

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek  
Departmental Paperwork Clearance Officer  
Office of the Chief Information Officer  
14th and Constitution Ave. NW.  
Room 6625  
Washington, DC 20230

09/15/2005

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 07/20/2005.

TITLE: Pacific Islands Region Seabird-Fisheries  
Interaction Recovery Reporting

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE  
OMB NO.: 0648-0456  
EXPIRATION DATE: 09/30/2008

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	6	5	0
New	1	3	0
Difference	-5	-2	0
Program Change		-2	0
Adjustment		0	0

TERMS OF CLEARANCE: None

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OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

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# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) ( <i>if applicable</i> )	
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
PACIFIC ISLANDS REGION SEABIRD-FISHERIES INTERACTION RECOVERY  
REPORTING  
OMB CONTROL NO.: 0648-0456**

**A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary.**

Under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act), the Western Pacific Fishery Management Council (Council) prepared a regulatory amendment to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) establishing measures to reduce the incidental catch of seabirds in the Hawaii pelagic longline fishery. Three of the measures pertain to reporting requirements triggered by an incidental take of a short-tailed albatross by a Hawaii-based longline fishing vessel (Hawaii longliners). This collection is one of the terms and conditions contained in the biological opinion (BiOp)<sup>1</sup>, issued by the U.S. Fish and Wildlife Service (FWS), under the authority of the Endangered Species Act of 1973, as amended, for the effects of the Hawaii longline fishing fleet on the endangered short-tailed albatross (*Phoebastria albatrus*).

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

If a short-tailed albatross is hooked or entangled by a Hawaii longliner, Federal regulations at 50 CFR 600.35 will require that the injured (or dead) albatross be brought on board the vessel. Furthermore, the captain must then: (a) contact National Marine Fisheries Service (NOAA Fisheries Service) immediately, and (b) complete a short-tailed albatross recovery data form. If the retrieved albatross is dead, the captain (c) must attach information tags to the carcass and specimen bag.

Immediate notification of an injured shot-tailed albatross enables NOAA Fisheries Service to arrange for ship-to-shore communication between a veterinarian and the vessel operator. The information provided by the vessel captain from the short-tailed albatross recovery data from provides the veterinarian with a report on the condition of the injured albatross. The information also serves as a record for FWS. When a dead short-tailed albatross is brought on board the vessel, immediate notification gives a heads-up to NOAA Fisheries Service and FWS allowing the agencies to coordinate and arrange for disposition and study of the specimen following the vessel's return to port. In readying a dead short-tailed albatross for delivery to FWS, it is important that the vessel captain attach an identification tag to the carcass and specimen bag with key information such as species name, location and date of mortality, and band number (if available).

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<sup>1</sup> "Biological Opinion on the Effects of the Hawaiian Longline Fishery on the Short-tailed Albatross (*Phoebastria albatrus*) [FWS 1-2-1999-F-02R], revised November 18, 2002 and supplemented October 8, 2004."

Over a span of 60 plus years that short-tailed albatrosses have been observed around the Hawaiian Islands, there has never been a report or observation of a short-tailed albatross taken by a Hawaii longliner. Although it is unlikely that a short-tailed albatross will be taken in the Hawaii longline fishery, this collection is established as a preparatory procedure required under the BiOp. Estimates of the burden to fishermen are based on the October, 2004 BiOp's estimated take of 1 short-tailed albatross per year.

As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries Service will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NOAA Fisheries Service decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

NOAA Fisheries Service and the Council continue to investigate information technology advances that would simplify the collection and reduce its burden on fishermen. Most communications between a Hawaii longliner at sea and NOAA Fisheries Service is through the telephone (i.e., marine operator), a single side-band radio, or, when an observer is onboard, through a satellite phone (SAT phone). Some of the Hawaii longliners are capable of communications through a vessel monitoring system unit (VMS); however, the majority of longliners do not have on-board computers associated with VMS for messaging ship-to-shore. VMS communication will probably be the quickest and most effective way to transmit information elements in the future, when more vessels become equipped with the technology to do so, however, currently, this information will be transmitted through more rudimentary means.

**4. Describe efforts to identify duplication.**

NOAA Fisheries Service carefully considered whether there were other collections by FWS or other Federal agencies that might meet the information needs presented above. It was concluded that no other collections would meet the at-sea notification, recovery data collection, or specimen identification requirements contained in the BiOp.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

All of the vessels in the Hawaii-based longline fishery are small business entities of similar sizes and are affected comparably. No special measures are needed to accommodate different sized businesses. Only a minimum amount of data, as required by the terms and conditions of the BiOp, is collected through this program.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

If this information is not conducted, NOAA Fisheries Service will not be in compliance with the BiOp. Also, without this collection, the ability of NOAA Fisheries Service and FWS to effectively respond to any potential take of a short-tailed albatross in the Hawaii longline fishery would be compromised.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

This collection is consistent with the OMB guidelines, except that its frequency may exceed the minimum quarterly reporting schedule. This is because the collection is varied and unscheduled; its implementation requires immediate action and use of the information.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

NOAA Fisheries Service consulted with FWS, Council staff, and FWS' North Pacific Albatross Working Group on the initial collection elements and format. FWS staff developed and prepared the short-tailed albatross recovery data form for use by NOAA Fisheries. The final rule on seabird mitigation measures was published in the *Federal Register* on May 14, 2002 (67 FR 34408). The *Federal Register* notice eliciting comments on the renewal of this collection was published on March 17, 2005; no comments were received. Copies of the BiOp containing the collection requirements were made available to fishermen at the Council's meeting for discussion and can be found on Pacific Islands Regional Office (PIRO) website at <http://swr.nmfs.noaa.gov/pir/>.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

No payments or gifts are involved in this collection.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

Under Section 402b of the Magnuson-Stevens Act and NOAA Administrative Order 216-100, information submitted in accordance with regulatory requirements under the Act is confidential. This includes confidential information contained in the short-tailed albatross recovery data form (i.e., fishing location). Personal and propriety information is not released to the public.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No questions of a sensitive nature will be asked in this data collection.

**12. Provide an estimate in hours of the burden of the collection of information.**

	Annual Burden: (hours)
(a) At-sea notification: 1 vessel x 1 notification/year x 60 min/notification =	1 hours
(b) Reports: 1 vessel x 1 report/year x 60 min/report =	1 hours
(c) Specimen Tag: 1 vessel x 1 id tags/year x 30 min/tag =	1 hour
	Total = 3 hours

The number of respondents is based on an estimated accidental take of a total of one short-tailed albatross annually in the Hawaii-based longline fishery. The take level is consistent with the October 2004 supplement to the Biological Opinion issued by FWS on the effects of the fishery on the short-tailed albatross.

The total annual personnel cost to respondents is estimated at \$60 per year. This was derived by multiplying the number of hours of burden each year (3 hours) times an hourly cost rate of \$20, the estimated hourly wage rate for a vessel captain.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

There is no “start-up” capital cost for complying with this requirement. The estimated total annual cost to respondents is \$80 (1 respondent x \$80/year) – primarily ship-to shore communication cost.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated annual cost to the Federal government to administer this collection is \$200 per year, which includes the cost for printing the short-tailed albatross recovery forms and specimen identification tags, and the cost of staff time for receiving/transmitting the data forms to FWS.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

The adjustment of burden hours reflects the new take levels outlined in the supplementary 2004



BiOp<sup>2</sup>. The estimate of one short-tailed albatross per year is based on certain assumptions relative to the bird's behavior, distribution, and its possible interaction with the Hawaii-based longline fishery.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

No formal scientific publications based on these collections are planned at this time. NOAA Fisheries, FWS, and the Council will use the data for fisheries management and protected species reports, FMP amendments, and evaluations. However, subsequent use of the data collected over the next few years may include scientific papers and publications.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

The expiration date will be shown on the short-tailed albatross recovery data form used under this collection.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

There are no exceptions.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.

