

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

Dated: March 2, 1998.

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[FR Doc. 98-5833 Filed 3-3-98; 1:40 pm]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 971201282-8049-02; I.D. 102897B]

RIN 0648-AK38

#### Halibut Fisheries in U.S. Convention Waters Off Alaska; Fisheries of the Exclusive Economic Zone Off Alaska; Management Measures to Reduce Seabird Bycatch in the Hook-and-Line Halibut and 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 vessels fishing for Pacific halibut in U.S. Convention waters off Alaska to conduct fishing operations in a specified manner and to employ specified measures intended to reduce seabird bycatch and incidental seabird mortality. This rule also amends the regulations requiring seabird bycatch avoidance measures in the hook-and-line groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA) to exempt small vessels from some of the requirements and to clarify one of the measures. The Pacific halibut fishery measures are intended to mitigate interactions with the short-tailed albatross (*Diomedea albatrus*), an endangered species protected under the Endangered Species Act (ESA), and with other seabird species in fisheries in and off Alaska.

**DATES:** Effective April 6, 1998.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this final rule may be obtained from NMFS at P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Copies of the EA/RIR/FRFA prepared for the action requiring seabird avoidance measures in the BSAI and GOA groundfish hook-and-line

fisheries are also available from the above address.

**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 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 (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. The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773 *et seq.*, authorizes the Council to develop and NMFS to implement halibut fishery regulations that are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC). Furthermore, the Magnuson-Stevens Act and the Halibut Act authorize the Council and NMFS to make regulatory changes that are consistent with the FMPs and that are necessary to conserve and manage the fixed gear Pacific halibut fisheries.

#### Background

The issue of seabird bycatch and incidental mortality in commercial fishing operations has been heightened in recent years. Further information on this issue was provided in the preambles to the proposed and final rules implementing seabird avoidance measures in the BSAI and GOA hook-and-line groundfish fisheries (62 FR 10016, March 5, 1997; 62 FR 23176, April 29, 1997), in the EA/RIR/FRFA prepared for that action, in the preamble to the proposed rule for this action (62 FR 65635, December 15, 1997), and in the EA/RIR/FRFA prepared for this action. In addition, the United States is working with the United Nations' Food and Agriculture Organization to conduct a technical consultation on implementing mitigation measures to reduce seabird bycatch in longline fisheries around the world (62 FR 42766, August 8, 1997). NMFS and the U.S. Fish & Wildlife Service (USFWS) are the U.S. co-leaders in this effort.

Recent takes of the endangered short-tailed albatross (two in 1995 and one in 1996) in hook-and-line groundfish fisheries in the BSAI and the GOA

underscore a seabird bycatch problem. 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 be required to use certain seabird bycatch avoidance measures intended to reduce the incidental mortality of the short-tailed albatross and other seabird species. Furthermore, the Council recommended that these or similar measures be implemented in the Pacific halibut fishery in U.S. Convention waters off Alaska. Addressing a potential seabird bycatch problem in the Pacific halibut fishery is warranted, given the similarities between the Pacific halibut fishery and the hook-and-line groundfish fisheries. At its annual meeting in January 1997, the IPHC reviewed and concurred with the development of seabird avoidance measures for the Pacific halibut fishery in U.S. Convention waters off Alaska.

At its June 1997 meeting, the Council recommended extending the seabird avoidance requirements in the Alaska hook-and-line groundfish fisheries to the Pacific halibut fishery in U.S. Convention waters off Alaska. The Council also recommended that vessels less than 26 ft (7.9 m) length overall (LOA) in the Pacific halibut fishery and in the GOA and BSAI hook-and-line groundfish fisheries be exempt from some of the specified seabird avoidance measures.

NMFS published a proposed rule in the **Federal Register** on December 15, 1997 (62 FR 65635) that proposed seabird avoidance measures for the Pacific halibut fishery in U.S. Convention waters off Alaska. Public comment was invited through January 14, 1998. Two letters containing nine comments were received by the end of the comment period. One letter of six comments was received after the close of the public comment period and addressed two new issues that are addressed under the Response to Comments section.

