Dated: December 14, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050620162–5326–02; 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: Final rule; notice of availability of Record of Decision (ROD).

SUMMARY: NMFS issues a final rule to implement measures to further reduce the incidental catch of seabirds in the Hawaii-based longline fishery. Depending on the fishing method and area where the vessels operate, owners and operators of longline fishing vessels must either side-set (deploy 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 from being accidentally hooked, entangled, and killed during fishing operations.

NMFS also announces the availability of the ROD for the ''Final Environmental Impact Statement, Seabird Interaction Avoidance Methods under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region and Pelagic Squid Fishery Management under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region and the High Seas Fishing Compliance Act'' (FEIS). The ROD announces that NMFS selects the Preferred Alternative of the FEIS, modified slightly, to cost-effectively further reduce the potentially harmful effects of the Hawaii-based longline fishery on seabirds.

DATES: Effective January 18, 2006.

ADDRESSES: Copies of the following documents are available from William L. Robinson, Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814:

- The Regulatory amendment document entitled ''Additional Measures to Reduce the Incidental Catch of Seabirds in the Hawaii-Based Longline Fishery'' (April 6, 2005), which contains a Regulatory Impact Review and a Final Regulatory Flexibility Assessment (FRFA);
- The FEIS; and
- The ROD for the FEIS.

Requests for copies of any of these documents should indicate whether paper copies or electronic copies on CD-ROM are preferred. These documents are also available at the following web site: *http://swr.nmfs.noaa.gov/pir*.

FOR FURTHER INFORMATION CONTACT: Robert Harman, NMFS PIR, 808–944–2271.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at: *http://www.archives.gov/federal-register/publications*.

Background

On July 13, 2005, NMFS published in the **Federal Register** a proposed rule (70 FR 40302) that, depending on the fishing method and area where the vessels operate, would require owners and operators of Hawaii-based longline fishing vessels to either side-set (deploy 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 from being accidentally hooked, entangled, and killed during fishing operations.

NMFS, the Western Pacific Fishery Management Council (WPFMC), and the fishing industry have collaborated on research to test side-setting and other measures as additional seabird deterrent methods for Hawaii longline vessels. The research results were analyzed and considered by the WPFMC as potential new seabird mitigation requirements to cost-effectively further reduce the effects of the Hawaii longline fleet on seabirds. In October 2004, the WPFMC recommended that NMFS amend the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (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 (bird-scaring) system plus the currently-required measures (blue-dyed thawed bait, strategic offal discards, and line shooter with weighted branch lines), 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, wherever they fish, must either side-set, or use a tori line plus the currently required measures (night setting, 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.

In the ROD for the FEIS, NMFS selects the Preferred Alternative of the FEIS, modified slightly, to cost-effectively further reduce the potentially harmful effects of the Hawaii-based longline fishery on seabirds. The original Preferred Alternative included a requirement to add weights of 60 g (2.1 oz) to each branch line while side-setting. The modified Preferred Alternative reduces the weight requirement used on branch lines while side-setting to 45 g (1.6 oz). Additionally, the modified Preferred Alternative eliminates the requirement to use tori line systems.

Additional background on this final rule may be found in the preamble to the proposed rule (70 FR 40302, July 13, 2005) and is not repeated here.

Comments and Responses

NMFS received comments on the proposed rule (70 FR 40302, published July 13, 2005) from fishing industry organizations, government agencies, environmental groups, and private citizens. The responses are found later in this section. Based on comments received and on subsequent action by the WPFMC, the final rule contains changes to the proposed rule that change the weight required to sink branch lines and remove the proposed requirement to use tori lines when not side-setting, and clarify technical specifications related to gear deployment.

Prompted by several of the comments, the WPFMC held a meeting by teleconference on November 1, 2005, to address and discuss recent analyses involving two elements of the proposed rule, and to make adjustments to their recommendations in the proposed rule. As a result of the recommendations from that meeting, the final rule contains changes to the proposed rule that modify one technical requirement and remove another requirement.

