of the endangered short-tailed albatross (*Diomedea albatrus*) (two in 1995 and one in 1996) in hook-and-line groundfish fisheries in the BSAI and the GOA highlight a seabird bycatch problem. A recently amended biological opinion issued in an ESA section 7 consultation on the GOA and BSAI groundfish fisheries includes an incidental take statement for the take of four birds in 2 years (USFWS, 1997). If the take during 1997 and 1998 exceeds four, NMFS immediately must reinitiate section 7 consultation and review with the U.S. Fish & Wildlife Service (USFWS) the need for possible modification of the reasonable and prudent measures established to minimize take of the short-tailed albatross.

At its December 1996 meeting, the Council voted unanimously to recommend that all hook-and-line vessels fishing for groundfish in the GOA and BSAI must use certain seabird bycatch avoidance devices intended to reduce the incidental mortality of the short-tailed albatross and other seabird species. The Council reaffirmed its recommendation at its February 1997 meeting. At its April 1997 meeting, the Council is scheduled to take action to expand seabird avoidance measures to the Pacific halibut hook-and-line fishery in Convention waters in and off Alaska. Depending on Council action, rulemaking to require seabird avoidance measures may be initiated separately for the halibut fishery.

Background information on seabird avoidance measures established for the GOA and BSAI hook-and-line fisheries for groundfish may be found in the preamble to the proposed rule published in the **Federal Register** on March 5, 1997 (62 FR 10016), and in the EA/RIR/FRFA prepared for this action. Public comment was invited through March 20, 1997. Thirty-three letters of comments were received and are summarized and responded to below in the "Response to Comments" section. Two letters of comment were received after the close of the public comment

period but did not address any new issues.

Change From the Proposed Rule

The proposed rule at § 679.24(e)(2)(ii) would have required the avoidance of offal discharge to the extent practicable when setting or hauling hook-and-line gear. If the discharge of waste was unavoidable, this activity would have been required to occur aft of the hauling station or on the opposite side of the vessel to that where gear was set or hauled. Comment on the proposed rule received from the Alaskan fishing industry strongly questioned the logic of avoiding the discharge of offal when setting gear, because waste discharge distracts birds from baited hooks and currently is employed by the fishing fleet as a bird avoidance technique. Furthermore, most vessels using hook-and-line gear typically set gear from the stern, but conduct hauling activity at a different site on either the starboard or port side of the vessel. The constraints in the proposed rule on where discharge may occur from a vessel does not take into account that setting frequently occurs off the stern of the vessel.

In response to this comment, NMFS has revised the proposed rule at § 679.24(e)(2)(ii) to require that any discharge of offal from a vessel must occur in a manner that distracts seabirds, to the extent practicable, from baited hooks while gear is being set or hauled. The discharge site on board a vessel must either be aft of the hauling station or on the opposite side of the vessel from the hauling station.

Seabird Bycatch Avoidance Gear and Methods

After considering the public comments received, NMFS is implementing management measures designed to reduce the incidental mortality of seabirds. These measures are intended to minimize seabird attraction to fishing vessels and prevent seabirds from attempting to seize baited hooks. These measures apply to (1) operators of vessels fishing for groundfish with hook-and-line gear in the GOA and the BSAI; and (2) operators of vessels that are required to obtain a Federal permit and are fishing for groundfish with hook-and-line gear in waters of the State of Alaska adjacent to the GOA and the BSAI. Exempted from the measures are vessels that retain more round-weight equivalent of halibut than round-weight equivalent of groundfish.

1. All applicable hook-and-line fishing operations must be conducted in the following manner:

a. Use hooks that when baited, sink as soon as they are put in the water. This could be accomplished by the use of weighted groundlines and/or thawed bait.

b. Any discharge of offal from a vessel must occur in a manner that distracts seabirds, to the extent practicable, from baited hooks while gear is being set or hauled. The discharge site on board a vessel must either be aft of the hauling station or on the opposite side of the vessel from the hauling station.

c. Make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the bird.

2. All applicable hook-and-line fishing operations are required to employ one or more of the following seabird avoidance measures:

a. Deploy gear only during the hours specified at § 679.24(e)(2)(iv)(D) of this final rule, using only the minimum vessel's lights necessary for safety;

b. Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks;

c. Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed; or

d. Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear.

Many different ways exist to prevent seabirds from taking bait, getting hooked, and being drowned. No solution is totally effective on its own, but combinations of solutions can almost completely prevent bait loss and the killing of birds (Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), 1996a). Regulations at § 679.24(e)(2) (i) and (ii) require the mandatory use of two seabird avoidance measures by all applicable vessels. Section 679.24(e)(2)(iii) requires that every reasonable effort be made to release alive seabirds brought on board. In addition, regulations at § 679.24(e)(2)(iv) require the use of one or more of four seabird avoidance measures. NMFS strongly encourages fishermen to use as many of these four measures as is practicable.

