

implementing the ALWTRP can be found either in the Code of Federal Regulations (CFR) at 50 CFR 229.32 or downloaded from the website, along with a guide to the regulations.

Dated: July 8, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050620162-5162-01; I.D. 061505D]

RIN 0648-AS30

Fisheries off West Coast States and in the Western Pacific; Pelagic Fisheries; Additional Measures to Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would require all Hawaii-based longline fishing vessels to either side-set (set longline gear from the side of the vessel rather than from the stern), or use a combination of other seabird mitigation measures to prevent seabirds, e.g., Laysan and black-footed albatrosses, from being accidentally hooked or entangled, and killed during fishing operations. This proposed rule is also intended to reduce the potential for interaction with endangered short-tailed albatrosses that are known to be in the area in which the fishery operates.

DATES: Comments on the proposed rule must be received in writing by August 12, 2005.

ADDRESSES: You may submit comments on this proposed rule or its Initial Regulatory Flexibility Analysis (IRFA), identified by 0648-AS30 by any of the following methods:

- E-mail: AS30-Seabirds@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: Seabird Measures. Comments sent via e-mail, including all attachments, must not exceed a 10 megabyte file size.

- Federal e-Rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: William L. Robinson, Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

- Fax: 808-973-2941.

Copies of the regulatory amendment document (6 April 2005) entitled "Additional Measures to Reduce the Incidental Catch of Seabirds in the Hawaii-Based Longline Fishery" (containing a Regulatory Impact Review and IRFA) and Final Environmental Impact Statement (FEIS) prepared for this action may be obtained from William L. Robinson (see **ADDRESSES**). Requests should indicate whether paper copies or electronic copies on CD-ROM are preferred. These documents are also available at the following websites: www.wpcouncil.org and <http://swr.nmfs.noaa.gov/pir>.

FOR FURTHER INFORMATION CONTACT:

Robert Harman, NMFS PIR, 808-973-2937.

SUPPLEMENTARY INFORMATION: Hawaii-based longline fishing vessels inadvertently hook or entangle, and kill black-footed albatrosses (*Phoebastria nigripes*) and Laysan albatrosses (*Phoebastria immutabilis*) that nest in the Northwestern Hawaiian Islands (NWHI). Short-tailed albatrosses (*Phoebastria albatrus*), an endangered species that nests primarily on Tori Island off Japan and known to visit the NWHI, have been sighted occasionally in the vicinity of Hawaii longline vessels during fishing operations. However, there has been no confirmed report of any interaction between the short-tailed albatross and Hawaii longline fishery.

The Western Pacific Fishery Management Council (WPFMC) developed and proposed seabird mitigation measures for Hawaii-based longline vessels, but these were not finalized due to a Biological Opinion issued late in 2000 by the U.S. Fish and Wildlife Service (USFWS 2000 Biological Opinion) under section 7 of the Endangered Species Act (ESA). In mid-2001, NMFS implemented emergency seabird mitigation measures (66 FR 31561, 12 June 2001) in accordance with the terms and condition of the USFWS 2000 Biological Opinion on the short-tailed albatross.

On May 14, 2002, NMFS published a final rule (67 FR 34408) establishing permanent seabird mitigation measures recommended by the WPFMC for the Hawaii longline fishery. That rule, which replaced the 2001 emergency interim rule, is the result of the

WPFMC's continued effort and commitment to minimize interactions between seabirds and the Hawaii-based longline fishery. A description of the WPFMC's role and ongoing actions in seabird mitigation in the western Pacific region is contained in the regulatory amendment document entitled "Additional Measures to Reduce the Incidental Catch of Seabirds in the Hawaii-based Longline Fishery" (WPFMC, 6 April 2005, see **ADDRESSES**).

The May 2002 final rule required owners and operators of all vessels registered for use with Hawaii longline limited access permits and deploying longline gear north of 23° N. latitude to use line-setting machines (line shooters) with weighted branch lines, or use basket-style longline gear, and to use thawed, blue-dyed bait and strategic offal discards (which include fish, fish parts, or spent bait) during the setting and hauling of longline gear. The owners and operators of these vessels were also required to follow certain seabird handling techniques, and annually complete a protected species educational workshop on seabird mitigation conducted by NMFS.