The first issue addressed by the WPFMC, the requirement to use 60 g (2.1 oz) weights on branch lines used to sink baited hooks on branch lines when side-setting, was revisited on two grounds: safety and relative

effectiveness. The final rule contains changes from the proposed rule that modify the specifications for the weights used on branch lines. These weights, deployed in the form of weighted swivels, are intended to quickly sink the baited hooks so that foraging seabirds are not attracted to the baits and subsequently hooked or entangled.

There is a concern for human safety because when a weighted branch line breaks under strain, it tends to lash backwards toward the crew members who are handling the gear. Fishermen report that heavier weights are more dangerous than lighter ones, and that severe injuries from backlashed weights have occurred in the longline fishery. Thus, from a safety perspective, fishermen prefer to use a lighter-weight swivel.

A recent study compared the effective sinking rates of baited hooks on branch lines weighted with a range of weights. The sink rates were almost identical for baited hooks with 40 g (1.4 oz) and 60 g (2.1 oz) weights. Thus, the advantage in sinking a baited hook out of the foraging range of seabirds using the 60 g (2.1 oz) weight had little advantage over using a 40 g (1.4 oz) weight. Because the industry preference is to use 45 g (1.6 oz) swivels, and because the weight requirement for branch lines when deep-setting from the stern is 45 g (1.6 oz), and because the differences in sink rates between the lighter and heavier weights were negligible, the WPFMC opted to modify its recommendation and require 45 g (1.6 oz) weights on the branch lines, rather than 60 g (2.1 oz) weights in the proposed rule. This final rule reflects that change.

The second issue addressed during the WPFMC meeting was the requirement to use tori line systems. The WPFMC acknowledged that its previous recommendation to use tori lines was an incentive for vessels to convert to side-setting, that other measures have been effective in reducing interactions with seabirds, and that the construction and operating performance standards of these systems had not been fully analyzed in the Hawaii longline fishery. The incentive to side-set has worked unexpectedly well, with more than 40 vessels already converted and more awaiting funding to convert. NMFS has provided financial assistance to help convert the Hawaii longline fleet to side-setting operations.

After the proposed rule was published, NMFS and the WPFMC received information that showed that interactions with seabirds have been reduced markedly from historical levels. When compared with the data from 1995–99, the rates for seabird takes (expressed as birds/1,000 hooks) in the first and second quarters of 2005 decreased on the order of 90–99% from the historical averages. This decrease in seabird takes can be attributed to the requirement to set at night when shallow-setting (starting one hour after local sunset and finishing one hour before local sunrise), combined with the effective use of other measures to reduce seabird interactions. These other measures include the use of thawed blue-dyed bait, strategic offal discards, and line shooters to sink lines quickly. Additionally, under a rule published on November 15, 2005 (70 FR 69282), shallow-set vessels are now required to use large, offset circle hooks, and this may also reduce the mortality of seabirds.

Because the existing seabird measures for this fishery are relatively effective in minimizing the take of seabirds, and because the construction and operating performance standards of using tori line systems in the Hawaii pelagic longline fleet have not been thoroughly studied, the WPFMC removed its previous recommendation to require tori lines in this fishery. This final rule reflects that recommendation.

Even though the WPFMC changed its previous recommendation to implement tori lines in the Hawaii longline fishery, NMFS understands that tori lines have proven to be effective in reducing interactions with seabirds in similar fisheries in other locations. NMFS is concerned that adding the tori line requirement at this time may potentially obscure the factors that have led to recent dramatic decreases in seabird catches. Based on the existing data and analyses, it is not clear whether tori line systems would lead to even further decreases in seabird interactions. Thus, NMFS views side-setting as a valuable addition to the techniques already in place, but will wait before considering other avoidance measures (e.g., tori lines). NMFS aims to collect information and analyze the effectiveness of the new measure before considering additional seabird mitigation measures.

The requirements in 600.35(a)(1)(i) and (iii) were changed to clarify that the mainline must be deployed, and the mainline shooter must be mounted, as far forward on the vessel as practicable, to comply with the terms and conditions of a US Fish and Wildlife Service (USFWS) Biological Opinion, as supplemented, on the effects of the Hawaii longline fleet on the endangered short-tailed albatross.