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<sup>2</sup> "Biological Opinion on the Effects of the Reopened Shallow-set Sector of the Hawaii-based Longline fishery on the Short-tailed Albatross (*Phoebastria nigripes*) [FWS 1-2-1999-F-2.2].

<b>SHORT-TAILED ALBATROSS RECOVERY DATA FORM</b>			
<b>I. CAPTURE INFORMATION:</b>			
Date:	Time:	<b>Location:</b> Latitude =	
Trip Number:	Specimen Number:	Longitude =	
<b>Band Information:</b> Color: Number:		<b>Left Leg:</b>	<b>Right Leg:</b>
Bird alive at capture (circle one)?      Yes      No      (If "No", do not fill out Sections II-V.)			
<b>II. ASSESS BIRD'S CONDITION:</b>			
Answer the following questions by placing an X in the yes or no column. If all questions are answered "yes", the bird may be released following release guidelines as identified in the Handling and Release Guidelines for Short-tailed Albatross.			
<i>Observation Checklist</i>	<i>Yes</i>	<i>No</i>	<i>Comments</i>
1. Can the bird stand and hold head upright?			
2. Is the bird alert, responsive, aware of surroundings?			
3. Are the eyes open?			
4. Does the bird breathe with its bill closed (i.e., no open bill breathing)?			
5. Does the bird breathe quietly (i.e., no sounds)?			
6. Is the bird holding its wings in a normal position up and against the body (i.e., not drooping or held down)?			
7. Can the bird flap its wings?			
8. Is the bird free from visible damage? (If damaged, the wounds should be noted on bird diagram.)			
9. Is the bird free from hooks or entangled fishing line? (If bird is hooked or entangled in line, note location on bird diagram)?			

<b>III. TREATMENT</b>		
Note wounds, hooks, and line entanglement on bird diagram.		
Veterinarian Contacted:	Date:	Time:
<i>Date/Time:</i>	<i>Treatment Administered:</i>	
<b>IV. RECOVERY</b>		
<i>Observation Period</i> (Check bird at 30 minutes, 1 hour, and every few hours thereafter; use more sheets if necessary)		
<i>Date/Time:</i>	<i>Bird Behavior/Condition:</i>	
<b>V. RELEASE</b> (Note: Follow release criteria and guidelines as identified in the Handling and Release Guidelines for Short-tailed Albatross.)		
Release Date:	Release Time:	
Release Location (Lat/Long):		
Bird Behavior Upon Release:		

**Paperwork Reduction Act Information**

Public Reporting burden for this collection is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of

this collection of information, including suggestions for reducing this burden, to Regional Administrator, Pacific Islands Region, NOAA Fisheries Service, 1601 Kapiolani Blvd., Suite 1110, Honolulu, Hawaii 96814.

This information is being collected to provide the information needed to maximize the probability of long-term survival of an injured short-tailed albatross that is incidentally hooked or entangled by longline gear during fishing operations conducted by a Hawaii-based longline fishing vessel.

Responses to the collection are required by the October 8, 2004, biological opinion issued by the U.S. Fish and Wildlife Service under the authority of the Endangered Species Act and regulations implementing the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (ref. 50 CFR 660.35). Data provided concerning the vessel operators are handled as confidential under the Magnuson-Stevens Fishery Conservation and Management Act (sec.402(b)). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred.

**PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES**

3. The authority citation for part 1150 continues to read as follows:

**Authority:** 5 U.S.C. 553 and 559; 49 U.S.C. 721(a), 10502, 10901 and 10902.

4. Section 1150.32 is amended by adding a new paragraph (e) to read as follows:

**§ 1150.32 Procedures and relevant dates—transactions that involve creation of Class III carriers.**

\* \* \* \* \*

(e) If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

5. Section 1150.35 is amended by revising paragraph (a) to read as follows:

**§ 1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.**

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.32(e).

\* \* \* \* \*

6. Section 1150.42 is amended by adding a new paragraph (e) to read as follows:

**§ 1150.42 Procedures and relevant dates for small line acquisitions.**

\* \* \* \* \*

(e) If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the

employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

7. Section 1150.45 is amended by revising paragraph (a) to read as follows:

**§ 1150.45 Procedures and relevant dates—transactions under section 10902 that involve creation of Class I or Class II rail carriers.**

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.42(e).

\* \* \* \* \*

[FR Doc. 97-23827 Filed 9-9-97; 8:45 am]  
BILLING CODE 4915-00-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

[Docket No. 970527125-7219-02; I.D. 032797B]

RIN 0648-AJ95

**Magnuson Act Provisions; Appointment of Regional Fishery Management Council Members**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to amend the regulations governing the nomination and appointment of members of regional fishery management councils to establish the procedures applicable to the nomination and appointment to the Pacific Fishery Management Council of a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The purpose of this rule is to implement certain sections of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Sustainable Fisheries Act (SFA) which require such an appointment.

**EFFECTIVE DATE:** September 5, 1997.

**ADDRESSES:** Comments on the collection of information aspects of this rule should be sent to Mr. William Stelle, Jr., Administrator, Northwest Region, NMFS, 76000 Sand Point Way, BIN C15700, Seattle, WA 98115-0070; or to Mr. William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6142 or Rodney McInnis at 562-980-4040.

**SUPPLEMENTARY INFORMATION:** On October 11, 1996, President Clinton signed into law the Sustainable Fisheries Act, which, in pertinent part, amended the Magnuson-Stevens Act to add a seat on the Pacific Fishery Management Council (Pacific Council) exclusively for a representative of an Indian tribe with federally recognized fishing rights:

The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph (section 302(b)(5)(A)).

Sections 302(b)(5)(B)(i), (ii), and (iii) of the Magnuson-Stevens Act require that representation be rotated among the tribes taking into consideration the qualifications of the individuals on the list, the various rights of the Indian tribes involved and judicial cases that set out how those rights are to be exercised, and the geographic area in which the tribe of the representative is located.

NMFS published a proposed rule to implement these provisions of the Magnuson-Stevens Act with a 30-day comment period on July 1, 1997 (62 FR 35468). The comment period was subsequently extended through August 11, 1997, at the request of the Quileute Tribal Council.

As in the proposed rule, the final rule requires the Secretary of Commerce (Secretary) to consult with the Bureau of Indian Affairs (BIA), Department of the Interior, to determine from which Indian tribes to solicit nominations for the Council seat. By statute, NMFS must solicit nominees from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The rule requires the Secretary to solicit written nominations from each tribal government and produce a list of not less than three individuals who are

knowledgeable and experienced regarding the fishery resources affected by the recommendations of the Pacific Council. The Secretary will appoint one individual from this list to the Pacific Council for a term of 3 years. Under the rule, prior service on the Council in a different capacity will not disqualify a nominee proposed by a tribal government. Also, if any tribal representative appointed to the Council vacates the Council seat prior to the expiration of any term, the Secretary may appoint a replacement for the remainder of the vacant term from the original list of nominees or may solicit a new set of nominees following the process described above. Under the rule, no tribal representative may serve more than three consecutive terms in the Indian tribal seat.

The rule requires the Secretary to rotate the appointment of a tribal representative to the Pacific Council among the tribes, taking into consideration the qualifications of the individuals nominated, the various rights of the Indian tribes involved and judicial cases that set out how those rights are to be exercised, and the geographic area in which the tribe of the representative is located.