Since 2000, the number of fishery interactions with all seabirds was significantly reduced due to the closure of the shallow-set (swordfish-directed) component of the Hawaii-based longline fishery. This closure was implemented by NMFS to protect sea turtles via a number of emergency actions (64 FR 72290, 27 December 1999; 65 FR 51992, 25 August 2000; 66 FR 15358, 19 March 2001) and a final rule (66 FR 31561, 12 June 2001).

Between 2002 and 2003, NMFS, WPFMC, and the fishing industry collaborated in a series of research activities to test new seabird deterrent methods for Hawaii longline vessels. The trials found that underwater setting chutes (which deploy baited hooks underwater and out of the reach of seabirds) and side-setting were both effective in reducing interactions with seabirds. These and other seabird deterrent strategies were analyzed and considered by the WPFMC as potential new seabird mitigation methods to cost-effectively further reduce the effects of the Hawaii longline fleet on seabirds.

In March 2004, in concert with the regulatory amendment to reopen the swordfish component of the Hawaii longline fishery, NMFS and USFWS reinitiated ESA section 7 consultations on the effect of the fishery on the short-tailed albatross. During the consultation process, NMFS and USFWS also held discussions with the Hawaii Longline Association and WPFMC staff that included the consideration of

implementing side-setting and other effective mitigation measures by NMFS under the Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region (Pelagics FMP).

On April 2, 2004, NMFS published a final rule (69 FR 17329) that reopened the shallow-set component of the Hawaii-based longline fishery. In this fishery, longline gear is deployed (set) relatively shallow, generally in the upper 100 m (328 ft) of the water column, by fishing vessels that are targeting swordfish, compared to the deeper longline sets targeting bigeye tuna. Shallow-set longline gear does incidentally take sea turtles, such as leatherback and loggerhead turtles, but this technique also poses a problem for seabirds. The problem is acute when a longline vessel deploys fishing gear during the early evening period when seabirds, such as Laysan and black-footed albatrosses, are foraging for food at sea and are attracted to the baited hooks of the longline gear as it is being deployed. The April 2004 rule placed restrictions on the types of hook and bait that may be used, annual fleet-wide limits on fishery interactions with leatherback and loggerhead sea turtles, an annual fleet-wide limit on shallow-set fishing effort (2,120 sets), and other sea turtle mitigation measures. The rule also contained a seabird mitigation measure that required Hawaii longline vessels, when making shallow sets north of 23° N. lat., to start and complete the deployment of longline gear (set and haul) during the nighttime (specifically to set no earlier than one hour after local sunset and to finish hauling no later than local sunrise) to minimize interactions with seabirds.

At its meeting in June 2004, the WPFMC took initial action to establish additional seabird mitigation measures based on the promising results of the seabird mitigation studies conducted in 2002 and 2003. Subsequently, at its October 2004 meeting, the WPFMC recommended that NMFS amend the Pelagics FMP regulations to include the following seabird conservation measures: (a) when fishing north of 23° N. lat., all deep-setting Hawaii longline vessels must either side-set, or use a tori line system plus the currently required measures (line shooter with weighted branch lines, blue-dyed thawed bait, and strategic offal discards), with the requirement to use strategic offal discards modified to require that vessel operators use them only when seabirds are present; and (b) all shallow-setting Hawaii longline vessels must either side-set, or use a tori line plus the currently required measures (night setting, blue dyed thawed bait, and

strategic offal discards), wherever they fish, with the requirement to use strategic offal discards modified to require that vessel operators use them only when seabirds are present.

NMFS estimated that the Hawaii longline fleet hooked or entangled 2,320 albatrosses during 1999. In 2002 and 2003, when the shallow-set component of the Hawaii-based longline fishery was closed due to sea turtle bycatch, annual seabird interaction estimates fell to 113 and 257, respectively. Although the shallow-set longline fishery reopened in 2004, NMFS projects that under a restricted fishery and with this proposed rule the Hawaii longline fishing fleet will have approximately six (6) interactions per year with black-footed and Laysan albatrosses.

Classification

NMFS prepared an Environmental Impact Statement for this regulatory amendment. A Notice of Availability of the FEIS was published on 6 May 2005.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared that describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of why the action is being considered, the objectives and legal basis for the action, and a description of the action, may be found at the beginning of this section. There are no recordkeeping or reporting requirements proposed in this rule.

This proposed rule does not duplicate, overlap, or conflict with any relevant Federal rules. All vessels are considered to be small entities. Therefore, there are no economic impacts resulting from disproportionality between large and small vessels. A summary of the analysis follows.