NMFS, the WPFMC, and fishery participants are continually collecting information about the effectiveness of fishing techniques that reduce the take of non-target species, including seabirds. This information comes from directed research, observer reports and other sources. Whenever new information is available and analyzed, NMFS and the Council can re-evaluate the management regime. In the future, if the information supports such actions, the WPFMC and NMFS may propose measures such as mandatory side-setting or tori lines, or the revision of existing measures such as blue-dyed bait, offal discards, etc.

NMFS responds to the received written comments on the proposed rule, as follows:

Comment 1: The take of albatrosses in the Hawaii longline fleet violates the Migratory Bird Treaty Act (MBTA) because there is no take authorization under this act.

Response: The MBTA applies only in nearshore waters, i.e., from the shoreline seaward to three nautical miles offshore. The Hawaii pelagic longline fleet does not operate in waters covered by the MBTA, so no take authorization is required.

Comment 2: Longline vessels should be required to use tori lines during gear hauling, in addition to during gear setting.

Response: For the reasons identified above, the use of tori lines is not required by this rule. As new information on the construction and operating performance standards of tori lines in the pelagic longline fishery becomes available and is analyzed, the WPFMC and NMFS may revisit this issue for future management consideration.

NMFS is taking a step-wise approach to building the suite of measures to reduce interactions between the Hawaii longline fleet and seabirds. Rather than adding two new measures at this time, only side-setting will be added as an optional measure. NMFS and the WPFMC intend to evaluate the effectiveness of side-setting and current suite of optional measures, and consider if future modifications to the regulations need to be made. This final rule allows NMFS and the WPFMC to assess how well side-setting works in a commercial setting.

Comment 3: The requirement for strategic offal discards will result in increased, rather than decreased, seabird captures.

Response: This measure complies with the non-discretionary terms and conditions of a USFWS Biological Opinion, as supplemented, on the

effects of the Hawaii longline fleet on the endangered short-tailed albatross. The results of research on the effectiveness of strategic offal discards in the Hawaii pelagic longline swordfish fishery have demonstrated that offal, when discarded strategically, does reduce seabird interactions with longline gear.

The requirement for strategic offal discards applies only when birds are present. Although discarding offal during setting is designed to distract birds away from baited hooks and reduce interactions, there is some anecdotal information that indicates a possible unwanted effect of attracting some birds to the vessel, increasing potential captures. NMFS is continuing to assess the impacts and effectiveness of strategic offal discards, and as new information becomes available and is analyzed, the WPFMC and NMFS may revisit this issue.

Comment 4: The requirement to use weights on branch lines creates a safety hazard for the crew of Hawaii longline swordfish vessels.

Response: The requirement to attach weights to branch lines is necessary for the rapid sinking of branch lines and baited hooks to minimize interactions with seabirds. The use of weighted lines has, however, been identified as a potential safety hazard. NMFS and the WPFMC are continuing to assess the effectiveness of and safety aspects of weighted lines (see discussion above on safety aspects of weighted lines). As new information becomes available and is analyzed, however, the WPFMC and NMFS may adjust the management measures. In the meantime, crew members may minimize the risk of injury by using wire leaders in lieu of monofilament leaders, and may wear safety equipment such as eye protection and hard hats. Also see the response to Comment 5.

Comment 5: The use of 45 g (1.6 oz), not 60 g (2.1 oz), weighted swivels should be required to be used with side-setting.

Response: NMFS and the WPFMC agree. For the reasons identified above, the requirement for branch line weights is changed to a minimum of 45 g (1.6 oz) in the final rule, from a minimum of 60 g (2.1 oz) in the proposed rule. NMFS and the WPFMC are continuing to assess the effectiveness and safety aspects of weighted lines, and as new information becomes available and is analyzed, the WPFMC and NMFS may adjust the management measures.

Comment 6: The side-setting specifications should require deployment so that the baited hooks remain submerged all the time, not just when birds are present, because seabirds can arrive at any time.

Response: Based on current research results and understanding of the fishery and its interaction with seabirds, the specification to ensure that baited hooks remain submerged when birds are present is adequate to reduce interactions. NMFS is continuing to assess the effectiveness of this specification, and as new information becomes available and is analyzed, the WPFMC and NMFS may revisit this issue for future management consideration.