Evaluation of Effectiveness of Seabird Avoidance Measures

Seabird avoidance measures have not been scientifically tested in the Alaskan hook-and-line fisheries. Although seabird avoidance measures have been studied in Southern Ocean hook-and-line gear fisheries, differences between

those fisheries and Alaskan fisheries warrant that testing be performed in the Alaskan hook-and-line fisheries prior to the application of measures developed for Southern Ocean fisheries. Some of the differences between the fisheries are: Target species, gear and gear deployment, vessel size and vessel configuration, weather and sea conditions, and prevalent seabird species. Therefore, rather than adopting measures developed for the Southern Ocean fisheries, NMFS implements in this final rule Alaskan seabird avoidance requirements that are structured to allow some flexibility in application, yet assure that changes in fishing methods will effectively reduce seabird bycatch. Studies to assess the effectiveness of seabird bycatch avoidance gear and methods will include the collection of observer data, testing of gear on NMFS research vessels, and could include industry surveys. When assessments have occurred and information is available as to the effectiveness and practicability of specific seabird avoidance measures in the Alaskan hook-and-line fisheries, NMFS may revise the regulations to reflect such findings.

USFWS recently amended its 1995 Biological Opinion on the NMFS Interim Incidental Take Exemption Program and outlined reasonable and prudent measures that NMFS must implement with regard to the short-tailed albatross (USFWS, 1997). Two additional non-discretionary reasonable and prudent measures follow: (1) Vessels in the hook-and-line fishery of the GOA and BSAI areas shall be required, as soon as possible but no later than October 1, 1997, to use seabird bycatch avoidance devices and methods during fishing activities, and (2) a research program outlining specific plans for testing the effectiveness of seabird bycatch avoidance gear and methods shall be completed before January 1, 1998. NMFS intends to implement these recommendations.

Revised Suggestions for Streamer Line Construction

NMFS revises the guidelines on streamer line construction published in the preamble to the March 5, 1997, proposed rule based on information that indicates streamer line construction should account for variable vessel sizes and gear deployment speeds (New Zealand Department of Conservation, 1997). Large vessels equal to or greater than 125 ft (38.1 m) length overall (LOA) deploying gear at approximately 5 knots may require a thicker dimension of streamer line (e.g., 8 millimeters (mm)), compared to smaller vessels less

than 125 ft (38.1 m) LOA deploying gear at faster speeds of 7 to 8 knots that may require streamer lines constructed of material only 5 mm in diameter. The key characteristics of an effective streamer line are:

- All materials used to construct the streamer line and to hold the streamer line in place are strong enough to withstand all weather conditions in which hook-and-line fishing activity is likely to be undertaken;
- The streamer line is attached to a pole at the stern of the vessel and positioned such that it will be directly above the baited hooks as they are deployed;
- The height of the streamer line at the point of attachment is 4 to 8 m above sea level;
- The streamer line for all vessel sizes is constructed of material that is between 5 and 8 mm in diameter;
- Length of streamer line is a minimum of 150 to 175 m for all vessel sizes;
- Number of streamers attached to a streamer line is 6 to 10 pairs;
- Streamers made of a heavy, flexible material that will allow the streamers to move freely and flop unpredictably (for example, streamer cord inserted inside a red polyurethane tubing);
- Streamer pairs attached to the bird streamer line using a 3-way swivel or an adjustable snap;
- Streamers should just skim above the water's surface over the baited hooks.

These characteristics should be taken into consideration when employing a bird streamer line, as required in this rule. NMFS may propose these or similar technical specifications for streamer lines be included in regulations after testing has occurred and information is available on the effectiveness of specifically constructed streamer lines in the Alaskan hook-and-line fisheries.

Response to Comments

Comment 1

The proposed measures deviate substantially from and are weaker than the seabird avoidance regulations established by CCAMLR that NMFS implemented for the protection of seabirds in the sub-Antarctic fisheries on March 5, 1996 (61 FR 8483). The proposed Alaskan measures were initially suggested by the North Pacific Longline Association and subsequently recommended to NMFS by the Council. NMFS should require the Alaskan hook-and-line fisheries to comply with the more stringent CCAMLR measures or something similar and not simply rubber-stamp the industry proposal.

Response. NMFS disagrees with the recommendation that the CCAMLR regulations should be implemented for the Alaskan fisheries at this time. The proposed regulations for seabird avoidance measures in Alaskan fisheries were based on the CCAMLR regulations. Nonetheless, differences exist between the sub-Antarctic longline fisheries governed under the CCAMLR regulations and the Alaskan groundfish hook-and-line fisheries. These differences include: (1) Target species, (2) gear and gear deployment, (3) vessel size and vessel configuration, (4) weather and sea conditions, and (5) prevalent seabird species. Patagonia toothfish (*Dissostichus eleginoides*) and southern bluefin tuna (*Thunnus maccoyii*) are key target species in Southern Ocean fisheries. Patagonia toothfish is fished with the Spanish method of bottom longlining, the gear being more buoyant than that used in Alaska. The southern bluefin tuna is a pelagic species fished with pelagic or surface gear. Hooks are attached to branch lines which are attached to the mainline. The mainline is suspended between buoys, and the 35 m branch lines hang below the mainline. The majority of the vessels are large (30–50 m) and deploy gear either from the stern or the side of the vessel at speeds of 10–13 knots. The prevalent seabird species incidentally taken are albatrosses and petrels.