#### Comments and Responses

NMFS received five letters from tribal organizations commenting on the proposed rule. Two letters were received from the Quileute Tribal Council and one letter each from the Hoh Tribe, the Quinault Indian Nation and the Columbia River Inter-Tribal Fish Commission (CRITFC) representing the four Columbia River Treaty Tribes (Yakama, Warm Springs, Umatilla and Nez Perce). These comments and NMFS' responses are summarized below.

*Comment 1:* NMFS did not adequately consult with tribal governments, as required by the Magnuson-Stevens Act, before preparing the proposed rule. The CRITFC suggested that final regulations not be implemented until that deficiency is cured by NMFS.

*Response:* NMFS needed to act quickly to implement procedures to appoint a tribal member to the Council in order to have a tribal representative appointed and seated on the Council for the very important September and November 1997 Council meetings. At these Council meetings, decisions will be made regarding harvestable amounts of Pacific groundfish that will directly affect tribal harvests. NMFS staff consulted informally with the staffs of the CRITFC, Northwest Indian Fisheries Commission (NWIFC), and the Yurok and Hoopa Valley Tribes prior to publication of the proposed rule. NMFS

did not formally send the proposed rule to each individual tribal government until after the rule was published for public comment. After the rule was published, it was sent to each individual tribal government to solicit comment during the comment period. At the request of the Quileute Tribe, the comment period was extended until August 11, 1997, to provide additional time for tribal governments to comment. NMFS is publishing the final rule without further delay in order to implement the new provisions for the appointment of a tribal member to the Council before the September Pacific Council meeting.

*Comment 2:* Both the CRITFC and Quileute Tribal Council commented that the appointment of a tribal member to the Council should be rotated among the three tribal regions (*U.S. v. Washington* tribes, the Columbia River-*U.S. v. Oregon* and Idaho tribes, and the California tribes). The Quileute stated that the Secretary "shall" rotate the appointment every three years, and proposed that no tribal representative may serve more than one term. CRITFC commented only that it was their expectation that the "appointments would rotate among the three Regions." The Quinault opposed the required rotation among the three areas every three years and the one-term limit.

*Response:* The Magnuson-Stevens Act, section 302(b)(5)(B), states only that "Representation shall be rotated among the tribes taking into consideration—(i) the qualifications of the individuals on the list referred to in subparagraph (A), (ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and (iii) the geographic area in which the tribe of the representative is located." Although not specifically identifying the areas/regions or tribes among which the appointment shall be rotated, the statute provides the Secretary with the discretion to rotate the appointment among the three regions identified by the two commentators. In addition, as pointed out by the Quinault Indian Nation, requiring rotation of the Council seat each 3 years and limiting the tribal representative to one term appears inconsistent with the provision of the Act that limits the number of times a single individual can hold a Council seat to three consecutive terms. The three term limitation implicitly recognizes the value of experience gained by longer term service. In addition, the statute lists two additional criteria the Secretary must take into account when rotating the seat: The qualifications of the nominees and the rights of the tribes. Therefore, the

regulations use the plain language of the statute in the belief that Congress wanted the Secretary to have some discretion in rotating the appointments consistent with the guidance contained in the statute. If Congress had intended the appointment to rotate among three specific regions without exception, the statutory language would have been more specific. *Comment 3:* Both the CRITFC and the Quileute Tribal Council proposed modification of the NMFS-proposed process for appointing a tribal member to the Council. This modification would add an additional step to the process where, after NMFS has solicited initial nominations from each individual tribal government, NMFS would send the list of nominees back to each tribal government so that the tribes could select a preferred nominee from each of the three regions. The Quileute proposal suggested that each tribe would vote for one of the nominees in its area. The Secretary would be required to make the Council appointment from a list of the three nominees with the most votes from each area. The nominees with the most votes from the other two areas would serve as alternates. The CRITFC proposal was similar to the Quileute proposal but not as detailed. CRITFC suggested the same process by which NMFS would return the list of nominees to the tribal governments for them to choose a preferred nominee from each area, but CRITFC would expect the Secretary to "defer to the tribes in each respective area where there is a consensus on their nominee." CRITFC also suggested that the BIA should provide to the NMFS a list of tribes with federally recognized rights and contacts at that tribe, and that the list be provided to each tribe on the list.

*Response:* NMFS believes the idea of providing the list of nominees to the affected Indian tribes is worth further consideration and intends to consult further with the tribes regarding a process by which all of the affected Indian tribes might have an opportunity to comment on the list of nominees. NMFS notes, however, that the tribes have the ability to consult among themselves primarily through the Inter-Tribal fish commissions (Northwest Indian Fish Commission and CRITFC) at the time that nominations are initially solicited. Thus, the tribes from each area initially could coordinate the nomination of a single individual without the need for coordination through NMFS. While NMFS believes this is a suggestion worth exploring for the long term, its consideration should not hold up the promulgation of a final

rule governing the appointment for the upcoming term while NMFS further explores this proposal. Consequently, NMFS is adopting the process as proposed in the proposed rule but will formally consult with each Indian tribe with federally recognized fishing rights, from which nominations were initially solicited, regarding the consultation process proposed by the Quileute and CRITFC. If, after consultation with all of the tribes, NMFS determines that a different process should be adopted for the future, NMFS will amend this regulation. Regardless of what process is selected for consulting with the tribes, NMFS cannot adopt a rule whereby the Secretary would be bound by a vote among the tribes, as suggested by the Quileute comments. Such a rule would eliminate the Secretary's discretion in making appointments and the Secretary's ability to take into account the statutory criteria discussed above in response to comment 2. The Secretary will, however, take into account the breadth of support from other tribes when selecting the tribal Council member.

*Comment 4:* The Quileute, the Hoh, and CRITFC all suggested that the regulations should provide for regional "alternates" or "designees." The designees would be allowed to occupy the Council seat and vote on matters primarily affecting the region that they represent. The Quinault agreed this was a good idea, but acknowledged the statute probably does not permit this.

*Response:* The Magnuson-Stevens Act includes as voting members of Council the state director or designee and the NMFS Regional Director or designee. For all other council members, the statute does not authorize voting by designees. Without statutory authorization NMFS cannot provide the authority for "designees" to vote.

*Comment 5:* The Quileute Tribe commented that prior service by a tribal member who has served three consecutive terms on the Council, in a position where the tribal member was nominated by a State Governor to fill one of the State Council seats, should disqualify the individual for appointment to the Tribal Council seat. The Quinault Indian Nation commented that the three-term prohibition applies to three terms in the same Council seat and that the proposed rule correctly interprets the SFA.

*Response:* NMFS agrees with the Quinault Indian Nation comment. In the proposed rule NMFS states that prior service will not disqualify a nominee proposed by a tribal government from serving in the newly-created tribal seat. Thus, the three-term consecutive limit

prohibition applies to service time in the new Council seat that Congress established specifically to represent tribal governments. Prior service in a state governor-nominated Council seat does not disqualify a tribal government's nominee for the newly established tribal Council seat.

#### Classification

Since this rule is procedural or interpretative in its entirety, under 5 U.S.C. 553(d) it is not subject to a 30-day delay in effectiveness date.