Pursuant to section 7 of the ESA, NMFS initiated a consultation on the Pacific halibut fishery and proposed regulatory measures to reduce seabird mortality in this fishery with the USFWS in April 1997. In October 1997, NMFS revised the Pacific halibut fishery consultation and initiated an informal consultation on the proposed regulatory measure to exempt vessels less than 26 ft (7.9 m) LOA using hook-and-line gear in the groundfish fisheries in the BSAI or GOA from some of the seabird avoidance measures. In January 1998, USFWS concluded the informal consultation and concurred with

NMFS's assessment that the proposed regulatory measures to reduce seabird mortality in the Pacific halibut fishery and the regulatory exemption for vessels less than 26 ft (7.9 m) LOA using hook-and-line gear in the groundfish fisheries in the BSAI or GOA or in the Pacific halibut fishery are not likely to adversely affect the short-tailed albatross. The consultation on the Pacific halibut fishery itself will be concluded prior to the commencement of the fishery in March 1998.

#### **Required Seabird Bycatch Avoidance Gear and Methods in the Pacific Halibut Fishery**

After considering the public comments received, NMFS is implementing the following management measures designed to reduce the incidental mortality of seabirds. These measures apply to operators of vessels fishing with hook-and-line gear for Pacific halibut in U.S. Convention waters off Alaska. These measures are unchanged from those proposed in the **Federal Register** (62 FR 65635, December 15, 1997).

1. All such operators must conduct fishing operations in the following manner:

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

b. If offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable. 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; and

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

2. All such operators of vessels greater than or equal to 26 ft (7.9 m) LOA must also employ one or more of the following seabird avoidance measures:

a. Set gear between hours of nautical twilight 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.

This final rule also removes a regulation at 50 CFR 679.24(e)(1)(ii) that effectively exempted halibut fishermen from having to use seabird avoidance gear and methods. When the seabird avoidance measures were promulgated for the Alaska groundfish fisheries, halibut fishermen were exempt until the Council and the IPHC could address this issue in the Pacific halibut fishery. This exemption is no longer appropriate.

#### **Revision of Seabird Avoidance Gear and Methods in the Alaska Groundfish Hook-and-Line Fisheries**

This final rule revises the seabird avoidance gear and methods required to be employed by operators of vessels using hook-and-line gear in the groundfish fisheries in the BSAI and GOA to exempt operators of vessels less than 26 ft (7.9 m) LOA from the requirement to employ one or more of the measures set forth under 2., above. They are still required to comply with the measures set forth under 1., above.

This final rule also revises the seabird bycatch avoidance regulations applicable to the BSAI and GOA groundfish fishery to clarify that NMFS intent is that, if offal is discharged while gear is being hauled, it must be discharged in a manner that distracts seabirds, to the extent practicable, from baited hooks. Some persons had misinterpreted the existing regulation as requiring offal to be discharged during the setting or hauling of gear. This was not NMFS' intent.

These two revisions to the seabird avoidance regulations applicable to the BSAI and GOA groundfish fisheries make these regulations the same as the regulations applicable to the Pacific halibut fisheries in U.S. Convention waters.

#### **Suggestions for Streamer Line Construction**

In response to public comment, NMFS reiterates suggestions for streamer line construction. Guidelines were published initially in the **Federal Register** on March 5, 1997 (62 FR 10016) and subsequently revised in the preamble to the final rule requiring seabird avoidance measures in the GOA and BSAI groundfish hook-and-line fisheries (62 FR 23176, April 29, 1997).