In contrast, the Alaskan hook-and-line groundfish fisheries target primarily Pacific cod, sablefish, and turbot, which all are demersal species fished with bottom gear consisting of groundlines to which 1 ft gangions are attached. In general, larger vessels (100–150 ft (30.5–45.7 m)) are used in the BSAI and smaller vessels (30–80 ft (9.1–24.4 m)) are used in the GOA. All vessels deploy gear from the stern at speeds of 5–7 knots. The prevalent seabird species incidentally taken in the BSAI are fulmars and gulls, while in the GOA fulmars and albatrosses predominate.

Bottom gear used in the Alaskan hook-and-line fisheries is designed to sink quickly to reach the bottom where fishing occurs. Typically, fishermen weight the groundline to achieve its sinking quickly. In contrast, surface or pelagic gear used in Southern Ocean fisheries is designed to fish mid-water and may be more buoyant and not sink as quickly as bottom gear. The predominant number of relatively small vessels in the Alaskan hook-and-line fisheries (approximately 1200 vessels, 30–80 ft (9.1–24.4 m)) raises safety concerns with night-setting of gear as required by CCAMLR regulations (approximately 15–30 vessels, 100–150

ft (30.5–45.7 m)). The technical standards for streamer lines in CCAMLR regulations is not appropriate for the gear deployment speeds and the majority of the vessels in the Alaskan fisheries. No studies have been conducted on the effectiveness of CCAMLR seabird avoidance measures on Alaskan bird species. It is not known if the effectiveness of these measures is taxonomically dependent.

The CCAMLR regulations reflect the development of seabird avoidance measures designed for specific fisheries and operating conditions. Current information suggests that seabird avoidance techniques appropriate for one fishery may not be appropriate for another (Duckworth, 1995; CCAMLR, 1996a). CCAMLR has refined its conservation measures each year since 1990, based upon experience in the Southern Ocean fisheries, and is attempting to develop the right set of measures based upon the conditions in the CCAMLR fisheries. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. Nigel Brothers of Australia, primary author of "Catching Fish Not Birds," and the CCAMLR publication "Fish the Sea Not the Sky" state very clearly that the most applicable solutions for preventing seabirds from taking baits depend on the vessel, its size, the crew, weather and sea conditions, and where and when fishing occurs. These factors must be considered when implementing regulations for a particular fishery. While certain of the CCAMLR regulations are appropriate for the Alaskan fisheries and are incorporated into this final rule, others will be implemented only after further investigation demonstrates their practicability in the Alaskan fisheries.

USFWS believes that implementation of the proposed measures will contribute to the reduction of take of the endangered short-tailed albatross, and will lead to the development of more specific requirements for the use of seabird avoidance methods in the future (USFWS, 1997). Implementation of specific requirements, such as those adopted by CCAMLR, would not be prudent at this time, because no information is available on the effectiveness of these measures with the gear and conditions of Alaska's hook-and-line fisheries. Studies on the effectiveness of seabird bycatch avoidance devices in other fisheries are very limited, and conclusions from those studies are based on small sample sizes. USFWS believes that it is essential to gather data on the effectiveness of seabird avoidance

measures as soon as possible before requiring the mandatory use of potentially costly measures, such as those adopted by CCAMLR in the Alaskan fisheries. USFWS believes that the regulations recommended by the Council and proposed by NMFS should significantly reduce seabird bycatch. NMFS concurs with these views held by USFWS.

Comment 2

CCAMLR regulations require the use of thawed bait. NMFS should require the same in Alaskan waters. NMFS should also require that the hooks or groundlines be weighted such that they sink quickly.

Response. One way the proposed measures would reduce the incidental mortality of short-tailed albatrosses and other seabird species is by preventing seabirds from attempting to seize baited hooks. Two methods for causing baited hooks to sink as soon as they are put in the water is to use thawed bait or weighted groundlines. Although the preamble of the proposed rule noted these methods, NMFS believes that specifying the methods in regulation is not necessary. Rather, the regulation requires that the hooks sink as soon as they are put in the water, regardless which method is used. The industry should have the flexibility to select a method that is most appropriate to the vessel and fishing conditions.

The current scientific literature contains very limited amounts of information on the comparative performance of vessels that employ different bait thawing practices (Klaier and Polacheck, 1995). The authors found that fewer seabirds were caught by hook-and-line vessels when semi-thawed bait was used than when the bait was well-thawed. Due to small sample sizes, it would be difficult to determine whether the level of bait thawing had any substantial effects. Typically, the larger BSAI hook-and-line vessels employ automatic baiting machines that require semi-thawed bait. Fully thawed bait cannot be used effectively in the mechanized baiting and gear deployment used by most of the larger vessels.