Number of Affected Small Entities

The proposed rule would potentially apply to all holders of Hawaii longline limited access permits. The number of Hawaii longline limited access permits is 164. Not all such permits are renewed each year (approximately 110 were renewed in 2003, and 122 in 2004), and of those renewed, not all are used to participate in the Hawaii-based longline fishery. In a few cases, multiple permits are held by a single business, so the number of businesses to whom the rule would apply is slightly smaller than the number of affected permit holders. All holders of Hawaii longline limited access permits are small entities (i.e., they are businesses that are independently owned and operated, and have no more than \$3.5 million in

annual receipts). Therefore, the number of entities to which the rule would potentially apply is approximately 164.

Duplicating, Overlapping, and Conflicting Federal Rules

To the extent practicable, it has been determined that there are no Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Alternatives to the Proposed Rule

A total of 25 alternatives were considered. Each alternative would have applied one or more seabird deterrent strategies to the fishery sectors (deep- or shallow-setting) and by area (north of 23° N. lat., south of 23° N. lat., or all areas). Alternatives that would have applied deterrent measures to both fishery sectors in all areas were rejected as not being cost-effective, given that deep-setting vessels south of 23° N. lat. average just over one (1) seabird interaction per year. Alternatives that would have required the use of an underwater setting chute were rejected as untenable based on the fact that the hardware broke when used experimentally, and likely would not withstand the rigors of routine use aboard commercial fishing vessels.

Alternatives that would have required all shallow-setting vessels to side-set in one or more areas were rejected because (1) some smaller vessels may be unable to be reconfigured for side-setting, and (2) side-setting has been subject to limited experimental testing and, although it has been very promising for reducing seabird interactions, there has been no commercial testing and it is uncertain how well this technique will perform during routine use. NMFS and the WPFMC have determined that gradual implementation of side-setting would allow information collection and further consideration of the merits of this mitigation measure.

Effects of the Proposed Rule on Small Entities

The proposed rule is expected to have mixed impacts on small entities. Current seabird deterrent requirements for all vessels fishing north of 23° N. lat. will be modified to add a requirement to use a tori line system, as well as to require that strategic offal discards be used only when seabirds are present. Vessel operators may opt to side-set with no additional deterrents. Operators of vessels that can be easily reconfigured for side-setting may find that their operations are more efficient because (1) less bait will be taken by seabirds, thus potentially increasing fish catch rates, and (2) side-setting can improve the efficiency of fishing

operations because fishing crews do not have to move the fishing gear from one location on the vessel to another between sets. Whether or not these savings will be enough to offset the initial purchase and installation cost (approximately \$4,000) and ongoing maintenance cost (estimated at \$50/year) is unknown. Operators of vessels that cannot be easily reconfigured for side-setting will have to use a tori line (approximately \$3,300 for purchase and installation, with annual maintenance costs estimated at \$2,300/year, per line), in addition to the currently required measures.

To the extent that these measures increase fish catch rates by reducing bait loss, they will have a positive economic impact, but whether or not these savings will be enough to offset the costs of the measures is unknown. Under the proposed rule, vessels that shallow-set south of 23° N. lat. will also be subject to seabird deterrent measures. Operators of these vessels will have to use the same measures as those required when shallow setting north of 23° N. lat. Impacts on these operations are likely to be similar to those described above, but if side-setting is not feasible, vessel operators will have to invest in blue dye (estimated to cost \$1,400/year), containers for offal discards (initial cost of \$150), and tori lines (\$3,300 installation plus \$2,300 annual maintenance, per line). Again, it is not known if potential increases in catch rates due to reduced bait loss will be enough to offset the costs of these deterrent measures. However, given the already low number of seabird interactions, this seems unlikely. In addition, estimates of net revenue per vessel from a 2000 survey of the longline fishery indicate that net revenues ranged from a low of \$18,208 for the average large tuna longline vessel to \$385,776 for the average large swordfish longline vessel, with an average net return of \$27,483 and \$55,058 for all swordfish and tuna vessels, respectively. This would indicate that relative reductions in profitability from this proposed action based on size and target species may be disproportionately distributed among vessels in the Hawaii-based longline fleet. However, there is no indication that this proposed rule would lead to the cessation of operations of any vessel participating in this fishery.