NMFS revised the guidelines on streamer line construction based on information that indicated 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) LOA deploying gear at approximately 5 knots may require a thicker dimension of

streamer line (for example, 8 millimeters (mm)), than smaller vessels of less than 125 ft (38.1 m) LOA that deploy gear at faster speeds of 7 to 8 knots and that may require streamer lines constructed of material only 5 mm in diameter. The following are the key characteristics of an effective streamer line:

1. 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;

2. 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;

3. The height of the streamer line at the point of attachment is 4 to 8 m above sea level;

4. The streamer line for all vessel sizes is constructed of material that is between 5 and 8 mm in diameter;

5. The length of streamer line is a minimum of 150 to 175 m for all vessel sizes;

6. The number of streamers attached to a streamer line is 6 to 10 pairs;

7. The streamers are made of a heavy, flexible material to allow them to move freely and flop unpredictably (for example, streamer cord inserted inside a red polyurethane tubing);

8. The streamer pairs are attached to the bird streamer line using a 3-way swivel or an adjustable snap;

9. The 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. NMFS may propose that 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.

#### **Evaluation of Effectiveness of Seabird Avoidance Measures**

For background information on this topic, see the preamble to the final rule requiring seabird avoidance measures in the GOA and BSAI groundfish hook-and-line fisheries (62 FR 23176, April 29, 1997). NMFS continues to endorse the testing of seabird avoidance measures used in the Alaska hook-and-line fisheries.

In coordination with the USFWS, NMFS is developing a research plan to test the effectiveness of the required measures, as required by USFWS's Biological Opinion issued on February

19, 1997. Substantial progress has been made on the development of such a test plan in coordination with the USFWS. The test plan will test the effectiveness of seabird avoidance measures in two phases: (1) experimental tests of select measures, and (2) an observer phase that would apply the experimental results in the commercial fisheries. Given that very few experimental tests of seabird avoidance measures have occurred in the world (and none in Alaska), methodologies to be used in the experimental testing phase would first be developed in a pilot study. Implementation of either phase of the test plan is dependent upon the availability of adequate funding.

When such tests have occurred and information is available as to the effectiveness and practicability of specific seabird avoidance measures in the Alaska hook-and-line fisheries, NMFS may revise the regulations to reflect such findings. Currently, no new information about the effectiveness of the regulations exists that would warrant NMFS revising the seabird avoidance measures at this time.

#### Response to Comments

*Comment 1.* NMFS failed to promulgate seabird avoidance regulations in the Pacific halibut fishery in a timely fashion despite the recommendations of the Council at its December 1996 meeting.

*Response.* NMFS disagrees. The Council's initial December 1996 recommendations were directed at requiring seabird avoidance measures in the groundfish fisheries. Although, the Council indicated that similar measures were to be implemented for the Pacific halibut fishery, a target date was not specified. NMFS and the Council planned to initiate a separate rulemaking for the Pacific halibut fishery in order to allow the IPHC to first review the proposed measures. The Halibut Act authorizes the Council to develop and NMFS to implement regulations concerning halibut that are in addition to, and not in conflict with, regulations adopted by the IPHC. The IPHC was provided an opportunity to review the proposed regulations at its January 1997 meeting. After receiving IPHC concurrence in January, the Council took final action on proposed measures in the Pacific halibut fishery in June, 1997. Given the time required to prepare proposed and final rulemaking and allow for a public comment period, implementation has not been untimely.

*Comment 2.* NMFS ignored every recommendation that was submitted by the environmental community in

response to the proposed regulations for seabird avoidance measures in the Alaska groundfish hook-and-line fisheries. Those regulations and the proposed regulations for the Pacific halibut fishery deviate substantially from, and are weaker than, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) regulations that NMFS promulgated for the sub-Antarctic seas (61 FR 8483, March 5, 1996). The CCAMLR regulations should be required in Alaska waters.