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

Because prior notice and opportunity for public comment is not required for this rule by 5 U.S.C. 553 or by any other law, under 5 U.S.C. 603(a) and 604(a) this rule is not subject to the analytical requirements of the Regulatory Flexibility Act.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The reporting burden for Indian tribal government nominations for the Council appointments is estimated to average 120 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the PRA, unless that collection-of-information displays a currently valid OMB control number. The collection of this information has been approved by the OMB under Control Number 0648-0314. Send comments on the collection of information aspects of this rule to the NMFS Northwest or Southwest Regional Administrators (see ADDRESSES) or to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

#### List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing, Intergovernmental relations.

Dated: September 4, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

#### PART 600—MAGNUSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.215, the introductory text is removed, paragraphs (a) through (g) are redesignated as paragraphs (a)(1) through (a)(7) respectively, paragraphs (c)(1) through (c)(6) are redesignated as paragraphs (a)(3)(i) through (a)(3)(vi) respectively, paragraphs (f)(1) and (f)(2) are redesignated (a)(6)(i) and (a)(6)(ii) respectively, paragraphs (g)(1) through (g)(6) are redesignated (a)(7)(i) through (a)(7)(vi) respectively, and paragraphs (a) introductory text and (b) are added to read as follows:

#### § 600.215 Appointments.

(a) *Members appointed from Governors' lists.* This paragraph applies to council members selected by the Secretary from lists submitted by Governors pursuant to section 302(b)(2)(C) of the Magnuson-Stevens Act.

\* \* \* \* \*

(b) *Tribal Member.* This paragraph applies to the selection of the Pacific Fishery Management Council's tribal member as required by section 302(b)(5) of the Magnuson-Stevens Act.

(1) The Secretary shall appoint to the Pacific Fishery Management Council one representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than three individuals submitted by the tribal Governments.

(2) The Secretary shall solicit nominations of individuals for the list referred to in paragraph (b)(1) of this section only from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The Secretary will consult with the Bureau of Indian Affairs, Department of the Interior, to determine which Indian tribes may submit nominations.

(3) To assist in assessing the qualifications of each nominee, each tribal government must furnish to the NMFS Office of Sustainable Fisheries a current resume, or equivalent, describing the nominee's qualifications with emphasis on knowledge and experience related to the fishery resources affected by recommendations of the Pacific Council. Prior service on the Council in a different capacity will not disqualify nominees proposed by tribal governments.

(4) Nominations must be provided to NMFS by March 15 of the year in which

the term of the current tribal member expires.

(5) The Secretary shall rotate the appointment among the tribes taking into consideration:

(i) The qualifications of the individuals on the list referred to in paragraph (b)(1) of this section.

(ii) The various rights of the Indian tribes involved and judicial cases that set out how those rights are to be exercised.

(iii) The geographic area in which the tribe of the representative is located.

(iv) No tribal representative shall serve more than three consecutive terms in the Indian tribal seat.

(6) Any vacancy occurring prior to the expiration of any term shall be filled in the same manner as described above except that the Secretary may use the list referred to in paragraph (b)(1) of this section from which the vacating member was chosen.

\* \* \* \* \*

[FR Doc. 97-23940 Filed 9-5-97; 10:40 am]  
BILLING CODE 3510-22-F

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket Number; 970903221-7221-01; I.D. 081297C]

RIN 0648-XX89

**Fisheries off West Coast States and in the Western Pacific; Precious Corals Fisheries; Technical Amendment**

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the regulations implementing the Fishery Management Plan for Precious Corals Fisheries of the Western Pacific Region (FMP) which were published in the **Federal Register** on July 2, 1996. This amendment corrects the coordinates for the location of the Makapuu bed of precious corals appearing under the category of "Established beds" in the definition of "Precious coral permit area".

**DATES:** Effective September 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, 562-980-4034; or Alvin Katekaru, 808-973-2985.

**SUPPLEMENTARY INFORMATION:** In the original FMP the coordinates for the center of the Makapuu bed contained a typographical error. Instead of the longitude being listed as 157° 32.5' W. it was incorrectly listed as 157° 35.5' W. longitude. This error placed the location of the bed approximately three miles away from its actual location.

There has been almost no fishing under the FMP since its implementation, and this error was only recently discovered. This technical amendment corrects the regulations implementing the FMP (August 30, 1983, 48 FR 3923; consolidated by July 2, 1996, 61 FR 34570) to list the coordinates for the center of the Makapuu bed.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B) finds that providing prior notice and an opportunity for public comment on this rule is unnecessary, because the rule merely corrects coordinates for the location of a

resource, and such notice and opportunity for comment would serve no useful purpose. Similarly, the AA, under 5 U.S.C. 553 (d)(3) finds that delaying the effective date of the correction for 30 days is unnecessary because the location of the bed is fixed.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. This rule is exempt from review under E.O. 12866.

**List of Subjects in 50 CFR Part 660**

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

Dated: September 4, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, 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 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 § 660.12, the category for "Established beds" under the definition of "Precious coral permit area" is corrected by revising the coordinates of the point specified therein to read "21° 18.0' N. lat, 157° 32.5' W. long."

[FR Doc. 97-23941 Filed 9-9-97; 8:45 am]

BILLING CODE 3510-22-F



**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 000622191-2104-02; I.D. 041700D]

RIN 0648-A035

**Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; 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:** Announcement of effectiveness of a collection-of-information requirement.

**SUMMARY:** NMFS announces the effectiveness of a collection-of-information requirement for participants in the Hawaii-based longline limited access fishery, whereby in the event an endangered short-tailed albatross is accidentally hooked or entangled during fishing operations, NMFS or the U.S. Coast Guard (USCG) or U.S. Fish and Wildlife Service (USFWS) must be notified immediately. Recovery information on short-tailed albatross, which is retrieved from the ocean by a Hawaii-based longline vessel, must be recorded on a data form provided by NMFS. If the retrieved short-tailed albatross is dead or dies on board the vessel, information tags must be

attached to the carcass and specimen bag.

**DATES:** Paragraphs 660.35(b)(4)(i), 660.35(b)(6), and 660.35(b)(8) of the final rule published May 14, 2002 (67 FR 34408), are effective October 10, 2002.

**FOR FURTHER INFORMATION CONTACT:** Alvin Z. Katekaru, Pacific Islands Area Office, NMFS, 808-973-2937.

**SUPPLEMENTARY INFORMATION:** On May 14, 2002 (67 FR 34408), NMFS published a final rule that promulgated a regulatory amendment, under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, permanently codifying seabird take mitigation measures in the Hawaii-based longline fishery. Section 660.35 (Pelagic longline seabird mitigation measures) of that final rule contains a collection-of-information requirement for any vessel registered for use under a Hawaii longline limited access permit. Immediate notification must be provided to NMFS, the USCG, or the USFWS of any hooking or entanglement of an endangered short-tailed albatross during longline fishing operations. If the albatross is retrieved dead or dies on board the vessel, an identification tag must be attached directly to the carcass listing the species, location, and date of mortality, and band number if the bird has a leg band. A duplicate identification tag must be attached to the specimen bag or container holding the carcass. If the retrieved short-tailed albatross is alive, the condition of the bird must be recorded on a recovery data form provided by NMFS. The information may be used by a

veterinarian in providing advice to the vessel operator and crew on the care and recovery of an injured short-tailed albatross.

In the final rule, NMFS requested comments on the reporting burden estimate or any other aspect of the collection-of-information requirements that are in this final rule. No comments were received on the collection-of-information requirements.

Because the notification and reporting activities constitute a collection-of-information subject to the Paperwork Reduction Act, it could not be enforced prior to approval by the Office of Management and Budget (OMB). Delayed enforcement of §§660.35(b)(4)(i), 660.35(b)(6), and 660.35(b)(8) was announced in the May 14, 2002, final rule pending OMB approval of short-tailed albatross interaction notification and reporting procedures. OMB has approved the collection-of-information requirement under OMB control number 0648-0456. Sections 660.35(b)(4)(i), 660.35(b)(6), and 660.35(b)(8) are effective September 30, 2002, and will be enforced from that date on.

**List of Subjects in 50 CFR Part 660**

Reporting and recordkeeping requirements.

Dated: September 4, 2002.