Significant Alternatives to the Proposed Rule

There were several alternatives considered (2A through 7C in the regulatory amendment document) that would have allowed vessel owners to

minimize their costs for complying with this action by giving them the opportunity to use the current seabird avoidance methods at no additional cost, or to change their avoidance procedures and procure additional equipment such as a tori line, side-setting equipment, or blue dye at costs described above. However, the continuation of the current seabird avoidance methods would not be consistent with the USFWS 2004 Biological Opinion. Although that Opinion concluded that the shallow-set longline fishery was not likely to jeopardize the continued existence of the short-tailed albatross, it contains measures directing NMFS to “implement and monitor side-setting or another appropriate seabird deterrent or combination of deterrents that the USFWS [Service] agrees is at least as effective as side-setting in reducing the risks to the short-tailed albatross in the shallow-set Hawaii-based longline fishery.”

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: July 6, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.22, paragraphs (aa), (bb), (cc), and (mm) are removed; paragraphs (dd) through (ll) are redesignated as (aa) through (ii); paragraphs (nn) through (vv) are redesignated as paragraphs (jj) through (rr); and paragraph (z) is revised to read as follows:

§ 660.22 Prohibitions.

* * * * *

(z) Fail to fish in accordance with § 660.35(a)(1) or § 660.35(a)(2) when operating a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.35(a).

* * * * *

3. In § 660.35, paragraphs (a) and (b)(10) are revised to read as follows:

§ 660.35 Pelagic longline seabird mitigation measures.

(a) *Seabird mitigation techniques.*

When deep-setting or shallow-setting north of 23° N. lat. or shallow-setting south of 23° N. lat., owners and operators of vessels registered for use under a Hawaii longline limited access permit, must either side-set according to paragraph (a)(1) of this section, or fish in accordance with paragraph (a)(2) of this section.

(1) *Side-setting.* Vessels opting to side-set under this section must fish according to the following specifications:

(i) The mainline must be deployed at least 1 m (3.3 ft) forward from the stern corner of the vessel;

(ii) The mainline and branchlines are set from the port or the starboard side of the vessel;

(iii) If a mainline shooter is used, the mainline shooter must be mounted at least 1 m (3.3 ft) forward from the stern corner of the vessel;

(iv) Branchlines must have weights with a minimum weight of 60 g (2.1 oz);

(v) One weight must be connected to each branchline within 1 m (3.3 ft) of each hook;

(vi) When seabirds are present, the longline gear must be deployed so that baited hooks remain submerged and do not rise to the sea surface; and

(vii) A bird curtain must be deployed.

Each bird curtain must consist of the following three components: a pole that is fixed to the side of the vessel aft of the line shooter and which is at least 3 m (9.8 ft) long; at least three main streamers that are attached at regular intervals to the upper 2 m (6.6 ft) of the pole and each of which has a minimum diameter of 20 mm (0.8 in); and branch streamers attached to each main streamer at the end opposite from the pole, each of which is long enough to drag on the sea surface in the absence of wind, and each of which has a minimum diameter 10 mm (0.4 in).

(2) *Alternative to side-setting.* Vessels that do not side-set must:

(i) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled, when seabirds are present;

(ii) Retain sufficient quantities of fish, fish parts, or spent bait, between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (i) of this section;

(iii) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (i) of this section;

(iv) Remove the bill and liver of any swordfish that is caught, sever its head from the trunk and cut it in half vertically and periodically discharge the butchered heads and livers in accordance with paragraph (i) of this section;

(v) Employ a tori line system, prior to the first hook being set, that meets the following requirements:

(A) The tori line must be at least 150 m (492 ft) long for shallow-setting vessels and 75 m (246 ft) long for deep-setting vessels, and is composed of an aerial portion attached to a submerged portion. For a shallow-setting vessel, the aerial portion must extend at least 80 m (262 ft) behind the stern of the vessel, and the submerged portion must extend at least 70 m (230 ft). For a deep-setting vessel, the aerial portion must extend at least 40 m (131 ft), and the submerged portion must extend at least 35 m (115 ft);

(B) The aerial portion of the line must be composed of a line 3–6 mm (0.12–0.24 in) in diameter, and the submerged portion of the line shall be composed of twisted polypropylene or rope that is at least 5 mm (0.20) in diameter;

(C) The tori line must be fixed to a pole or vessel structure that allows the position of the line to be adjusted to achieve the requirements for aerial and submerged lengths and coverage over the area where the baited hooks are at or near the sea surface; and

(D) At least three pairs of streamers must be attached to the aerial portion of the line at regular intervals, beginning no closer than 5 m (16.4 ft) to the tori pole or vessel structure. Each pair of streamers must be fixed to a single point on the line. Each streamer must be brightly colored and made of UV-protected plastic tubing or a minimum of 10 mm (0.4 in) polyester line or material of equivalent density. Each streamer must be long enough to drag on the sea surface in the absence of wind.