*Response.* At this time, NMFS disagrees that the CCAMLR regulations should be required in Alaska waters. Given the similarities between the Alaska groundfish hook-and-line fisheries and the Pacific halibut fishery, NMFS proposed that the seabird avoidance measures required in the groundfish hook-and-line fisheries also be required in the Pacific halibut fishery. As stated in the preamble and in the "Response to Comments" section of the final rule requiring seabird avoidance measures in the Alaska groundfish hook-and-line fisheries (62 FR 23176, April 29, 1997), differences exist between the sub-Antarctic longline fisheries governed under the CCAMLR regulations and the Alaska hook-and-line fisheries that warrant the differences in the regulations meant to reduce seabird bycatch. The differences between the sub-Antarctic longline fisheries and the Alaska hook-and-line fisheries 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 main line 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 from the side of the vessel at speeds of 10 through 13 knots. The prevalent seabird species incidentally taken are albatrosses and petrels.

In contrast, the Pacific halibut fishery targets halibut, a demersal species fished with bottom gear consisting of groundlines, usually 0.54 km long, with hooks attached to 1 to 1.5 m gangions spaced from 1.5 to 7 m apart along the

groundline. In general, the vessels range in length from small skiffs in the several meter range to vessels of 20 through 30 m. Most vessels deploy gear from the stern at speeds of 5 to 7 knots. The prevalent seabird species incidentally taken in the Pacific halibut fishery have not been determined. Given that the halibut fishery occurs in much the same areas as the groundfish fisheries, the species most likely to be taken incidentally are fulmars and gulls in the BSAI, and fulmars and albatross in the GOA.

Bottom gear used in the Pacific halibut fishery is designed to sink quickly to reach the bottom where fishing occurs. Traditionally, gangions have been tied to the groundline at a set spacing ("conventional" gear), but, more recently, gangions have sometimes been attached to the groundline with a snap fastener ("snap-on" gear). Conventional gear is set and retrieved as coils, while snap-on gear is set and retrieved on drums. Several groundline units, called skates, are strung together for a fishing unit, weighted with anchors attached to buoys and buoy lines. Conventional gear is deployed off the stern over a chute that uses centrifugal force to straighten out the gangion and drop the bait away from the groundline to minimize tangles. Snap-on gear is deployed directly off the drum. With both types of bottom gear, the groundline and bait float for a few seconds before anchors (about 20 kg), and sometimes additional weights (0.5–2 kg) cause them to sink. Sinking rates vary with the vessel. Bottom gear is hauled amidships over a roller. 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. The predominant number of relatively small vessels in the Pacific halibut fishery (approximately 2100 vessels, 7–30 m) raises safety concerns with night-setting of gear as required by CCAMLR regulations (approximately 15–30 vessels, 30–46 m). The technical standards for streamer lines in CCAMLR regulations is not appropriate for the gear deployment speed used by the majority of the vessels in the Pacific halibut fishery. 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, 1996). CCAMLR has been refining 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, the primary author of "Catching Fish Not Birds," and the CCAMLR publication "Fish the Sea Not the Sky" report that the most applicable solutions for preventing seabirds from taking baits depend on the vessel, its size, the crew, weather and sea conditions, and the time and place fishing occurs. Regulations for a particular fishery must take these factors into consideration. While certain of the CCAMLR regulations appear to be appropriate for the Pacific halibut fishery and are incorporated into this final rule, others may be implemented only if further investigation demonstrates their practicability in the Pacific halibut fishery.

USFWS believes that implementation of the proposed measures is not likely to adversely affect the short-tailed albatross (USFWS, 1998). 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. Testing the effectiveness of the required seabird avoidance measures will allow NMFS to better ascertain the effectiveness of these measures in the Alaska fisheries. NMFS continues to work with USFWS to develop an appropriate research plan, as discussed here. When such tests have occurred and information is available as to the effectiveness and practicability of specific seabird avoidance measures in the Alaska hook-and-line fisheries, NMFS may revise the regulations to reflect such findings.