A recent New Zealand study (Duckworth, 1995) found that lower seabird bycatch rates were achieved when thawed baits were used, although these rates were not statistically different from rates achieved through the use of frozen baits. This study called for further studies to measure the effectiveness of (1) types of bait that sink faster, and (2) the use of weighted hooks on groundlines.

The proposed rule would establish a performance standard for the Alaskan groundfish hook-and-line fisheries that requires baited hooks to sink as soon as they are put in the water. Given that the specific CCAMLR provisions have not been evaluated in Alaskan hook-and-line fisheries (see response to Comment 1) and given the limited amount of information available on their effectiveness, NMFS believes that fishermen must have some flexibility in method and means in meeting this performance standard rather than specifying in regulation how the standard must be met.

Comment 3

The CCAMLR requirement to use thawed bait should not be imposed for the Alaskan hook-and-line fleet, which typically uses partially thawed bait in automatic baiting operations. Fisheries regulated by CCAMLR use 15-ft (4.6 m) gangions that allow baited hooks to remain on the surface until the mainline descends 15 ft (4.6 m) and sinks the hooks. In contrast, the majority of Alaskan hook-and-line vessels use shorter gangions, approximately 1-ft (0.3 m) long. As long as fishermen adequately weight their groundlines, which is the only way to make baited hooks sink as soon as they are put in the waters, use of thawed bait has a negligible effect on the sinking rate of weighted hook-and-line gear in the Alaskan hook-and-line fishery.

Response. NMFS agrees. If fishermen use weighted groundlines that cause the hooks to sink as soon as they are put in the water, they would be in compliance with the rule. Nonetheless, the use of thawed bait remains an option to enhance the sinking rate of hook-and-line gear for the reasons provided in the response to Comment 2.

Comment 4

NMFS should require the use of a streamer line and the setting of hook-and-line gear at night. The proposed measures do not require either, although a vessel must choose one avoidance technique that may include night-setting or streamer lines. The publication "Catching Fish Not Birds" emphasizes that fishing vessels must employ several avoidance techniques to be effective, not a "pick one" strategy as proposed in the Alaskan regulations.

Response. As explained in the response to Comment 1, seabird avoidance techniques appropriate for one fishery may not be appropriate for another. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. The rule

would require that more than one avoidance measure be used. Regulations at § 679.24(e)(2)(i) and (ii) require seabird avoidance measures of all applicable hook-and-line vessels fishing for groundfish. Section 679.24(e)(2)(iii) requires that every reasonable effort be made to release alive seabirds brought on board. In addition, applicable hook-and-line vessels must employ at least one of four seabird avoidance measures set forth at § 679.24(e)(2)(iv). NMFS does not limit a vessel to using only one of these measures.

National Standard 10 of the Magnuson-Stevens Act requires that measures shall, to the extent practicable, promote the safety of human life at sea. Night-setting may pose safety concerns for smaller vessels. Requiring mandatory night-setting may be neither practicable nor an effective seabird deterrent in the Alaskan fishery given (1) that night-setting is not an available avoidance measure during June and July in northern latitudes, (2) the importance of squid in the diet of the short-tailed albatross suggests that short-tailed albatrosses may have nocturnal feeding habits (Sherburne, 1993), and (3) safety concerns related to night-setting by smaller vessels.

New Zealand is one of the leading nations in efforts to reduce seabird bycatch in hook-and-line fisheries. In 1992, licenses issued to Japanese hook-and-line vessels to fish in New Zealand waters required either that streamer lines must be used or gear must be deployed at night (Murray *et al.*, 1993). Concerns were raised that recommending night-setting be mandatory in certain areas would be unwise, given the nocturnal feeding habits of certain seabird species. Beginning in 1993, the use of streamer lines became mandatory for foreign and domestic hook-and-line fishing and night-setting was removed as a license requirement (Duckworth, 1995). Australia, another leading nation in seabird bycatch efforts, requires the use of streamer lines but does not require night-setting. All other seabird avoidance methods are voluntary.

Seabird avoidance requirements must fit the particular needs of the situation. Until further information is available on the effectiveness of seabird avoidance devices in the Alaskan hook-and-line fisheries, NMFS believes that providing the industry with some flexibility in choosing among possible options to reduce seabird bycatch is appropriate.

Comment 5

Vessels should be required to employ all three of the following measures at all times: Night-setting, streamers, and

deployment of hooks underwater using lining tubes.

Response. NMFS disagrees. As explained in the responses to Comments 1 and 4, seabird avoidance techniques appropriate for one fishery may not be appropriate for another. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. In addition, NMFS does not limit the number of seabird avoidance measures that may be employed. At this time, the preferred option is to implement seabird avoidance measures for the Alaskan hook-and-line fisheries that (1) provide the industry some flexibility in choosing seabird avoidance techniques that are appropriate for different vessel size categories and fishing operations, and (2) allow for the development and assessment of the effectiveness of these measures to determine whether they should be made mandatory.