(vi) When using basket-style longline gear north of 23° N. lat., ensure that the main longline is deployed slack to maximize its sink rate; and

(vii) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS; and

(viii) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel; and

(ix) Follow the requirements in paragraphs (a)(3) and (a)(4) of this section, as applicable.

(3) *Deep-setting requirements.* The following additional requirements apply to vessels engaged in deep-setting using a monofilament main longline north of

23° N. lat. that do not side-set. Owners and operators of these vessels must:

(i) Employ a line shooter; and

(ii) Attach a weight of at least 45 g (1.6 oz) to each branchline within 1 m (3.3 ft) of the hook.

(4) *Shallow-setting requirement.* In addition to the requirements set forth in paragraphs (a)(1) and (a)(2) of this section, vessels engaged in shallow-setting that do not side-set must begin the deployment of longline gear at least 1 hour after local sunset and complete the deployment no later than local sunrise, using only the minimum vessel lights necessary for safety.

(b) * * *

(10) Any seabird that is released, in accordance with paragraph (b)(9) of this section or under the guidance of a veterinarian, must be placed on the sea surface.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050701176–5176–01; I.D. 062405B]

RIN 0648–AT47

Fisheries off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fisheries; Main Hawaiian Islands; Control Date

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

ACTION: Proposed rule; advance notice of proposed rulemaking; establishment of a control date; request for comments.

SUMMARY: NMFS announces that persons who enter the bottomfish fishery in the U.S. exclusive economic zone (EEZ) around the main Hawaiian Islands (MHI) after June 2, 2005, (“control date”) are not guaranteed future participation in the fishery if the Western Pacific Fishery Management Council (Council) prepares and NMFS approves a program limiting entry or effort. This action does not commit the Council or NMFS to limit entry, or prevent any other date from being selected for eligibility to participate in the MHI bottomfish fishery. The Council or NMFS may also use other criteria to limit fishing effort or participation in a limited entry program that is developed in the future.

DATES: Comments must be submitted in writing by August 12, 2005.

ADDRESSES: You may submit comments identified by I.D. 062405B by any of the following methods:

- E-mail: AT47@NOAA.gov. Include in the subject line of the e-mail comment the following document identifier: MHI bottomfish control date. Comments sent via e-mail, including all attachments, must not exceed a 10 megabyte file size.

- Federal e-Rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: William L. Robinson, Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

- Fax: 808–973–2941

FOR FURTHER INFORMATION CONTACT:

Walter Ikehara, PIR, at 808–973–2937.

SUPPLEMENTARY INFORMATION: On June 2, 2005, the Council adopted a “control date” of June 2, 2005, applicable to persons intending to participate in the fishery (commercial and non-commercial) for bottomfish multi-species stock complex (bottomfish complex) operating in the U.S. EEZ around the MHI. The purpose of this action is to notify fishermen, who may be interested in participating in the fishery, that if they enter this fishery after June 2, 2005, they may not be assured of future access if the Council and/or NMFS decide to limit new entry or limit effort in the fishery. Neither the Council nor NMFS have yet decided whether to limit new entry to this fishery or how new entry might be limited.

Establishment of a control date responds to NMFS’ notification to the Council on May 27, 2005, (70 FR 34452, June 14, 2005) that overfishing is occurring in the bottomfish complex around the Hawaiian Archipelago and that management action must be taken by the Council to end this overfishing condition. Since this condition primarily occurs in the MHI, the Council tentatively determined that a limited entry permit program might be utilized to end overfishing in this fishery.

At present, 3,736 fishing vessels are registered for use with State of Hawaii bottomfish permits (commercial and non-commercial), of which 2,101 (56 percent) are classified as commercial fishing vessels. This represents an estimate of fishermen who could be affected by the control date. The MHI bottomfish fishing grounds are located predominantly in State waters (about 80 percent based on the 100–fm contour); however, it is estimated that about 65 percent of the bottomfish fishing trips