*Comment 3.* NMFS's proposed amendment to clarify the offal discharge requirement in the Alaska groundfish hook-and-line fisheries is an improvement. Nevertheless, the regulation adopted under CCAMLR is preferable because it prohibits the discharge of offal at any time while gear is being set and requires that the discharge of offal during the haul be

avoided as far as possible. NMFS should require the same in Alaska waters.

*Response.* NMFS agrees that the Alaska offal discharge regulation, as revised, is clearer. NMFS disagrees that the regulation should be replaced with the CCAMLR regulation. The CCAMLR regulation does not prohibit offal discharge as the commenter suggests. Rather, the CCAMLR regulation states that "the dumping of offal shall be avoided as far as possible while longlines are being set or hauled; if discharge of offal is unavoidable, the discharge must take place on the opposite side of the vessel to that where longlines are set or hauled" (61 FR 8483, March 5, 1996). In practice, the Alaska regulation is very similar to the CCAMLR regulation. Under the Alaska regulation, offal must be discharged in a way that distracts seabirds from baited hooks (i.e., discharge must take place on the opposite side of the vessel to that where longlines are set or hauled). Furthermore, a recent study of the demersal longline fishery for toothfish (*Dissostichus eleginoides*) near the Kerguelen Islands in the South Indian Ocean has shown that the dumping of homogenized offal during gear deployment greatly reduced incidental capture of seabirds, because birds were more attracted to the offal than to baited hooks (Cherel *et al.*, 1996). This finding is similar to comments provided by Alaska longliners during the comment period for the rule requiring seabird avoidance measures in the groundfish hook-and-line fisheries. For practical and safety reasons, offal discharge cannot be avoided by most of the vessels in the Pacific halibut fishery or in the Alaska groundfish fisheries. Most of the smaller vessels discharge offal while hauling gear. Some vessel operators have reported that discharging offal on the opposite side of the vessel from where gear is deployed distracts seabirds from the baited hooks, thus reducing the potential for seabirds getting hooked. Furthermore, some of the smaller vessels do not discharge offal at all while fishing, but retain whole fish.

*Comment 4.* NMFS should not exempt vessels less than 26 ft (7.9 m) LOA from the required use of one or more of the measures specified at § 679.24(e)(3). NMFS acknowledges that relatively little scientific information is available regarding the relationship of vessel size to seabird bycatch. No scientific or legal justification for this exemption exists, and the exemption might violate the incidental take permit and Biological Opinion from the USFWS for the short-tailed albatross.

*Response.* NMFS is required by the Magnuson-Stevens Act to base all conservation and management measures upon the best scientific information available. The best scientific information that is available on this subject indicates that variations between vessels in the numbers of observed seabird catches appear to be related, at least in part, to the extent to which birds accumulate around vessels. This, in turn, is a function of the length of time that offal is discarded. Smaller vessels are not as attractive to scavenging seabirds as are larger vessels, which provide a continuous supply of food (Barnes *et al.*, 1997). For example, smaller vessels fishing off the southwest cape in South Africa do not attract large numbers of scavenging birds because hauling and setting periods are much shorter and irregular and the offal is available to birds only for short periods of time and in small quantities (Barnes *et al.*, 1997). This scientific information, in conjunction with information about the typical fishing practices of small vessels that was presented in the proposed rule (62 FR 65635), indicates that vessels of less than 26 ft (7.9 m) LOA are less likely to have a seabird bycatch problem than larger vessels. As noted in the response to comment 3, some of the smaller vessels do not discharge offal at all and are even less attractive to scavenging seabirds. In January 1998, USFWS concluded an informal consultation and concurred with NMFS's assessment that the proposed regulatory measures to reduce seabird mortality in the Pacific halibut fishery and the regulatory exemption for vessels less than 26 ft (7.9 m) LOA using hook-and-line gear in the groundfish fisheries in the BSAI or GOA or vessels less than 26 ft (7.9 m) LOA in the Pacific halibut fishery are not likely to adversely affect the short-tailed albatross (USFWS, 1998). Given that operators of vessels less than 26 ft (7.9 m) LOA using the proposed measures are not likely to adversely affect the short-tailed albatross, the incidental take limit established in the USFWS Biological Opinion for the BSAI and GOA groundfish hook-and-line fisheries applies to only vessels over 26 ft (7.9 m) LOA (USFWS, 1998).