Comment 6

The option for fishermen to use night-setting as a seabird avoidance technique should be dropped at this time, pending clarification of the feeding habits of short-tailed albatross. Preliminary information indicates these birds may have nocturnal feeding habits.

Response. NMFS disagrees. Although questions exist whether or not short-tailed albatross are nocturnal feeders, many other bird species are not. Available literature suggests that night-setting can be an effective technique to avoid catching birds in hook-and-line fisheries and NMFS does not have information to indicate otherwise. Therefore, NMFS will retain night setting as an optional seabird avoidance measure.

Comment 7

NMFS should not impose mandatory night and day restrictions on setting of hook-and-line gear. These restrictions should be retained as optional measures to reduce seabird mortality in the hook-and-line fisheries. The number of daylight hours widely vary in northern latitudes. Restrictions to limit fishing operations to hours of darkness would severely limit fishing operations, especially during the months of June or July when very few, if any hours of darkness exist. Furthermore, a prohibition on fishing operations during daylight would limit the ability of vessel operators to fish in a manner that avoids bycatch and mortality of other species of concern such as Pacific halibut.

Response. NMFS agrees. As explained in the responses to Comments 1, 4, and 5, seabird avoidance techniques appropriate for one fishery may not be

appropriate for another. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. NMFS does not limit the number of seabird avoidance measures that may be employed. At this time, the preferred option is to implement seabird avoidance measures for the Alaskan hook-and-line fisheries that (1) provide the industry some flexibility in choosing appropriate seabird avoidance techniques, and (2) allow for the development and assessment of the effectiveness of these measures to determine whether they should be made mandatory. At this time, night-setting of hook-and-line gear will remain an optional measure to reduce seabird mortality.

Comment 8

The technical specifications of the streamer line should be included in the proposed rule, as they are under the CCAMLR regulations. Furthermore, streamer lines should be required for all boats equal to or greater than 100 ft (30.5 m) LOA.

Response. NMFS disagrees. As explained in the responses to comments 1, 4, and 5, seabird avoidance techniques appropriate for one fishery may not be appropriate for another. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. This approach will provide the industry some flexibility in choosing appropriate seabird avoidance techniques and allow for the development and assessment of the effectiveness of these measures to determine whether they should be made mandatory. NMFS has revised guidelines for streamer line construction based on preliminary information from a commercial supplier of this equipment. The revised guidelines in the preamble of this final rule reflect variations in streamer line specifications that may be necessary according to vessel length and gear setting speed. Sturdier construction materials also may be necessary given the harsh Alaskan weather and sea conditions. In 1993, New Zealand fisheries required CCAMLR streamer line specifications as a minimum standard. It has since been determined that in some instances these technical specifications are not suitable for smaller vessels. When testing has occurred and information is available as to the effectiveness of various constructions of streamer lines in the Alaskan hook-and-line fisheries, NMFS may revise the regulations to include technical specifications for construction of streamer lines.

If streamer lines are proven effective in reducing seabird mortality in the Alaskan hook-and-line fisheries, NMFS, in consultation with the Council, can amend regulations to require mandatory use of streamer lines on larger hook-and-line vessels.

Comment 9

Simply towing a stick, board, or buoy behind a hook-and-line vessel will not significantly reduce seabird bycatch. Furthermore, these devices should be allowed only on those vessels with an observer aboard until such devices have been demonstrated to be as effective as streamer lines. Preferably, this option should be deleted.

Response. NMFS believes that preliminary testimony from Alaskan fishermen on the effectiveness of towing a buoy, board, stick, or other device in reducing seabird bycatch warrants the inclusion of this option in regulations. Any device that moves unpredictably across the water near the gear should help prevent birds from taking baited hooks. The towing of a buoy, board, stick, or other device may not be totally effective on its own, but combinations of solutions can significantly reduce seabird bycatch.

Comment 10

The proposed rule at § 679.24(e)(2)(iv)(B) should be revised to include an allowance for towing of a broom and minimum standards for the broom or stick should be specified. Furthermore, the regulatory phrase "or other device" should be deleted entirely from this regulation. It is the towing of a buoy or a broom that has been used by local fishermen as a bird avoidance technique, not the towing of other devices. If fishermen develop a new device-towing technique that proves to be more effective than a buoy bag or a broom, that should be considered in regulations at a later time.

Response. NMFS' intent in using the term "stick" instead of "broom" as a towing device is that the former term may be more broadly applied and would include a broom. NMFS has maintained the option for fishermen to use devices other than buoys, boards, or sticks to tow behind a vessel as a bird deterrent with the intent of providing fishermen some flexibility to explore bird avoidance techniques outside those strictly defined in the final rule. Future rulemaking can include specific standards for towed devices once information on which to base these standards becomes available.

Comment 11

It is ironic that NOAA/NMFS would require specific seabird avoidance measures for U.S. vessels longlining south of 30° south lat. and pay for the reprinting of the publication "Catch Fish Not Birds" that endorses these same regulations, but fail to require these measures in Alaskan waters to prevent the deaths of short-tailed albatross and other seabirds. The ability of the United States to influence long term international conservation efforts is dependent on the United States leading by example through adoption CCAMLR regulations for the Alaskan hook-and-line fisheries.