Comment 7: The term ''submerged portion'' in the definition of a tori line is problematic because the line may be dragging at the sea surface and not underwater.

Response: For the reasons identified above, the use of tori lines is not required by this rule.

Comment 8: To achieve the required lengths of the aerial portions of the tori line, items such as weighted funnels and buoys will need to be placed at the end of the line.

Response: See the response to Comment 7.

Comment 9: It is unclear why the regulations specify a minimum length of the portion of the tori line that must be in the water.

Response: See the response to Comment 7.

Comment 10: The design specified for the tori line for deep-setting longline vessels is unlikely to result in the aerial portion of the line maintaining a minimum length of 40 m (131 ft), as the regulations require.

Response: See the response to Comment 7.

Comment 11: More than three streamer pairs should be required to be used with each tori line.

Response: See the response to Comment 7.

Comment 12: The regulations do not specify whether flexible hollow rubber tubing may be used as streamer material.

Response: See the response to Comment 7.

Comment 13: The requirement to carry a minimum of two cans of blue dye is insufficient, as this amount of dye will not last for an entire trip.

Response: Research has indicated that two cans of dye are sufficient to dye the bait used during a normal longline fishing trip. Nothing in the regulations prevents operators from carrying more dye if they think it is necessary to ensure that they comply with the requirement to dye blue all deployed bait to the degree required in the regulations.

Comment 14: All vessels should be required to side-set unless they can demonstrate that doing so is impracticable.

Response: The purpose of the final rule is to cost-effectively further reduce the potentially harmful effects of the longline fishery on seabirds. Research in the Hawaii longline fishery and elsewhere has identified and demonstrated several cost-effective methods to minimize seabird captures, including the alternatives in the regulations. In addition to the primary goal of reducing seabird captures, the required seabird avoidance measures also consider economic impacts and practicality. Allowing vessels to choose between alternative effective methods ensures that vessels can select the options that are most viable for that vessel and fishing operation. NMFS and the WPFMC are continuing to assess the effectiveness of all measures that potentially reduce seabird captures. As new information becomes available and is analyzed, the WPFMC and NMFS may consider revisions to the measures contained in this final rule.

Comment 15: All longliners, not just shallow-set vessels, should be required to set at night when fishing north of 23° N. lat., in addition to the other measures that are currently required.

Response: See the response to Comment 14. The 23° N. lat. boundary for the deep-set component of the fishery conforms with a USFWS Biological Opinion, as supplemented, on the effects of the Hawaii longline fleet on the federally listed short-tailed albatross. These birds have not been observed to range south of this latitude.

Comment 16: The most effective combination of bird avoidance methods should be required to be used by all longline vessels to minimize bird captures, or the vessels should be required to use all known seabird avoidance methods in combination.

Response: See the response to Comment 14.

Comment 17: Vessels that choose not to side-set should be required to use paired tori lines, which were found to be effective in reducing bird captures in Alaska demersal longline fisheries.

Response: See the response to Comment 7. Also, Hawaii's pelagic longline fishery differs significantly from Alaska's demersal longline fishery in terms of target species, oceanographic and environmental conditions, and fishing operations, and there is currently no information available that assesses the effectiveness, economic viability, or practicality of paired tori lines in the Hawaii pelagic longline fishery. NMFS and the WPFMC are

continuing to assess the effectiveness of tori lines, and as new information becomes available and is analyzed, the WPFMC and NMFS may consider revisions to the measures contained in this final rule.

Comment 18: Vessels should be required to use seabird avoidance methods everywhere that they fish. The requirement for the use of bird avoidance methods only when fishing N. of 23° N. lat. is insufficient because vessels catch seabirds south of this latitude.

Response: Shallow-set longline fishing operations must use seabird avoidance techniques wherever they fish. The 23° N. lat. boundary for the deep-set component of the fishery conforms with a USFWS Biological Opinion, as supplemented, on the effects of the Hawaii longline fleet on the federally listed short-tailed albatross. These birds have not been observed to range south of this latitude. The current catch levels of other seabirds in the Hawaii longline fishery, and the anticipated lower catch levels under the new regulations, are not anticipated to result in population-level effects on affected seabird populations. As new information on interactions with other seabirds becomes available and is analyzed, the WPFMC and NMFS may revisit this issue.