*Comment 5.* NMFS should require the mandatory use of bird streamer lines by vessels required to use seabird avoidance measures. The use of bird streamer lines should not be optional. The cost of streamer lines is not prohibitive, and there is no excuse for not requiring streamer lines for large vessels, particularly those that choose

not to install a lining tube due to the cost of refitting.

*Response.* Until measures are scientifically tested in the Alaska hook-and-line fisheries, NMFS will continue to allow some flexibility in the application of seabird avoidance requirements. No scientific evidence exists to indicate that the required measures are not effective, and anecdotal information indicates that they are.

*Comment 6.* Setting of longline gear at night or towing a "buoy, board, stick, or other device" are not sufficient alternatives to the proven efficacy of streamer lines.

*Response.* As explained in the response to comment 5, no scientific evidence exists to indicate that the required measures are not effective, and anecdotal information indicates that they are. As explained in the response to comment 2, the most efficacious solutions for preventing seabirds from taking baits probably depend on circumstances relating to the vessel, its size, the crew, weather and sea conditions, and the time and place at which fishing occurs. Each of these factors must be considered when designing regulations for a particular fishery. Testing the effectiveness and practicability of the required seabird avoidance measures in Alaska hook-and-line fisheries must occur before definitive comparisons can be made among measures designed to reduce seabird bycatch in the Alaska hook-and-line fisheries. When such tests have occurred and information is available as to the effectiveness and practicability of specific seabird avoidance measures in the Alaska hook-and-line fisheries, NMFS may revise the regulations to reflect such findings. A research test plan to test the effectiveness of the required seabird avoidance measures is being developed in coordination with USFWS.

*Comment 7.* To ensure that the bait sinks quickly, NMFS should require either that either thawed bait be used, or hooks or groundlines be weighted, or both.

*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 are using thawed bait or weighted groundlines. Although the preamble of the proposed rule noted these methods, NMFS believes that specifying the methods by 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 (Klaer 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 halibut 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. Typically, the smaller halibut vessels use hand-baited gear, requiring that the bait is either thawed or partially thawed.

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) the types of bait that sink faster, and (2) the use of weighted hooks on groundlines.

The final rule establishes a performance standard for the Pacific halibut fishery 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 2) and given the limited amount of information available on their effectiveness, NMFS believes that fishermen must have some flexibility in meeting this performance standard.

*Comment 8.* NMFS should require both the use of a bird streamer line and the nightsetting of gear.

*Response.* As explained in the response to comment 2, 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 final rule requires vessels to use more than one avoidance measure. Regulations at § 679.24(e)(2)(i) and (ii) require seabird avoidance measures of all hook-and-line vessels fishing for Pacific halibut. Section 679.24(e)(2)(iii) requires that

every reasonable effort be made to release alive seabirds brought on board. In addition, hook-and-line vessels that are greater than or equal to 26 ft (7.9 m) LOA must employ at least one of four additional seabird avoidance measures set forth at § 679.24(e)(3)(i) through (e)(3)(iv). A vessel may use more than one of these measures at the same time.

Moreover, setting at night may pose safety concerns for smaller vessels. Requiring mandatory night-setting may be neither practicable nor an effective seabird deterrent in the Pacific halibut fishery given that (1) 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) there are safety concerns are 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 be used or that gear be deployed at night (Murray *et al.*, 1993). Concerns were raised that recommending that 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 vessels, and night-setting was removed as a license requirement (Duckworth, 1995). Australia, another leading nation in seabird bycatch reduction 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 9.* The proposed measure at § 679.24(e)(3)(ii) should not specify towing a board or stick as a seabird avoidance measure.