Response. As explained in the response to Comment 1, seabird avoidance techniques appropriate for one fishery may not be appropriate for another. Management agencies must assess the needs in a particular fishery and employ measures that are practicable for that fishery. NMFS recognizes and endorses international efforts to address seabird bycatch problems, and in this final rule adopts seabird avoidance measures that are appropriate for the Alaskan hook-and-line fisheries.

Comment 12

The proposed regulations are necessary and should be implemented without delay.

Response. NMFS agrees.

Comment 13

NMFS should include new bait casting methods as optional seabird avoidance measures. During line setting, two ways exist to throw the bait out of the turbulence of the vessel's wake and propeller in order to increase its sink rate: Fishermen can use an automatic bait throwing machine or they can educate their crew to throw the baited lines at least 10 m clear of the ship. Automatic bait throwing machines can significantly reduce seabird bycatch if used in conjunction with streamer lines.

Response. NMFS acknowledges that promising seabird avoidance techniques for the Alaskan fisheries likely exist other than those listed in the proposed rule. Alternative bait casting methods can be employed by fishermen and considered in future rulemaking if warranted.

Comment 14

The deployment of streamer lines and/or towing buoys during rough weather is probably of questionable value and would present another complication during difficult and possibly dangerous operating conditions. During times when winds

are in excess of 30 knots and during times of darkness, seabirds are not flying. Bird avoidance measures are not necessary during these times and could pose safety hazards for vessel operators and crew.

Response. NMFS disagrees. Current information from Australia and New Zealand indicates that, for certain seabird species (e.g., species in the order Procellariiformes), the number of seabirds present actually increases as the wind increases to about 50 knots and then may decrease in winds greater than 60 knots.

Comment 15

Dumping of fish waste when setting baited hooks actually acts as a lure to draw the birds away from the stern and the hooks. NMFS should eliminate reference in the proposed rule to the avoidance of dumping of offal while setting gear because this activity is a recognized measure used by the Alaskan fleet to reduce seabird mortality. Furthermore, the proposed rule should be revised to use only the vessel hauling location as the site of reference for the discharge of offal, given that most vessel operators set their gear from the stern.

Response. NMFS agrees and has changed the proposed rule to require that any discharge of offal from a vessel must occur in a manner that distracts seabirds, to the extent practicable, from baited hooks while gear is being set or hauled. The discharge site on board a vessel must either be aft of the hauling station or on the opposite side of the vessel from the hauling station.

Numerous comments were received from the Alaskan hook-and-line industry expressing the apparent effectiveness of waste discharge in distracting seabirds from baited hooks. Nonetheless, the CCAMLR Scientific Committee recommends that offal discharge not be used in this way, because it can attract more seabirds to the vicinity of the vessel (CCAMLR, 1996b). In view of this position, therefore, NMFS will assess the long term effectiveness of this measure and may propose modification or rescission if circumstances warrant.

Comment 16

The proposed measure to encourage alternative offal disposal practices is supported. Avoiding the disposal of fish and bait waste during setting and hauling lessens the incentive for birds to follow fishing vessels in search of food. Fishermen can dispose of waste during other times of the fishing cycle or dump at sea in frozen blocks or in a homogenized state to reduce seabird interactions.

Response. The final rule will allow the discharge of offal during setting of gear, based on the testimony and comment from numerous Alaskan fishermen that properly discharged offal actually distracts birds from baited hooks.

Comment 17

Regulations for seabird avoidance measures in the Eastern GOA are not necessary. The small-boat fleet that typically fishes in the eastern GOA does not catch many birds and never has taken the endangered short-tail albatross. This fleet uses a leaded or weighted groundline and the gear and baited hooks sink very fast so that seabirds do not have much of an opportunity to get hooked.

Response. NMFS disagrees. Due to recent takes of the endangered short-tailed albatross and a heightened awareness of a seabird bycatch problem, NMFS believes that reductions in seabird bycatch are necessary and appropriate regardless of where a vessel using hook-and-line gear is fishing.

Comment 18

Snap-on gear used by many vessels in the Alaskan hook-and-line fisheries is weighted by galvanized or stainless steel snaps that attach the hooks to the groundline and sink quickly, hence avoiding a seabird problem.

Response. If gear methods cause the hooks, when baited, to sink as soon as they are put in the water, then the gear method would be in compliance with the rule at § 679.24(e)(2)(i). Nonetheless, small vessels using hook-and-line gear still must comply with other seabird avoidance provisions of the rule § 679.24(e)(2)(iv) to minimize, to the extent practicable, interactions between fishing operations and seabirds.

Comment 19

Concern has been raised about the enforceability of the proposed regulations. The bad publicity associated with seabird bycatch in general and the dire and well-publicized consequences of short-tailed albatross mortality in particular are sufficient to ensure compliance. Fishermen using hook-and-line gear recognize the necessity of the seabird avoidance techniques and will comply with the regulations.