**Rebecca Lent,**

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

[FR Doc. 02-22924 Filed 9-9-02; 8:45 am]

**BILLING CODE 3510-22-S**

(295) New and amended regulations for the following APCD were submitted on February 8, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Tehama County Air Pollution Control District.

(1) Rules 4:31 and 4:37 adopted on January 29, 2002.

\* \* \* \* \*

[FR Doc. 02-11823 Filed 5-13-02; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 000622191-2104-02; I.D. 041700D]

RIN 0648-AO35

#### Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; 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; seabird mitigation measures.

**SUMMARY:** NMFS issues a final rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) that requires owners and operators of all vessels registered for use under a Hawaii longline limited access permit and operating with longline gear north of 23° N. lat. to employ a line-setting machine with weighted branch lines or use basket-style longline gear, and to use thawed blue-dyed bait and strategic offal discards during setting and hauling of longlines. This final rule also requires that the owners and operators of these vessels follow certain seabird handling techniques and annually complete a protected species educational workshop conducted by NMFS. This final rule follows an emergency interim rule published on June 12, 2001, and is being implemented to permanently codify the terms and conditions contained in a biological opinion (BiOp) issued on November 28, 2000, by the U.S. Fish and Wildlife Service (USFWS) and intended to afford protection to the endangered short-tailed albatross. This final rule also implements management measures that were recommended by the Western Pacific Fishery

Management Council (Council) and published in a proposed rule on July 5, 2000. These measures were designed to minimize interactions between seabirds and the Hawaii-based longline fishery.

**DATES:** This final rule is effective June 13, 2002, except for amendments to §§ 660.35(b)(4)(i), 660.35(b)(6), and 660.35(b)(8), which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval is received, the effective date will be announced in the **Federal Register**.

**ADDRESSES:** Copies of a final environmental impact statement for the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FEIS) are available from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Copies of an environmental assessment (EA), regulatory impact review and final regulatory flexibility analysis (FRFA) prepared for this action may be obtained from Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Suite 1400, 1164 Bishop Street, Honolulu, HI 96813. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this rule to NMFS, PIAO and to OMB at the Office of Information and Regulatory Affairs, OMB, 725 17th St., NW, Washington, DC 20503 (Attn: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru, PIAO, 808-973-2937.

**SUPPLEMENTARY INFORMATION:** As discussed in the proposed rule, published at 65 FR 41424, July 5, 2000, Hawaii-based pelagic longline vessels are known to interact in a sometimes fatal manner with black-footed (*Phoebastria nigripes*) and Laysan (*P. immutabilis*) albatrosses. These seabirds follow the longline vessels, dive on the baited longline hooks, and may become hooked and subsequently drown. Although no fishery interactions with the endangered short-tailed albatrosses (*P. albatrus*) have been recorded to date, following the publication of the proposed rule, the USFWS prepared a BiOp for the fishery under section 7 of the Endangered Species Act (ESA) for this species. That BiOp concluded that the Hawaii-based longline fishery was not likely to jeopardize the continued existence of the short-tailed albatross. However, it estimated that the fishery would take 15 short-tailed albatrosses during the 7-year period addressed in the consultation. (For the purposes of this BiOp, the USFWS considered a "take" to include not only injury or

mortality to a short-tailed albatross caused by longline gear, but also any short-tailed albatross striking at baited hooks or mainline gear during longline setting or haulback.)

Based on this assessment, the USFWS BiOp requires NMFS to implement several measures applicable to the owners and operators of vessels registered for use under Hawaii limited access longline permits (Hawaii-based vessels). When making deep sets north of 23° N. lat., these vessels must employ a line-setting machine with at least 45 grams of weight attached within 1 meter of each hook. In addition, all Hawaii-based vessels operating north of 23° N. lat. must use thawed blue-dyed bait and strategic offal discards to distract birds during the setting and hauling of longline gear. Regardless of the area fished, all Hawaii-based vessel operators must follow certain handling techniques to ensure that any short-tailed albatross brought onboard alive is handled and released in a manner that maximizes the probability of its long-term survival (dead short-tailed albatrosses are to be frozen and their carcasses submitted to NMFS upon return to port). Finally, the USFWS BiOp requires that Hawaii-based vessel operators annually complete a protected species educational workshop conducted by NMFS. Although shallow "swordfish-style" setting is currently prohibited by an emergency rule implemented to protect sea turtles (see below), the USFWS BiOp requires that vessel operators making shallow sets north of 23° N. lat. begin setting the longline at least 1 hour after local sunset and complete the setting process by local sunrise, using only the minimum vessel lights necessary. This requirement is not included in this final rule because the prohibition on "swordfish style" shallow set fishing is being undertaken under separate rulemaking to make this measure permanent in compliance with a March 29, 2001, biological opinion issued by NMFS regarding sea turtles. On October 18, 2001, the USFWS amended the USFWS BiOp to allow basket-style longline gear to be set without a line-setting machine or weighted branch lines as data show that this gear has a rapid sink rate that results in few, if any, seabird interactions.

The USFWS BiOp's terms and conditions were implemented by NMFS on June 12, 2001, through an emergency interim rule, which also included sea turtle mitigation measures (FR 66 31561). Public comments were solicited at that time; however, none were received. On December 10, 2001, NMFS extended that emergency interim rule

for another 180 days, through June 8, 2002 (FR 66 63630).

Under the Council's recommended seabird mitigation measures (as described in the July 5, 2000, proposed rule), both vessel owners and vessel operators would have been required to attend annually a protected species workshop conducted by NMFS. In addition, the proposed rule would have required that all seabirds (not just short-tailed albatrosses) be handled and released in a manner that maximizes the probability of their long-term survival. As these two components of the Council's recommendation are more conservative than those in the USFWS BiOp, this final rule combines the terms and conditions of the USFWS BiOp (as previously implemented by the June 12, 2001, emergency interim rule), with the Council's recommendation on seabird handling and workshop attendance requirements. Additional background information on this fishery's interactions with seabirds may be found in the preamble to the proposed rule and is not presented here.

#### Comments and Responses

Comments on the Council's proposed rule were received from seven individuals.

*Comment 1:* The rule should not allow vessel operators to decide what mitigation techniques to use (pick list) but should mandate the use of specific techniques.

*Response:* This final rule does not allow vessel operators to choose mitigation techniques from a pick list. They are required to employ three non-discretionary techniques (blue dyed bait, strategic offal discards, and either basket-style longline gear or a line shooter with weighted branch lines) when fishing north of 23° N. lat. However, vessel operators may choose to use additional mitigation techniques.

*Comment 2:* NMFS should only require mitigation measures that are scientifically proven.

*Response:* The seabird mitigation methods in this final rule were studied for their effectiveness in reducing longline gear interactions with seabirds. Both NMFS and a private contractor tested the effectiveness of blue-dyed bait, strategic offal discards, and night setting. Data collected by NMFS observers between 1994–1998 were used to analyze the effectiveness of using a line-setting machine with weighted branch lines. These techniques were found to individually reduce seabird interactions from 40 to 97 percent, with their combined effectiveness anticipated to be at the high end of this range.

*Comment 3:* NMFS should require fishermen to attach weights of at least 60 grams one meter from each hook on the branch line, because NMFS scientists used 60 grams of weight to achieve a 92-percent reduction in seabird catch.

*Response:* Although NMFS scientists tested 60 grams of weight, other scientists investigating seabird mitigation techniques have demonstrated that there are diminishing returns to the sink rates of baited hooks with the addition of weights greater than 40 grams. There are safety concerns associated with heavily weighted hooks because they increase the tension on the line. During longline haulback operations the heavily weighted hooks on the tense line can ricochet back onto vessel crew members and cause serious injury or death. Considering that many vessel operators are currently able to safely weight their gear with 45 grams, and that the sink rate would not significantly increase with the addition of more weight, NMFS believes it is unnecessary and potentially dangerous to require fishermen to use 60 grams of weight.