*Response.* NMFS believes that 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.

Depending on conditions, towing a buoy, board, stick, or other device may not be totally effective on its own, but combinations of solutions might significantly reduce seabird bycatch. As explained in the response to Comment 2, when tests have occurred and information is available as to the effectiveness and practicability of specific seabird avoidance measures in the Alaska hook-and-line fisheries, NMFS may revise the regulations to reflect such findings.

*Comment 10.* A weakness of the proposed rule is its lack of guidelines for constructing an effective bird streamer line. The final rule should require the use of effectively designed and built streamer lines and set out guidelines for their construction, performance, and maintenance.

*Response.* NMFS agrees that guidelines for constructing an effective bird streamer line should be provided. They are included in the preamble of this final rule.

*Comment 11.* NMFS should be applauded for promulgating these regulations in an attempt to protect seabird populations in the North Pacific. However, the proposed rule should be strengthened in order to effectively reduce bycatch of the short-tailed albatross and other seabirds.

*Response.* As explained in the response to comment 2, when tests have occurred and information is available as to the effectiveness and practicability of specific seabird avoidance measures in the Alaska hook-and-line fisheries, NMFS may revise the regulations to reflect such findings.

## References

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## Classification

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

At the proposed rule stage, NMFS prepared an IRFA on this action. No comment were received on the IRFA. NMFS has prepared an FRFA, as part of the RIR, that describes the impact this rule would have on small entities. In 1996, 2,124 vessels landed halibut from U.S. Convention waters off Alaska. Of these vessels, 1,935 were less than 60 ft (18.3 m) LOA and NMFS assumes that most of these 1,935 vessels would be considered small entities. Based on the best available information, NMFS cannot predict how many small entities would be affected. Depending on what types of avoidance measures each vessel employs, any number of vessels ranging from zero to 1,935 could experience a reduction of greater than 5 percent in their annual gross annual incomes. Therefore, it is possible that this rule could have a significant negative economic impact on a substantial number of small entities.

A number of alternatives to the rule which would have lessened the economic impact on small entities were considered and rejected. The no-action alternative would not require any

vessel, including small entities, to implement seabird avoidance measures in the Pacific halibut fishery, but this alternative would not have accomplished the Council's objective of limiting bycatch. In addition, very significant impacts on small entities could occur if closures were imposed due to the incidental take limit of short-tailed albatross being exceeded. The likelihood of this happening would be greater under the no-action alternative. Alternatives that addressed modifying reporting requirements for small entities were not considered by the Council, or in this analysis, because such alternatives would not reduce seabird interactions and would not mitigate the impacts of this action on small entities.

Several aspects of this rule will minimize the economic effects on small entities. The proposed seabird avoidance measures are based on performance standards rather than on design standards, therefore alleviating a potential economic burden to small entities. The exemption for vessels less than 26 ft (7.9 m) LOA (all small entities) in this rule would also alleviate a potential economic burden to small entities. In 1996, of the 2,124 vessels that made landings in the halibut and sablefish fisheries, 328 were less than 26 ft (7.9 m) LOA (15 percent of total number of vessels making halibut and sablefish landings). In 1996, of the 1,847 vessels that were issued Federal fisheries permits for the BSAI and GOA groundfish fisheries, 47 were less than 26 ft (7.9 m) LOA (2.5 percent of 1996 Federal fisheries permittees). To provide maximum flexibility to participants in the fishery, a number of alternative measures to avoid seabird interaction are included in the rule as options from which a vessel operator may choose in deciding how to comply with this rule. Consequently, there are no additional alternatives that would mitigate the economic impact while achieving this action's purpose.

The economic impacts of this rule would vary depending on which seabird avoidance measures a fisherman employs. The cost of buoys and bird streamer lines as seabird bycatch avoidance devices range from \$50 to \$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 were 189 hook-and-line vessels equal to or greater

than 60 ft (18.3 m) that made halibut landings in 1996.

Although this action could result in economic impacts on small entities, the no-action alternative could result in even more severe economic impacts. Failure to establish seabird avoidance measures under this action could increase the likelihood of exceeding the incidental take limit to be specified for the short-tailed albatross. In that event, additional measures to minimize the take of short-tailed albatross could be implemented, ranging from those in this rule to more stringent measures, including closures. The economic impacts to small entities resulting from such measures would depend on a variety of factors, although very significant negative impacts could be expected if the halibut fishery were closed due to takes of short-tailed albatross in excess of the incidental take authorized under the section 7 consultation with the USFWS. A copy of the EA/RIR/FRFA is available from NMFS (see ADDRESSES).

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 2, 1998.

David L. Evans,

Deputy 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.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.24, paragraphs (e)(2)(iv) introductory text, and (e)(2)(iv)(A) through (e)(2)(iv)(D) are redesignated as paragraphs (e)(3) introductory text, and (e)(3)(i) through (e)(3)(iv), respectively, and paragraphs (e)(1), (e)(2)(ii), and newly designated paragraph (e)(3) introductory text are revised to read as follows:

##### § 679.24 Gear limitations.

\* \* \* \* \*

(e) *Seabird avoidance gear and methods for hook-and-line vessels fishing for groundfish—(1) Applicability.* 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 paragraphs (e)(2) and (e)(3) 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.

(2) *Requirements.* \* \* \*

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

\* \* \* \* \*

(3) For a vessel greater than or equal to 26 ft (7.9 m) LOA, the operator of that vessel described in paragraph (e)(1) of this section must employ one or more of the following seabird avoidance measures:

\* \* \* \* \*

3. In § 679.42, paragraph (b) is revised to read as follows:

##### § 679.42 Limitations on use of QS and IFQ.

\* \* \* \* \*

(b) *Gear—(1) IFQ Fisheries.* Halibut IFQ must be used only to harvest halibut with fishing gear authorized in § 679.2. Sablefish fixed gear IFQ must not be used to harvest sablefish with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area of the GOA.

(2) *Seabird avoidance gear and methods.* The operator of a vessel using gear authorized at § 679.2 while fishing for IFQ halibut or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).

[FR Doc. 98-5834 Filed 3-5-98; 8:45 am]

BILLING CODE 3510-22-F

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket no. 971112269-8047-02; I.D. 102997A]

RIN 0648-AK13

##### Fisheries of the Exclusive Economic Zone off Alaska; Management Authority for Black and Blue Rockfish

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 46 to the

Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 46 removes black and blue rockfish from the complex of species managed under the FMP. The rule makes conforming changes to the FMP implementing regulations to reflect the removal of black and blue rockfish from the complex. The State of Alaska (State) will regulate fishing for these species by vessels registered under State law. This action is necessary to allow the State to implement more responsive, regionally based, management of these species than is currently possible under the FMP. The intended effect of this action is to repeal duplicative Federal regulations, provide for more responsive State management and prevent localized overfishing of black and blue rockfish stocks.

**DATES:** Effective April 6, 1998.

**ADDRESSES:** Copies of Amendment 46 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) and related economic analysis prepared for this action are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501-2252; telephone: 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** Alan Kinsolving, 907-586-7228.

##### SUPPLEMENTARY INFORMATION:

##### Management Background and Need for Action

The domestic groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

Amendment 46 was adopted by the Council at its June 1997 meeting and submitted for Secretarial review. A Notice of Availability of the FMP amendment was published in the **Federal Register** on November 5, 1997 (62 FR 59844), with comments invited through January 5, 1998. A proposed rule to implement Amendment 46 was published in the **Federal Register** on December 2, 1997 (62 FR 63690), with comments invited through January 16, 1998. No letters of comment were received on the amendment or on the proposed rule.

Upon reviewing Amendment 46 and the rationale for its adoption by the Council, NMFS has determined that this action is necessary for the conservation