Response. NMFS believes that the regulations can be enforced and will reduce seabird bycatch in these fisheries.

Comment 20

Fishermen must be provided some flexibility to assess different situations

and use judgment on how best to avoid catching birds.

Response. NMFS agrees. The final rule requires that baited hooks sink as soon as they are put in the water and that the discharge of offal be conducted in a manner that distracts seabirds away from baited hooks. The rule largely relies on the judgment of fishermen to discern how best to meet these standards. Options also are provided for additional seabird mitigation measures that are intended to provide a sufficient number of choices to fishermen to meet different fishing conditions and operations.

Comment 21

NMFS must commit to a reassessment of proposed measures based on an appropriately designed and statistically valid research plan. The final rule should include a provision that seabird avoidance measures be evaluated and revised based on the results of that research.

Response. The terms and conditions of the recently amended biological opinion issued in the ESA section 7 consultation with the USFWS requires NMFS to (1) implement as soon as possible but no later than October 1, 1997, regulations applicable to vessels in the hook-and-line fisheries of the GOA and BSAI requiring the use of seabird bycatch avoidance devices and methods during fishing activities, and (2) complete before January 1, 1998, a research plan outlining specific plans for testing of seabird bycatch avoidance gear and methods.

In response to these nondiscretionary requirements, NMFS is implementing the subject final rule and is pursuing the development of a research plan to assess the effectiveness of seabird avoidance techniques.

Comment 22

NMFS is encouraged to follow the advice of the USFWS to reinstate consultation if two short-tailed albatross are taken during the 1997 fishery so that any new information relative to the consultation can be examined and to avoid approaching the incidental take level of 4 birds over a 2-year period and potential disruption of the fishery.

Response. NMFS agrees and will reinstate consultation if two birds are taken during the 1997 fishery.

Comment 23

Rulemaking to mitigate seabird mortality in the hook-and-line fisheries should include more detailed information on the appropriate procedure necessary to remove a hook from a live bird's throat. NMFS mailed

this information to nearly 2,000 hook-and-line groundfish fishermen last year. Although the majority of birds are caught during setting of gear, a small number are hooked during hauling. For this reason, acting quickly to bring on board seabirds that are captured alive and safely removing hooks before releasing the birds are important practices.

Response. NMFS agrees that it is important to distribute to the fishing fleet information on the proper release of birds that are captured on hooks during haul back activities. NMFS will continue to support effective distribution to the fleet of information that addresses measures to reduce seabird mortality associated with fishing operations.

Comment 24

If the proposed seabird avoidance measures do not eliminate seabird interactions, NMFS should consider time/area closures to avoid bycatch of birds.

Response. NMFS, in consultation with the Council, likely would consider a change in fishing seasons or other measures to reduce seabird mortality, if necessary.

Comment 25

The proposed rule should be revised to require all hook-and-line vessels to carry at least one observer to monitor compliance and effectiveness of seabird bycatch mitigation measures.

Response. The Alaskan groundfish fishery already is one of the most intensively observed fisheries in the world. In 1996, over 30,000 observer days occurred. The industry pays for observer services and annual costs to the industry range between \$6 and \$7 million. All vessels equal to and over 125 ft (38.1 m) LOA must carry an observer aboard at all times. Vessels ranging between 60 ft (18.3 m) and 125 ft (38.1 m) LOA that fish for groundfish must have an observer aboard 30 percent of the vessels' fishing days during each calendar quarter. Most of the vessels using hook-and-line gear in the BSAI are larger vessels and carry an observer at all times. In the GOA, however, vessels typically are smaller and have less observer coverage. To require these vessels to carry an observer at all times would be prohibitively costly. NMFS believes that existing observer coverage, together with an appropriate research plan to assess the effectiveness of seabird mitigation measures, will provide sufficient information to assess the overall effectiveness of the proposed seabird mitigation measures.

Comment 26

NMFS should encourage fishermen to test underwater gear setting systems, which are very effective in avoiding seabird mortality. CCAMLR will be reviewing the feasibility of using these systems based on trials during this season.

Response. NMFS agrees. At least one owner of a vessel participating in the Alaskan hook-and-line fishery has notified NMFS that he is installing a lining tube on board his vessel and that he will keep NMFS apprised of the effectiveness of that system on board his vessel for possible consideration in the future as a regulatory requirement.

References

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- Sherburne, J. 1993. Status Report on the Short-tailed Albatross, *Diomedea albatrus*. Alaska Natural Heritage Program, Environment and Natural Resources Institute, University of Alaska Anchorage. Anchorage. 58pp.
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- USFWS. 1997. Correspondence to American Bird Conservancy, March 3.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a FRFA which describes the impact this final rule would have on small entities. Based on the analysis, it was determined that this rule could have a significant economic impact on a substantial number of small entities. In 1995, 1,217 and 100 hook-and-line catcher vessels harvested groundfish from the GOA and BSAI, respectively. Catcher/processor vessels numbered 35 and 46 in those respective areas. Very significant impacts on small entities could occur if the groundfish fisheries are altered or perhaps closed due to the annual take of the endangered short-tailed albatross being exceeded. The likelihood of this happening is great under the status quo alternative as indicated by recent takes (e.g., two in 1995).

This rule's combined mandatory and alternative provisions could result in a significant economic impact on a substantial number of small entities depending on which measures are used. In some cases, procedural or operational changes may be necessary in fishing operations. However, this rule does provide a range of alternatives that will enable vessel owners to minimize the economic impacts they experience. The cost of buoys and bird streamer lines as seabird bycatch avoidance devices range from \$50–\$250 per vessel. A lining tube is a technology used in fisheries of other Nations to deploy baited hooks underwater to avoid birds and is offered as a possible option. NMFS anticipates that the operators of smaller vessels (less than 60 ft (18.3 m)) would choose an avoidance measure other than a lining tube, which could cost as much as \$35,000 per vessel. There are 154 and 53 hook-and-line catcher vessels and 31 and 45 catcher/processor vessels equal to or greater than 60 ft (18.3 m) in the GOA and BSAI, respectively.

If the annual take of short-tailed albatross in the hook-and-line fisheries operating under these proposed measures would exceed the take limit established under the ESA section 7 consultation, the actual economic impacts resulting from the modification of the reasonable and prudent measures established to minimize take of the short-tailed albatross would depend upon the development and

implementation of revised measures. Such revised measures could range from additional or modified seabird avoidance measures, to fishery closures. The economic impact on fishing operations would depend upon the length of time of the closed period and the additional cost of revised measures. The likelihood of exceeding the take limit is less under the final rule than under the status quo alternative. NMFS has taken steps in the final rule to minimize economic impacts on small entities consistent with the objectives of the Magnuson-Stevens Act. These steps include: (1) Allowing a choice of measures to be used, and (2) including options that may already be in use. The required measures were determined to be the least burdensome on small entities. The no-action alternative was rejected as more burdensome on small entities because if the incidental take were exceeded and closures were imposed, the likely effect would be a significant loss of fishing opportunity for all small entities involved in the groundfish hook-and-line fishery. The economic impacts of this final rule on small entities could result in a reduction in annual gross revenues by more than 5 percent and could, therefore, potentially have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: April 23, 1997.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. In § 679.24, paragraph (e) is added to read as follows:

§ 679.24 Gear limitations.

* * * * *

(e) *Seabird avoidance gear and methods for hook-and-line vessels fishing for groundfish—(1)*

Applicability. (i) Except as provided in paragraph (e)(1)(ii) of this section, the

operator of a vessel that is required to obtain a Federal fisheries permit under § 679.4(b)(1) must comply with the seabird avoidance measures in paragraph (e)(2) of this section while fishing for groundfish with hook-and-line gear in the BSAI, in the GOA, or in waters of the State of Alaska that are shoreward of the BSAI and the GOA.

(ii) The operator of a vessel is not required to comply with the seabird avoidance measures in paragraph (e)(2) of this section whenever the round-weight equivalent of halibut retained on board exceeds the round-weight equivalent of groundfish retained on board.

(2) The operator of a vessel described in paragraph (e)(1) of this section must

conduct fishing operations in the following manner:

(i) Use hooks that when baited, sink as soon as they are put in the water.

(ii) Any discharge of offal from a vessel must occur in a manner that distracts seabirds, to the extent practicable, from baited hooks while gear is being set or hauled. The discharge site on board a vessel must either be aft of the hauling station or on the opposite side of the vessel from the hauling station.

(iii) Make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the birds.

(iv) Employ one or more of the following seabird avoidance measures:

(A) Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks;

(B) Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed;

(C) Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear; or

(D) Deploy gear only during the hours specified below, using only the minimum vessel's lights necessary for safety.

HOURS THAT HOOK-AND-LINE GEAR CAN BE DEPLOYED FOR SPECIFIED LONGITUDES ACCORDING TO PARAGRAPH (E)(2)(IV) OF THIS SECTION

[Hours are Alaska local time]

Calendar month	Longitude		
	Shoreward to 150°W	151 to 165°W	166 to 180°W
January	1800–0700	1900–0800	2000–0900
February	1900–0600	2000–0700	2100–0800
March	2000–0500	2100–0600	2200–0700
April	2100–0400	2200–0500	2300–0600
May	2200–0300	2300–0400	2400–0500
June	⁽¹⁾	⁽¹⁾	⁽¹⁾
July	⁽²⁾	⁽²⁾	⁽²⁾
August	2200–0400	2300–0500	2400–0600
September	2000–0500	2100–0600	2200–0700
October	1900–0600	2000–0700	2100–0800
November	1800–0700	1900–0800	2000–0900
December	1700–0700	1800–0800	1900–0900

¹ This measure cannot be exercised during June.

² This measure cannot be exercised during July.

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