Comment 19: When compared with historical bird capture rates, the current seabird regulations are extremely effective at reducing bird captures and, therefore, the proposal to add a requirement for use of a tori line is not justified.

Response: NMFS and the WPFMC agree. For the reasons identified above, the use of tori lines is not required by this rule. As new information on the benefits and costs of tori lines in the pelagic longline fishery becomes available and is analyzed, the WPFMC and NMFS may revisit this issue for future management consideration.

Comment 20: NMFS should establish an annual cap on the number of seabirds that may be captured by the Hawaii longline fleet.

Response: The measures contained in the final rule comply with the requirements of a USFWS Biological Opinion on the effects of the Hawaii longline fishery on the endangered short-tailed albatross. Although no other seabird species with which the longline fishery interacts is listed as threatened or endangered, the measures are also effective at reducing interactions with other seabird species. The current seabird catch levels in the Hawaii longline fleet, and the anticipated lower levels under this final rule, are not believed to result in population-level effects on seabird populations. Establishing thresholds for the capture of these birds is, therefore, not necessary.

Comment 21: Longline fishing should be prohibited because it results in the mortality of endangered species.

Response: The western Pacific pelagic longline fishery is governed under the Magnuson-Stevens Act and other applicable laws, including the Endangered Species Act (ESA) which is designed to protect species under threat of extinction. NMFS and the USFWS have determined that the fishery is not likely to jeopardize threatened or endangered species under their purview. Provided that specified terms and conditions of biological opinions are met, the ESA does authorize specific levels of the incidental take of endangered species. NMFS does comply with these biological opinions, so an incidental take is authorized.

Federal and other fishery regulations benefit the Nation by minimizing and mitigating interactions with threatened and endangered species, while maintaining a viable and productive fishery. NMFS and the WPFMC continue to assess the effectiveness of all measures that potentially reduce the interactions between fishing gear and protected resources. As new information becomes available and is analyzed, the Council and NMFS may adjust the management regime, as appropriate.

Comment 22: Side-setting vessels should be monitored to measure the continuing effectiveness of this technique in reducing seabird captures. Half of the fleet should be required to side-set, so that observers on these vessels can evaluate the effectiveness of the seabird avoidance method. Observers need to determine if seabirds habituate to these techniques.

Response: By allowing vessels to choose between alternative effective mitigation methods, the final rule will allow for the collection of additional data regarding effectiveness of the various measures. More than 40 vessels in the fleet are currently side-setting. A NMFS and industry program is underway to provide technical assistance to vessels to convert to side-setting, so we anticipate a larger number of vessels to soon be converted to side-setting. NMFS is also in the process of conducting a survey of operators that are side-set longlining; the survey will identify strengths, weaknesses and issues related to this technique.

Observer data will enable an assessment of the relative effectiveness of vessels opting to side-set versus the alternative seabird avoidance measures. Analyses of observer data will enable an assessment of the long-term efficacy of side-setting in reducing seabird captures. As new information becomes available and is analyzed, the WPFMC and NMFS may revisit this issue for future management consideration.

Comment 23: More specific measures for the implementation of side-setting are needed in the regulations.

Response: The final rule specifies required elements of the side-setting technique, including line deployment and line shooter (if used) locations on the vessel, branch line weights, submergence of baited hooks, and bird curtain design. NMFS considers these specifications sufficient guidance for the technique.

Changes to the Proposed Rule

In § 660.35, paragraphs (a)(1)(i) and (iii), are changed to clarify that, while side-setting, the mainline must be deployed as far forward on the vessel as practicable, but at least one meter from the stern. The mainline shooter, if used, must be mounted as far forward on the vessel as practicable, but at least one meter from the stern.

In § 660.35, paragraph (a)(1)(iv), the requirement to use branch line weights of at least 60 g (2.1 oz) is changed to require the use of branch line weights of at least 45 g (1.6 oz).

In § 660.35, paragraph (a)(2)(ix), the requirement to use tori lines when not side-setting is removed.