*Comment 4:* Strategic offal discharge should not be included as a seabird mitigation method because it attracts birds to the vessels and is unenforceable. The rule should also prohibit the discharge of spent bait with hooks, including fish heads with embedded hooks.

*Response:* NMFS recognizes that there is not universal agreement on the effectiveness of strategically discarding offal to deter seabirds from interacting with longline gear. However, studies of Hawaii-based vessels targeting swordfish have demonstrated that discharging offal strategically decreases the number of seabird interactions by an average of 53 percent and reduces seabird mortalities by as much as 86 percent, when compared with holding all offal onboard during longline operations. NMFS agrees that offal containing hooks should not be discarded and this rule requires the removal of hooks from fish parts, offal, and spent bait prior to its discharge.

*Comment 5:* Until a study has been completed, NMFS should not advocate the use of blue-dyed bait in combination with strategic offal discharge.

*Response:* Although specific research on the interactive effects of blue-dyed bait used in combination with strategic offal discharge has not been conducted, there is no information to suggest that their combined use will be any less effective than the use of either method alone.

*Comment 6:* The rule should apply to Hawaii longline vessels fishing north of 23° N. lat., not only to those north of 25° N. lat.

*Response:* As required by the USFWS BiOp, as supported by the data on incidental catch of seabirds in the longline fishery, this final rule applies to all Hawaii-based longline vessels fishing north of 23° N. lat.

*Comment 7:* Longline fishing should be prohibited north of 23° N. lat. within 200 nautical miles (nm) off the NWHI during the first 3 months of the nesting season.

*Response:* Although not tested simultaneously, the mitigation techniques contained in this rule are each anticipated to reduce seabird interactions by a minimum of 40 to 97 percent, with their combined effectiveness anticipated to be at the high end of this range. Closure of the area suggested would not be expected to further decrease interactions significantly.

*Comment 8:* Educating owners and operators through the protected species workshops should be mandatory and NMFS should not have the option of waiving this requirement. The workshop requirement should also be extended to crew members and fisheries observers.

*Response:* Both vessel owners and operators are required to complete annual protected species workshops. However, NMFS needs the flexibility to waive the requirement for protected species workshop attendance in certain circumstances if the waiver is needed for good and justifiable reasons. For example, if the permit holder (longline vessel owner) is a corporation, NMFS should be able to waive the workshop requirement with respect to each of its shareholders with the exception of a representative or designee of the corporation. Although crew members are not required to take the workshop due to the numbers involved and scheduling difficulties, NMFS encourages their attendance on a voluntary basis. The NMFS observer training program ensures that all fishery observers receive adequate training in protected species issues.

*Comment 9:* NMFS should prohibit the use of lightsticks in the Hawaii longline fishery to protect seabirds.

*Response:* The emergency interim rule (June 12, 2001) prohibits the possession and use of lightsticks north of the equator, but for the conservation of sea turtles. NMFS observer data do not show that lightsticks are a significant factor in the incidental catch of seabirds in the Hawaii-based longline fishery. However, this prohibition is part of a

separate rulemaking to make this measure permanent in compliance with a March 29, 2001, biological opinion on sea turtles issued by NMFS.

*Comment 10:* The rule should differentiate between the swordfish and tuna longline sectors in adopting mandatory seabird mitigation methods.

*Response:* The USFWS BiOp contains different requirements for the two sectors (shallow, nighttime setting swordfish vessels vs. deep daytime setting tuna vessels); however, a June 12, 2001, emergency rule prohibited all shallow setting north of the equator in order to conserve sea turtles. That prohibition is expected to be made permanent because it is one of the mandatory terms and conditions of a March 29, 2001, biological opinion on sea turtles issued by NMFS. Since the shallow-set fishery for swordfish is no longer allowed to operate, there is no need to promulgate regulations to control that fishery.

*Comment 11:* Standards for maximum lighting brightness should be established for the night setting mitigation method, with all other types of lighting illegal while night setting.

*Response:* NMFS is not implementing a night setting requirement at this time because shallow, nighttime setting is not expected to resume north of the equator (see response to comment 10).

*Comment 12:* If longline operators miscalculate sunrise and sunset times, the night setting method would be ineffective.

*Response:* NMFS is not implementing a night setting requirement at this time (see response to comment 10).

*Comment 13:* The rule should specifically delineate how enforcement shall occur and include provisions for monitoring the effectiveness of the mitigation methods.

*Response:* The U.S. Coast Guard (USCG) has indicated that it will enforce the use of seabird mitigation methods by conducting dockside inspections and aerial surveillance of fishing vessels at sea. At dockside and at sea, longline vessels will be checked for required equipment and vessel operators will be asked how and when they intend to employ seabird mitigation methods. Aerial surveillance will be used to observe the fishing process and determine whether line setting machines are being used when making deep sets north of 23° N. lat. To monitor and enforce attendance at the protected species workshops, each workshop participant will be given a completion certificate with their name and photograph, and each vessel's operator and owner must both maintain valid certificates in order to continue fishing.

*Comment 14:* The appropriate goal for seabird bycatch measures is the elimination of such bycatch entirely.

*Response:* At this time there is no single seabird interaction mitigation measure, or combination of measures, that would eliminate all seabird interactions with this fishery. However, NMFS intends to continue to research and develop seabird mitigation measures to reduce interactions with seabirds to the maximum extent practicable, as called for in the United Nations Food and Agricultural Organization's International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries.

*Comment 15:* The rule should include incentives for longline fishermen to participate in research and development programs to evaluate the effectiveness of seabird mitigation measures. There should be a requirement for monitoring mitigation measures on board Hawaii-based longline vessels and there should be research of more effective measures.

*Response:* Hawaii longline fishery participants have already voluntarily participated in seabird mitigation studies such as the testing of blue-dyed bait, strategic offal discards, and an underwater line-setting chute. In addition, nothing in this final rule prevents vessel operators from experimenting with new methods to reduce interactions with seabirds. The effectiveness of the mitigation measures required by this final rule will be evaluated primarily using data collected by NMFS observers, supplemented with data from the fishery logbooks.

*Comment 16:* NMFS should require automated, computer-monitored, NMFS-approved vessel monitoring systems (VMS) to be installed on all longline vessels.

*Response:* Existing NMFS regulations at 50 CFR 660.25 require all Hawaii-based longline fishing vessels to carry automated, computer-monitored VMS.

*Comment 17:* NMFS should expand the Hawaii longline fishery observer program to reduce the uncertainty regarding the rate of interactions with seabirds and the effectiveness of seabird mitigation methods. Observer coverage should be increased to at least 20 or 25 percent throughout the fishery. Observers should be trained in seabird identification and be required to record all seabird mortality data, mitigation measures employed, and the effectiveness of such measures.

*Response:* Over the past 15 months, NMFS has increased observer coverage in the Hawaii-based longline fishery to over 20 percent. Observers are currently trained in seabird identification, record seabird mitigation methods employed

on each observed vessel, and note bird abundance while the vessel is setting or hauling its gear.

*Comment 18:* Operators of longline vessels not carrying observers should record accurate information on the number of birds caught on each set, along with information on the numbers of hooks set, locality of set, time, and date of set. Any dead seabird should be brought aboard the vessel, frozen, and brought to port for identification and study.

*Response:* As longline vessel operators are already required to record seabird interaction information on NMFS daily longline logbooks, no change is required to meet this request. The collection and further study of dead seabird specimens would contribute to the understanding of how longline fishing operations impact seabird populations. However, because the Migratory Bird Treaty Act limits the importation and transportation of live or dead birds or bird parts without a permit or an exemption from the Act, Hawaii-based fishermen will not be required to bring back to port all dead seabirds brought aboard their vessels. This final rule does require that fishermen retain and bring back any dead short-tailed albatross, an endangered species, brought aboard the vessel. This action is authorized under the Endangered Species Act.

#### Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866. On March 30, 2001, NMFS issued an FEIS that analyzes the environmental impacts of U.S. pelagic fisheries in the western Pacific region. That analysis includes the Hawaii-based pelagic longline fishery and was filed with the Environmental Protection Agency; a notice of availability was published on April 6, 2001 (66 FR 18243). In February 2002, the Council prepared an EA on the specific seabird mitigation measures in this rule. That analysis is available from the Council (see **ADDRESSES**).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act. This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is

estimated at 60 minutes for at-sea notification by a longline vessel operator of a take of a short-tailed albatross, 60 minutes to complete a short-tailed albatross recovery data form, and 30 minutes to complete a specimen tag for a short-tailed albatross. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule to NMFS and OMB (see **ADDRESSES**).

An FRFA that describes the impact this final rule is likely to have on small entities was prepared and is also available from the Council (see **ADDRESSES**). A summary of the FRFA follows.

The need for and objectives of this final rule are stated in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this document and are not repeated here. No comments on the initial regulatory flexibility analysis or the economic effects of this action were received. This final rule will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 660.

All Hawaii-based longline vessels affected by this final rule are considered to be small entities under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of \$3.5 million. Based on the information provided in the FRFA, this final rule will affect all 164 holders of Hawaii limited access longline permits. Most severely impacted will be the owners and operators of those vessels fishing north of 23° N. lat. During the time period which was the focus of the USFWS BiOp (1994–1998), an average of 96 vessels made at least one set north

of 23° N. lat. each year. The distribution of these vessels by set type (deep versus shallow) is difficult to determine, as the majority made at least one set of each type. On average there were approximately 830 deep sets, and 4,100 shallow sets made annually north of 23° N. lat. between 1994 and 1998. The costs associated with this final rule can be categorized as direct (increased fixed or variable costs) or indirect (revenue changes). Because mitigation techniques vary by target, economic impacts follow this same pattern. Compared to the historic baseline (1994–1999, the period examined in the USFWS BiOp), the revenue impact to those vessels utilizing shallow sets north of 23° N. lat. (swordfish and mixed target vessels), is expected to be a gain of \$335 per swordfish set (a 9 percent increase as compared to the 1998 fleet wide average of \$3,724 per set) due to increased catch rates, but a loss of \$598 per mixed target set (16 percent decrease) due to decreases in catch rates. The actual impact on these vessel owners and operators is uncertain, as the current emergency rule to protect sea turtles prohibits these vessels from utilizing shallow sets north of the equator. The anticipated revenue impact to vessels utilizing deep sets north of 23° N. lat. (vessels targeting tuna and the only fishery currently allowed in this area) is expected to be a gain of \$432 per set (12 percent increase). Direct costs for these vessels include \$2,700 annually for the amortized purchase price and maintenance of a line setting machine with weighted branch lines. In addition, this rule is anticipated to increase annual direct costs to operators of all vessels fishing north of 23° N. lat. by up to \$500 for blue dye, and \$400 for containers in which to store offal between sets. The actual net revenue increase/decrease in this fishery cannot be predicted, because of the added constraints to the fishery compared to the baseline period. The impacts of other aspects of this final rule (seabird handling procedures and annual attendance at a protected species workshop) have not been quantified but are expected to be minimal. Four alternatives to this final rule were considered and rejected. The first alternative would have required vessel operators to use at least two of six specified mitigation techniques (pick list) when fishing north of 25° N. lat. The second alternative would have also required the use of two techniques when fishing north of 25° N. lat., but would have left the decision of which two up to the Council. The third alternative would have prohibited

longline fishing north of 23° N. lat. within the waters of the exclusive economic zone around Hawaii, while the fourth alternative was the no-action alternative. Based on the non-discretionary nature of the terms and conditions of the USFWS BiOp, these alternatives were all rejected on the basis that they do not meet the legal requirements of the Endangered Species Act. The amendment of the USFWS BiOp to allow the use of basket-style longline gear is intended to provide mitigation from the negative economic impacts of this final rule as one or more vessels that currently utilize this gear to make deep sets will not be required to refit their vessels to accommodate line shooters.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which the agency is required to prepare an 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 a part of this rule making process, a small entity compliance guide (compliance guide) was prepared. Copies of this final rule and the compliance guide will be sent to all holders of Hawaii limited access longline permits. The compliance guide will be available at the following web site: <http://swr.nmfs.noaa.gov/piao/index.htm>. Copies can also be obtained from the PIAO (see **ADDRESSES**).

As previously discussed, on November 28, 2000, the USFWS completed a formal Endangered Species Act section 7 consultation on this fishery. This consultation was amended on October 18, 2001, to allow the use of basket-style gear as an alternative to a line-setting machine with weighted branch lines. The formal consultation concluded that this fishery is not likely to jeopardize the continued existence of the short-tailed albatross. This final rule implements the mandatory terms and conditions of the USFWS BiOp that resulted from that consultation.

#### 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: May 8, 2002.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
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 of part 660 continues to read as follows:

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

2. In § 660.12, the definition for “Basket-style longline gear” is added to read as follows:

**§ 660.12 Definitions.**

\* \* \* \* \*

*Basket-style longline gear* means a type of longline gear that is divided into units called “baskets” each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

\* \* \* \* \*

3. In § 660.22, paragraphs (z) through (dd) are revised and new paragraphs (ee) and (ii) are added to read as follows:

**§ 660.22 Prohibitions.**

\* \* \* \* \*

(z) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep sets north of 23° N. lat., in violation of § 660.35 (a)(1) and (a)(2).

(aa) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access permit north of 23° N. lat., in violation of § 660.35 (a)(3).

(bb) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35 (a)(4), (a)(5), and (a)(6).

(cc) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35 (a)(7) through (a)(9).

(dd) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35 (b).

(ee) Fail to handle seabirds other than short-tailed albatross that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35 (c).

(ff) Own a longline vessel registered for use under a Hawaii longline limited access permit that is engaged in longline fishing for Pacific pelagic management unit species, without a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.36 (a).

(gg) Fish for Pacific pelagic management unit species on a vessel registered for use under a Hawaii limited access longline permit without having onboard a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.36 (d).

(hh) Fail to carry line clippers meeting the minimum design standards as specified in § 660.32(a)(1), and a dip net as required under § 660.32(a)(2), on board a vessel registered for use under a Hawaii longline limited access permit.

(ii) Fail to comply with the sea turtle handling, resuscitation, and release requirements specified in § 660.32(b) through (d), when operating a vessel registered for use under a Hawaii longline limited access permit.

\* \* \* \* \*

**Figure 3 to Part 660 [Removed]**

4. Figure 3 to Part 660 is removed.

5. Section 660.35 is added to read as follows:

**§ 660.35 Pelagic longline seabird mitigation measures.**

(a) *Seabird mitigation techniques.* Owners and operators of vessels registered for use under a Hawaii longline limited access permit must ensure that the following actions are taken when fishing north of 23° N. lat.:

(1) Employ a line setting machine or line shooter to set the main longline when making deep sets using monofilament main longline;

(2) Attach a weight of at least 45 g to each branch line within 1 m of the hook when making deep sets using monofilament main longline;

(3) When using basket-style longline gear, ensure that the main longline is deployed slack to maximize its sink rate;

(4) Use completely thawed bait that has been dyed blue to an intensity level

specified by a color quality control card issued by NMFS;

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

(6) 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;

(7) 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 (a)(6) of this section;

(8) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (a)(6) of this section; and

(9) 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 (a)(6) of this section.