Classification

The Regional Administrator, Pacific Islands Region, NMFS, determined that this rule is necessary for the conservation and management of the pelagic fisheries in the western Pacific region, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The potential economic impacts of this final rule on small entities were identified in an Initial Regulatory Flexibility Analysis (IRFA) and summarized in the **Federal Register** published on July 13, 2005 (70 FR 40302). A FRFA was subsequently prepared. A description of the need for and objectives of the action may be found at the beginning of this section. There are no recordkeeping or reporting requirements in this rule. No public comment was made on the IRFA.

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 FRFA analysis follows.

This final rule applies 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, 122 in 2004, and 120 in 2005) 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.

NMFS considered a range of 25 alternatives to this final rule. 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 limited commercial testing of this seabird deterrent method. NMFS and the WPFMC determined that voluntary implementation of side-setting would allow the collection and analysis of additional scientific information about, and further consideration of, the value of this mitigation measure.

This rule is expected to have mixed impacts on small entities. Current seabird deterrent requirements for all vessels fishing north of 23° N. lat. are modified 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 (up to 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 the currently required measures at no additional cost.

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 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), and containers for offal discards (initial cost of about $150). 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 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 rule would lead to the cessation of operations of any vessel participating in this fishery.

NMFS considered several alternatives (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. In addition, a USFWS Biological Opinion (which concluded that the shallow-set longline fishery was not likely to jeopardize the continued existence of the endangered short-tailed albatross), recommended that NMFS ''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.'' Recent information suggests that the measures currently required in the shallow-set fishery (night-setting and other measures) may be as effective as side-setting, so the WPFMC reversed its initial recommendation to require the use of tori lines. The WPFMC and NMFS will continue to analyze whether the additional use of tori lines would be justified in the future.

Copies of the FRFA are available from William L. Robinson (see **ADDRESSES**).

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides''. The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a small entity compliance guide (compliance guide) will be prepared. Copies of this final rule will be sent to all holders of permits issued for the western Pacific pelagic fisheries. Likewise, the compliance guide will be distributed to permit holders and will be available at the following web site *http://swr.nmfs.noaa.gov/pir*. Copies can also be obtained from the PIR (see **ADDRESSES**).

NMFS determined that fishing activities conducted pursuant to this rule will not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on this fishery. In a February 11, 2005, letter from W. Robinson, NMFS, to G. Shultz, USFWS, NMFS provided a description of the proposed rule and notified the USFWS that reinitiating consultation under section 7 of the ESA was not warranted for the proposed Federal action because the proposed actions are consistent with the November 2002 and October 2004 biological opinions on short-tailed albatross. The USFWS concurred with

this determination in a letter dated October 20, 2005.

NMFS prepared an FEIS for this regulatory amendment. A Notice of Availability of the FEIS was published on May 6, 2005. The Record of Decision is available from William L. Robinson (see **ADDRESSES**).

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: December 13, 2005.

James W. Balsiger,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is 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) though (ll) are redesignated as (aa) through (ii); paragraphs (nn) through (vv) are redesignated as paragraphs (jj) through (rr); new paragraphs (ss) through (vv) are added and reserved; and paragraph (z) is revised to read as follows:

§ 660.22 Prohibitions.

* * * * *

(z) Fail to fish in accordance with the seabird take mitigation techniques set forth at § 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.* Owners and operators of vessels opting to side-set under this section must fish according to the following specifications:

(i) The mainline must be deployed as far forward on the vessel as practicable, and at least 1 m (3.3 ft) forward from the stern of the vessel;

(ii) The mainline and branch lines must be set from the port or the starboard side of the vessel;

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

(iv) Branch lines must have weights with a minimum weight of 45 g (1.6 oz);

(v) One weight must be connected to each branch line 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.* Owners and operators of 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) 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

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

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

(viii) 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 branch line 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, owners and operators of 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 to conform with navigation rules and best safety practices.

(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 679

[Docket No. 050628170–5328–02; I.D. 062105B]

RIN 0648—AR67

Groundfish Fisheries of the Exclusive Economic Zone Off the Coast of Alaska; Recordkeeping and Reporting

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule amending Table 2 to 50 CFR part 679. Table 2 is the source for species codes used in data collection, analysis, and