(b) *Short-tailed albatross handling techniques.* If a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit, owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the bird on board the vessel using a dip net;

(2) Cover the bird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the bird;

(4) Determine if the bird is alive or dead.

(i) If dead, freeze the bird immediately with an identification tag attached directly to the specimen listing the species, location and date of mortality, and band number if the bird has a leg band. Attach a duplicate identification tag to the bag or container holding the bird. Any leg bands present must remain on the bird. Contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop, inform them that you have a dead short-tailed albatross on board, and submit the bird to NMFS within 72 hours following completion of the fishing trip.

(ii) If alive, handle the bird in accordance with paragraphs (b)(5) through (b)(10) of this section.

(5) Place the bird in a safe enclosed place;

(6) Immediately contact NMFS, the Coast Guard, or the U.S. Fish and

Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

(7) Follow the veterinary guidance regarding the handling and release of the bird.

(8) Complete the short-tailed albatross recovery data form issued by NMFS.

(9) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(4) and (c)(5) of this section, and release the bird only if it meets the following criteria:

(i) Able to hold its head erect and respond to noise and motion stimuli;

(ii) Able to breathe without noise;

(iii) Capable of flapping and retracting both wings to normal folded position on its back;

(iv) Able to stand on both feet with toes pointed forward; and

(v) Feathers are dry.

(10) If released under paragraph (a)(8) of this section or under the guidance of a veterinarian, all released birds must be placed on the sea surface.

(11) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water.

(12) Complete the short-tailed albatross recovery data form issued by NMFS.

(c) *Non-short-tailed albatross seabird handling techniques.* If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(2) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the seabird;

(4) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(5) Cut the fishing line as close as possible to ingested or inaccessible hooks;

(6) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(7) After recovered, release seabirds by placing them on the sea surface.

5. Section 660.36 is added to read as follows:

**§ 660.36 Protected species workshop.**

(a) Each year both the owner and the operator of a vessel registered for use under a Hawaii longline limited access permit must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(c) An owner of a vessel registered for use under a Hawaii longline limited access permit must maintain and have on file a valid protected species workshop certificate issued by NMFS in order to maintain or renew their vessel registration.

(d) An operator of a vessel registered for use under a Hawaii longline limited access permit and engaged in longline fishing, must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

[FR Doc. 02–12030 Filed 5–13–02; 8:45 am]

**BILLING CODE 3510–22–S**

Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: March 10, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-5238 Filed 3-16-05; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).  
*Title:* Pacific Islands Logbook Family of Forms.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0214.

*Type of Request:* Regular submission.

*Burden Hours:* 2,483.

*Number of Respondents:* 207.

*Average Hours Per Response:* 14 minutes.

*Needs and Uses:* The fishermen in Federally-managed fisheries in the western Pacific region are required to provide certain information about their fishing activities. Amendment 11 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region now necessitates a revised collection of information. The owners of large (>40 ft. in length) fishing vessels registered for use with American Samoa limited access longline permits would be required to notify NMFS of their vessels' intent to depart from port on a fishing trip. The pre-trip information enables NMFS to determine if that vessel must carry an observer.

*Affected Public:* Business or other for-profit organizations; Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by

calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov).

Dated: March 10, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-5239 Filed 3-16-05; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Southwest Region Seabird-Fisheries Interaction Recovery Reporting

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before May 16, 2005.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Alvin Katekaru, 808-973-2935 ext. 207 or [Alvin.Katekaru@noaa.gov](mailto:Alvin.Katekaru@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

In implementing mitigation measures to reduce interactions between seabirds and the Hawaii-based pelagic longline fishery, the National Marine Fisheries

Service (NMFS) is also requiring longline vessel operators to notify NMFS in the event an endangered short-tailed albatross is hooked or entangled during fishing operations. Following the retrieval of the seabird from the ocean, as required by Federal regulations, the vessel captain must record the conditions of the injured short-tailed albatross on a recovery data form. The information will be used by a veterinarian in providing advice to the captain caring for the short-tailed albatross. If the albatross is dead, the vessel captain must attach an identification/information tag to the carcass, as well as the specimen bag, to assist the U.S. Fish and Wildlife Service (FWS) biologists in follow-up studies on the specimen. This collection is one of the terms and conditions contained in a biological opinion issued by FWS and is intended to maximize the probability of the long-term survival of short-tailed albatross incidentally taken by longline gear.

#### II. Method of Collection

Paper data forms, sea to shore contact via vessel monitoring system unit (VMS), telephone or single side-band radio are required from participants, and methods of submittal include mail and facsimile transmission of paper forms.

#### III. Data

*OMB Number:* 0648-0456.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Not-for-profit institutions; and business or other for-profit organizations.

*Estimated Number of Respondents:* 2.

*Estimated Time Per Response:* 1 hour for notification; 1 hour for the report; and 30 minutes to attach specimen identification tags.

*Estimated Total Annual Burden Hours:* 5.

*Estimated Total Annual Cost to Public:* \$100.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques



or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 10, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-5241 Filed 3-16-05; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Proposed Information Collection; Comment Request; Northeast Region Sea Scallop Framework 16 Adjustment**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before May 16, 2005.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Don Frei, 978-281-9221 or [don.Frei@noaa.gov](mailto:don.Frei@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Recent Atlantic sea scallop fishery management actions included a controlled Area Access Program as a key part of scallop management. To ensure compliance with the Area Access Program, participating vessels are required to use a Vessel Monitoring System (VMS) to enroll in the program and to report catch. On November 2, 2004, Framework 16 to the Atlantic Sea Scallop Fishery Management Plan

(FMP) and Framework 39 to the Northeast Multispecies FMP (Joint Frameworks) were implemented and included these same provisions for a new Area Access Program. In addition, the Joint Frameworks extended the Area Access Program, and VMS reporting requirements to include the general category scallop vessels, which were not previously eligible to fish in the Area Access Program. The reporting requirements for the general category scallop vessels are currently approved through June 30, 2005, and would be extended for 3 years through this action.

**II. Method of Collection**

General category scallop vessels fishing in the Area Access Program are required to install and operate VMS units, and report catch and related information through the VMS e-mail messaging system. The vessels must send notification of intent to fish in the Area Access Program through the VMS e-mail system at least 72 hours prior to the opening of an access area. All Area Access Program vessels must also notify the National Marine Fisheries Service (NMFS), via VMS message, of their intent to fish in the Area Access Program for any given month (5 days prior to the beginning of the month). These notifications to NMFS are necessary in order to allow for the assignment of at-sea observers on some trips. The VMS is polled every 30 minutes consistent with the requirement for other vessels participating in the Area Access Program.

**III. Data**

*OMB Number:* 0648-0509.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 274.

*Estimated Time Per Response:*

Installation of VMS, 1 hour; verification requirement of VMS unit, 5 minutes (0.083 hour); daily reporting requirements with observer on board, 10 minutes (0.17 hour); daily reporting requirements without observer on board, 10 minutes (0.17 hour); VMS/5-day notification before month of fishing, 2 minutes (0.033 hour); VMS/72-hour departure notification to a controlled access area, 2 minutes (0.033 hour); notification for the day vessel leaves on the area access trip, 2 minutes (0.033 hour); VMS polling-daily, twice per hour, 6 seconds (0.0014 hour).

*Estimated Total Annual Burden Hours:* 13,152.

*Estimated Total Annual Cost to Public:* \$491,000.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 10, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-5242 Filed 3-16-05; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Proposed Information Collection; Comment Request; Characterization of the U.S. Recreational Fishery for Atlantic White Marlin**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before May 16, 2005.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection