

Although the hazardous liquid and natural gas programs are structured somewhat differently to accommodate the differences between the two types of pipeline systems, both integrity management programs are designed to identify the best method(s) for maintaining the structural soundness (*i.e.*, integrity) of pipelines operating across the United States.

On January 9, 2002, RSPA/OPS began the integrity management rulemakings for gas transmission lines by proposing a definition of high consequence areas (See 67 FR 1108). We finalized the high consequence area definition on August 6, 2002 (67 FR 50824). On January 28, 2003 (68 FR 4278), we proposed a new 49 CFR 192.763 setting out integrity management program requirements for gas transmission pipelines affecting those areas. The comment period for this proposal closes on March 31, 2003.

The INGAA Foundation and AGA are conducting this workshop to give participants a better understanding of the proposed rule's requirements as they are intended to apply to gas transmission pipelines, and the process to comment on the proposed rulemaking. An OPS representative will give an overview of the proposed regulation and answer questions related to it.

The preliminary agenda for this AGA/INGAA sponsored workshop on Integrity Management for Natural Gas Pipelines is as follows:

*February 20, 2003*

*Pipeline Safety Legislation*—An overview of the recently passed legislation and its impact on the proposed integrity management program requirements.

*Overview of Proposed Regulation*—An OPS representative will discuss the intent and structure of the recently published proposed integrity management rule for gas transmission pipelines.

*HCA Identification*—An industry panel will discuss the high consequence area definition and the proposed refinement of that definition in the proposed integrity management rule.

*Risk Assessment*—An industry panel will discuss the risk assessment process detailed in the proposed rulemaking and compare it to present practices.

*Plan Development*—An industry panel will discuss the plan development as envisioned in the proposed rule and compare it to present practices.

*IMP Implementation & Data Integration*—Issues surrounding data integration and implementing the administrative process in a company will be discussed by an industry group.

*February 21, 2003*

*Mitigation & Repair*—An industry panel will discuss the proposed requirements for mitigation and remediation.

*Performance Metrics*—An industry panel will discuss performance measures for an integrity management program.

*Open Forum and O&A*—The audience will be able to query all the panelists and state their opinions during this session. Because this involves an open rulemaking, RSPA/OPS will include detailed notes of this workshop in the docket for the proposed rule. However, participants wishing to comment on the proposed rule should comment directly in the docket rather than rely on the notes of the workshop.

Issued in Washington, DC, on February 3, 2003.

**James K. O'Steen,**

*Deputy Associate Administrator for Pipeline Safety.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 030130026-3026-01; I.D. 121202B]

RIN 0648-AM30

#### Fisheries of the Exclusive Economic Zone off Alaska; Halibut Fisheries in U.S. Convention Waters Off Alaska; Management Measures to Reduce Seabird Incidental Take in the Hook-and-Line Halibut and Groundfish Fisheries

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes revisions to current regulations requiring seabird avoidance measures in the hook-and-line groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) and in the Pacific halibut fishery in U.S. Convention waters off Alaska. The proposed revisions to the current seabird measures are intended to enhance the current requirements and further mitigate interactions with the short-tailed albatross (*Phoebastria*

*albatrus*), an endangered species protected under the Endangered Species Act (ESA), and with other seabird species in hook-and-line fisheries in and off Alaska. This action is necessary to effect such regulatory revisions and is intended to further the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Northern Pacific Halibut Act of 1982 (Halibut Act), the Migratory Bird Treaty Act, and the ESA.

**DATES:** Comments must be received by March 10, 2003.

**ADDRESSES:** Comments may be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK, 99801. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586-7228.

**FOR FURTHER INFORMATION CONTACT:** Kim S. Rivera, (907) 586-7424, or [Kim.Rivera@noaa.gov](mailto:Kim.Rivera@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. groundfish fisheries of the GOA and the BSAI in the exclusive economic zone (EEZ) are managed by NMFS under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and are implemented by regulations at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. The Halibut Act, 16 U.S.C. 773 *et seq.*, authorizes the Council to develop, and NMFS to implement, halibut fishery regulations that are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC).

This proposed action is designed to reduce the incidental take of seabirds in hook-and-line fisheries. The Magnuson-Stevens Act emphasizes the importance of reducing bycatch to maintain sustainable fisheries. Although seabirds are not included within the Magnuson-Stevens Act's 'bycatch' definition,

efforts to reduce the incidental take of seabirds in fisheries are consistent with the Magnuson-Stevens Act's objective to conserve and manage the marine environment. In addition, the NMFS guidelines for implementing the Magnuson-Stevens Act's national standards for fishery conservation and management note that other applicable laws, such as the Marine Mammal Protection Act, the ESA, and the Migratory Bird Treaty Act (MBTA), require that Councils consider the impact of conservation and management measures on living marine resources other than fish; i.e. marine mammals and birds.

### **National and International Bycatch Reduction Initiatives**

Several national and international initiatives highlight the need to address fisheries bycatch issues, including the incidental take of seabirds. The United Nation's Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fisheries, adopted in 1995, contains a call for states to "take appropriate measures to minimize waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species,...and promote, to the extent practicable, the development and use of selective, environmentally safe and cost effective gear and techniques." (Article 7.6.9.) NMFS's strategic document, *Managing the Nation's Bycatch: Programs, Activities, and Recommendations for the National Marine Fisheries Service (NMFS Bycatch Plan)*, sets forth national objectives, goals, and recommendations, all intended to address current programs and future efforts to reduce bycatch and bycatch mortality of marine resources, including seabirds. Consistent with the Code of Conduct for Responsible Fisheries, the FAO held a technical consultation to address the incidental take of seabirds in longline fisheries. The resulting *International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fishing* (IPOA-S), is a voluntary plan endorsed by the FAO's Committee on Fisheries (COFI) in February 1999 and ultimately adopted by the FAO Conference in November 1999. The United States developed and is implementing a *National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fishing* (NPOA-S) to fulfill our national responsibility described in the IPOA-S. Implementation is being carried out at the regional level through team efforts by a NMFS National Seabird Coordinator and designated staff in each NMFS region and fishery science center.

Efforts are also coordinated with designated staff in each of the regional fishery management councils, regional offices of the U.S. Fish & Wildlife Service (USFWS), and the Department of State. Additionally, NMFS has formed an International Bycatch Reduction Task Force that will work with foreign governments and regional fisheries management organizations to reduce the bycatch of sea turtles and seabirds in longline fisheries and promote the conservation and management of sharks. NMFS believes that its complementary implementation of the Code of Conduct for Responsible Fisheries, the NMFS Bycatch Plan, the IPOA-S, and the NPOA-S should result in the reduction of seabird incidental take in the Alaska hook-and-line fisheries. This plan will require the joint and cooperative efforts of NMFS, the Councils, the USFWS, the affected commercial longline fishing industry, environmental non-governmental organizations, and other interested groups.

### **Incidental Seabird Mortality off Alaska**

Awareness of the issue of seabird incidental take and incidental mortality in commercial fishing operations off Alaska has been heightened in recent years. Further information on this issue was provided in the preambles to the proposed and final rules implementing seabird avoidance measures in the GOA and BSAI hook-and-line groundfish fisheries (62 FR 10016 March 5, 1997, and 62 FR 23176 April 29, 1997) and in the Pacific halibut fishery off Alaska (62 FR 65635 December 15, 1997, and 63 FR 11161 March 6, 1998) and the EA/RIR/FRFAs prepared for those actions.

### **Council Action**

At the December 1998 Council meeting, industry representatives requested that the Council revise and strengthen the seabird avoidance measures that are currently required by Federal regulation. Current regulations require that operators of vessels greater than or equal to 26 ft (7.9 m) LOA and using hook-and-line gear in the groundfish and halibut fisheries must employ one or more of the following seabird avoidance measures: (i) Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks; (ii) tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks (multiple devices may be employed); (iii) deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of

gear; or (iv) deploy gear only during the hours specified below, using only the minimum vessel's lights necessary for safety.

All operators of these vessels must also conduct fishing operations in the following manner: (i) use hooks that when baited, sink as soon as they are put in the water; (ii) if offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station; and (iii) make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the birds. This request was made because two short-tailed albatrosses were taken in September 1998 and because the industry group perceives that some individual fishermen may not always be using seabird avoidance measures as carefully as is necessary to effectively reduce seabird incidental take.

These takes of endangered short-tailed albatross in the BSAI groundfish fishery highlight a seabird incidental take problem. Seabird avoidance measures must be used consistently and conscientiously if they are to be effective at reducing seabird incidental take. Under the ESA section 7 consultation on the 1999 GOA and BSAI groundfish fisheries, the USFWS anticipated that four short-tailed albatrosses could be taken in 1999 and 2000. USFWS extended its 1999 Biological Opinion until superseded by a subsequent biological opinion. No short-tailed albatrosses have been reported taken since 1998. Based on the ESA section 7 consultation in 1998 on the effects of the Pacific halibut fishery, the USFWS anticipates that two short-tailed albatrosses could be taken every 2 years. If the 2-year incidental take limit is exceeded in either the groundfish or the halibut fisheries, NMFS must immediately reinstate section 7 consultation and review with USFWS the need for possible modification of the reasonable and prudent measures established to minimize take of short-tailed albatrosses.

The NMFS North Pacific Groundfish Observer Program office has documented incidental take of seabird species in the GOA and BSAI groundfish fisheries since 1989. Estimates of the annual seabird incidental take for the Alaska groundfish fisheries, based on 1993 to

1999 data, indicate that approximately 15,700 seabirds are killed (taken) annually in the combined BSAI and GOA groundfish hook-and-line fisheries (14,500 in the BSAI and 1,200 in the GOA) at the average rates of 0.10 and 0.03 birds per 1,000 hooks in the BSAI and in the GOA, respectively. Approximately 60 percent of the 15,700 seabirds taken are northern fulmars (*Fulmaris glacialis*), the most abundant seabird species off Alaska. Preliminary analyses of 2000 and 2001 observer data indicate that whereas the seabird take estimates for the year 2000 in the combined BSAI and GOA groundfish hook-and-line fisheries were greater than the 1999 estimates, the number of seabirds estimated taken in 2001 in these fisheries was reduced by about one-third (to approximately 10,500, of which about 55 percent were northern fulmars). The rate of birds taken (number of birds per 1,000 hooks) in the BSAI in 2001 was about one-half that of the 2000 rate. The incidental catch rate may have decreased because fishermen are becoming more diligent and skilled using seabird avoidance measures, outreach efforts may have been successful, the 1999–2000 University of Washington's Washington Sea Grant Program (WSGP) research program's collaborative industry approach may have acted to change fishermen behavior and improve the effective deployment of seabird avoidance measures, or some other, unknown, factor(s). The annual seabird incidental catch estimates based on observer data from 1993 through 2001 exhibit a great deal of inter-annual variation, as did the take numbers and bird attack rates on baits in the WSGP study. Various non-anthropogenic factors could be involved, such as, bird abundance and distribution and/or climatic and oceanographic conditions.

After initial action to propose revised seabird avoidance measures at its February 1999 meeting, the Council took final action at its April 1999 meeting and recommended regulatory revisions to improve and strengthen the effectiveness of the required seabird avoidance measures and reduce the incidental take of short-tailed albatrosses and other seabird species.

In October 2000, NMFS informed the Council of its decision to await research results from a 2-year study (1999 and 2000) by the WSGP on the effectiveness of seabird avoidance measures used in hook-and-line fisheries off Alaska before proceeding with rulemaking to revise the existing regulations. Such an investigation was required in a Biological Opinion issued by the USFWS. If warranted by the research

results, NMFS would modify the existing seabird avoidance regulations to improve the effectiveness of avoidance measures or devices.

In October 2001, WSGP presented research results, recommendations, and its final report Solutions to Seabird Bycatch in Alaska's Demersal Longline Fisheries (available at <http://www.wsg.washington.edu/pubs/seabirds/seabirdpaper.html>) to the Council and NMFS. The Council took initial action at this meeting and final action at its December 2001 meeting.

#### **Council's Final Action Based in Part on WSGP Research Results and Recommendations**

For complete details of the research, results, and recommendations, see the WSGP final report. In summary, the WSGP research program compared seabird incidental take mitigation strategies over 2 years (1999 and 2000) in two major Alaska demersal longline fisheries: the Individual Fishing Quota (IFQ) fishery in the GOA and Aleutian Islands for sablefish and halibut and the Bering Sea catcher-processor longline fishery for Pacific cod. The program identified possible deterrents and tested them on active fishing vessels under typical fishing conditions. The avoidance measures tested were paired streamer lines, single streamer lines, weighted groundline, line shooter, lining tube, and a combination of paired streamer lines and weighted groundline. Rigorous experimental tests of seabird avoidance measures on the local abundance, attack rate, and hooking rate of seabirds in both fisheries were conducted on vessels over 60 ft (18.3 m) LOA. On vessels this size (larger vessels), paired streamer lines of specified performance and material standards were found to successfully reduce seabird incidental take in all years, regions, and fleets (88 percent to 100 percent relative to controls with no deterrent). Single streamer lines of specified performance and material standards were slightly less effective than paired streamer lines, reducing seabird incidental take by 96 percent and 71 percent in the sablefish and cod fisheries, respectively. This study represents the largest of its kind in the world with over 1.2 million hooks being set in the sablefish fishery and over 6.3 million hooks being set in the cod fishery component of the 2-year research program.

#### **Seabird Avoidance Measures for Smaller Vessels**

The Council's Science and Statistical Committee (SSC) generally agreed with the WSGP research study and found that

the study was excellent in its conception, execution and analysis, regarding the reduction of seabird incidental take by large vessels participating in the Pacific cod and the sablefish and halibut IFQ longline fisheries. The SSC noted, however, that the WSGP recommendations, while appropriate and useful for reduction of seabird incidental take by the large vessels in the longline fishery, may not be appropriate for application on smaller vessels, particularly small vessels fishing in the inside waters of southeast Alaska. The SSC suggested that short-tailed albatrosses do not frequent the inside waters of southeast Alaska, and therefore less stringent regulations to avoid seabird incidental take may be appropriate. The SSC identified a need for additional study of the necessity of, and methods for, incidental take reduction on small vessels. The SSC also queried whether small vessels may not be able to deploy streamer lines as specified for the larger vessels of the longline fleet. The SSC suggested that fishermen of the small-vessel segment of the industry cooperate in developing new information, equivalent to that now available from the larger vessels on the frequency of incidental take and the most appropriate methods for incidental take reduction.

Given the similarities in the small boat longline fleet of southeast Alaska, Prince William Sound, and nearshore waters of Cook Inlet, as well as the rarity of albatrosses and other pelagic bird species in these inside waters, the Council recommended less stringent measures for vessels using hook-and-line gear in these inside waters. The proposed seabird avoidance requirements would be based on area fished, vessel length, vessel type, and gear type. This proposal would address the varying characteristics found in the fishing operations of the very diverse demersal hook-and-line fleet for groundfish and Pacific halibut off Alaska. For vessels greater than 26 ft (7.9 m) LOA, and less than or equal to 55 ft (16.8 m) LOA, the applicable performance standard would be voluntarily implemented as guidelines. If new information becomes available suggesting revised standards for smaller vessels, then these revised standards could be proposed as regulatory requirements. The Council recommends that NMFS, WSGP, USFWS, and industry engage in a cooperative study during the first year of the program to determine if modification to the performance standard for this class of vessels is warranted and investigate if vessels less than or equal to 55 ft (16.8

m) LOA should be exempted from the seabird avoidance measures when fishing at night from November 1 to April 1.

### Summary of Council Recommendations

The Council's recommendations to NMFS for revised seabird avoidance measures are: (1) Seabird avoidance gear requirements would be based on area fished, vessel length, vessel type, and gear type, (2) Specified performance and material standards for the required avoidance measures would be required of larger vessels and suggested as guidelines for smaller vessels, (3) Specified gear would be required to be onboard the vessel, available for inspection upon the request of an authorized officer or observer, and used while hook-and-line gear is being deployed, (4) Measures would apply in specified areas to operators of specified vessels using hook-and-line gear to fish for groundfish or halibut, (5) Offal discharge methods designed to reduce interactions leading to seabird mortalities would be specified, and (6) A Seabird Avoidance Plan, a new reporting requirement, would be required to be onboard the vessel. The Seabird Avoidance Plan is described in more detail later in this preamble. In addition to the Council's recommendation for proposed regulatory revisions, the Council also made recommendations for suggested actions for a comprehensive seabird incidental take reduction program that addresses education, outreach, regulatory compliance, and enforcement. Such a program would improve the effectiveness of seabird avoidance measures at reducing the incidental take of endangered short-tailed albatrosses and other seabird species.

### Weather Safety Factor

Council discussion and deliberation of alternative revisions to the seabird avoidance measures indicated support of WSGP recommendations for the larger vessels (greater than 55 ft (16.8m) LOA) and necessary modifications of these measures for smaller vessels (between 26 (7.9 m) and 55 ft (16.8m) LOA). The WSGP final report notes that weather conditions exist in which the vessel captain would not want crew on the buoy deck deploying or adjusting streamer lines, although fishing would still be possible. Included in the WSGP recommendation was a weather safety factor that in winds exceeding 45 knots (storm, or Beaufort 9, conditions), the deployment of streamer lines be discretionary. NMFS clarifies in this proposed rule that this weather safety

factor applies to the deployment of buoy bag lines, single streamer lines, and paired streamer lines. Adverse weather conditions could impact the deployment of gear on vessels regardless of the vessel's size, so, the weather safety factor would be important when considering the deployment of buoy bag lines and single streamer lines (on smaller vessels) just as it would be with the deployment of paired streamer lines (on larger vessels).

### Seabird Data Collection by Observers

In addition to the regulatory requirements for seabird avoidance measures, an integral part of the comprehensive seabird avoidance program is collection of data on seabirds by onboard observers. The data currently collected by observers are detailed in the EA/RIR/IRFA prepared for this proposed rule and include a count of the number of seabirds by species that are encountered in the sampled portion of each observed haul. To clarify its intent that these encountered seabird specimens are to be made available by the vessel crew to the observer, NMFS includes an explicit requirement in this proposed rule that all seabirds from the observer-sampled portions of hauls using hook-and-line gear be kept until sampled by the observer or as requested by an observer during non-sampled portions of hauls.

### Exemption for Vessels 32 ft (9.8m) LOA or Less in state waters of IPHC Area 4E

In 2001, halibut accounted for the vast majority of fish harvested by these small vessels. It is not known if any of the sablefish harvested by vessels in the 30 to 35 ft (9.1 to 10.7 m) LOA category was harvested by vessels less than 32 ft (9.8m) LOA. Because of the difficulty of using surveillance aircraft to identify the species of fish harvested (e.g. halibut or groundfish), NMFS proposes in this rule to exempt any vessel less than 32 ft (9.8m) LOA fishing in state waters of IPHC Area 4E from using seabird avoidance measures, not just those vessels fishing halibut. NMFS has determined that if additional vessels are exempted by this language, it would not have a significant impact on the take of short-tailed albatrosses or other seabird species.

### Vessels Required to Use Seabird Avoidance Measures

The factors potentially affecting seabird hooking and entanglement on hook-and-line gear are complex and may include geographic location of fishing activity; time of day; season; type of fishing operation and gear used; bait type; condition of the bait; length of

time baited hooks remain at or near the surface of the water; water and weather conditions; availability of food (including bait and offal); bird size; bird behavior (feeding and foraging strategies); bird abundance and distribution; and physical condition of the bird. When establishing effective requirements that reduce the potential for seabird interactions with gear and the associated mortality of seabirds, it is desirable to consider or account for any of these factors, to the extent possible and practicable. Based on information from the WSGP study, the Council's SSC, several USFWS marine bird surveys, and anecdotal information from the commercial longline fleet off Alaska, the proposed seabird avoidance measures required of vessel operators would vary according to area fished, vessel length, vessel type, and gear type.

The current seabird avoidance regulations apply to operators of federally permitted vessels fishing for groundfish with hook-and-line gear in the GOA and the BSAI, and federally permitted vessels fishing for groundfish with hook-and-line gear in waters of the State of Alaska that are shoreward of the GOA and the BSAI, and to operators of vessels fishing for Pacific halibut in U.S. Convention waters off Alaska. Since the inception of requirements for seabird avoidance measures off Alaska, NMFS has required all hook-and-line vessel operators at risk of incidentally taking short-tailed albatrosses and/or other seabird species to use these measures, regardless of geographic area fished (i.e. EEZ, state waters, inside waters) or target fishery (i.e. groundfish, halibut, IFQ, CDQ). As new information on the necessity of, and methods for, incidental take reduction on small vessels becomes available, the applicability of the requirements could be revised as appropriate.

At its March 2002 meeting, the Alaska Board of Fisheries (Board) approved a proposal that will change state groundfish regulations to parallel these new Federal regulations governing seabird avoidance measure requirements for operators in hook-and-line fisheries.

Operators of vessels less than 26 ft (7.9m) LOA currently are not required to choose from the seabird avoidance options found at § 679.24(e)(3), i.e., towing a streamer line or buoy, underwater setting, and night setting. Operators of smaller vessels typically set many fewer hooks, set gear at slower speeds, fish closer to shore, and land many fewer fish (therefore, have less and more sporadic offal discharge). These characteristics contribute to attracting fewer birds to their vessels.

Some evidence suggests that large vessels may attract more seabirds than do smaller vessels and experience a higher seabird incidental take rate (see Vessel Size Considerations in section 4.1.2 of the EA/RIR/IRFA for this action). This proposed rule would exempt operators of vessels 32 ft (9.8 m) LOA or less fishing for halibut, including those fishing for halibut and groundfish, in IPHC Area 4E within 0 to 3 nm from the required use of seabird avoidance measures. Of the 1,733 vessels that landed halibut and/or sablefish in the IFQ and CDQ programs, only 219 vessels landed halibut in IPHC Area 4E. Ninety-eight percent of those were vessels less than 32 ft (9.8 m) LOA. Those small vessels fishing in Area 4E landed 150,000 lb (68,039 kg) of halibut, all of the halibut harvested in Area 4E and less than one-third of 1 percent of the total annual harvest in 2001. These landings represent such a very small portion of the total harvest, that any associated incidental take of seabirds is insignificant to non-existent. Testimony from local fishermen from these Western Alaska communities in the CDQ Program indicate they are fishing in areas very close to shore and never take seabirds. Sighting of short-tailed albatrosses have not been reported in nearshore areas of Area 4E. A few sightings have occurred in the perimeter of the area, beyond the nearshore areas fished by these very small vessels. Survey or sightings information on other seabird species in the area is not currently available.

#### **Proposed Seabird Avoidance Requirements**

NMFS proposes seabird avoidance measures that would apply to the operators of vessels using hook-and-line gear for (1) Pacific halibut in the IFQ and Community Development Quota (CDQ) management programs (0 to 200 nm), (2) IFQ sablefish in EEZ waters (3 to 200 nm) and waters of the State of Alaska (0 to 3 nm), except waters of Prince William Sound and areas in which sablefish fishing is managed under a State of Alaska limited entry program (Clarence Strait, Chatham Strait), and (3) Groundfish (except IFQ sablefish) with hook-and-line gear in the U.S. EEZ waters off Alaska (3–200 nm).

Operators of all applicable vessels using hook-and-line gear would be required to comply with the following bird line requirements:

For Applicable Vessels Operating in Inside Waters (NMFS Area 649, NMFS Area 659, and State Waters of Cook Inlet): (1) A minimum of 1 buoy bag line of a specified performance standard would be required of vessels greater

than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA that are without masts, poles, or rigging, (2) A minimum of 1 buoy bag line of a specified performance standard is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 32 ft (9.8 m) LOA and with masts, poles, or rigging, (3) A minimum of 1 streamer line of a specified performance standard is required of vessels greater than 32 ft (9.8 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (4) A minimum of 1 streamer line of a specified performance standard is required of vessels greater than 55 ft (16.8 m) LOA.

For Applicable Vessels Operating in the EEZ (not including NMFS Area 659): (1) A minimum of 1 buoy bag line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA that are without masts, poles, or rigging, (2) A minimum of 1 streamer line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (3) Except for vessels using snap gear, a minimum of paired streamer lines of a specified performance standard is required of vessels greater than 55 ft (16.8 m) LOA.

For Applicable Vessels Using Snap Gear: (1) A minimum of 1 buoy bag line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and that are without masts, poles, or rigging, (2) A minimum of 1 streamer line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (3) A minimum of 1 streamer line of a specified performance standard is required of vessels greater than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging.

Other seabird avoidance devices and methods include weights added to groundline, a buoy bag line or streamer line of specified performance standards, and strategic offal discharge to distract birds away from the setting of baited hooks, that is, discharge fish, fish parts (i.e. offal) or spent bait to distract seabirds away from the main groundline while setting gear.

#### **Gear Performance and Material Standards**

Current information indicates that bird deterrent devices must be carefully

constructed with the deterrent purpose in mind if they are to be effective. Given the variability of vessel sizes and configurations in the hook-and-line fisheries off Alaska, a single set of specific construction standards for bird lines would not be universally effective or practical. To enhance the effectiveness and improve the enforcement of seabird avoidance measures, the proposed rule would specify the gear performance and material standards for larger vessels (vessels greater than or equal to 55 ft (16.8 m) LOA). Voluntary guidelines for gear performance and material standards for smaller vessels (vessels greater than or equal to 26 ft (7.9m) and less than 55 ft (16.8 m) LOA) are provided and vessel operators are encouraged to comply with them.

#### **Proposed Standards for Larger (Vessels Greater than 55 ft (16.8 m) LOA) Vessels Paired Streamer Standard**

NMFS proposes that larger vessels deploy a minimum of two streamer lines while setting hook-and-line gear. Preferably, both streamer lines will be deployed prior to the first hook being set. At least one streamer line must be deployed before the first hook is set and both streamers must be fully deployed within 90 seconds. An exception to this standard would exist in conditions of wind speeds exceeding 30 knots (near gale or Beaufort 7 conditions), where it would be acceptable to fly a single streamer from the windward side of the vessel. In winds exceeding 45 knots (storm or Beaufort 9 conditions), the deployment of streamer lines would be discretionary. Further, streamer lines would have to be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern for vessels under 100 ft (30.5 m) and 196.9 ft (60 m) aft of the stern for vessels 100 ft (30.5 m) or over. For vessels deploying gear from the stern, the streamer lines would have to be deployed from the stern, one on each side of the main groundline. For vessels deploying gear from the side, the streamer lines would have to be deployed from the stern, one over the main groundline and the other on one side of the main groundline.

#### **Materials Standard:**

NMFS proposes the following minimum streamer line specifications: (1) Length of 300 feet (91.4 m), (2) Spacing of streamers every 16.4 ft (5 m), and (3) Streamer material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density. An individual streamer must hang attached to the

mainline to 0.25 m above the waterline in the absence of wind.

#### **Snap Gear Streamer Standard**

For vessels using snap gear, a single streamer line (147.6 ft (45 m) length) deployed in such a way that streamers are in the air for 65.6 ft (20 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

#### **Guidelines for Standards for Smaller Vessels**

For vessels greater than 26 ft (7.9 m) and less than or equal to 55 ft (16.8 m) LOA, a performance standard would be voluntarily implemented as guidelines. If new information becomes available suggesting revised standards for smaller vessels, then these revised standards could be proposed as regulatory requirements.

Performance Guidelines for Bird Line Requirements are as follows:

#### **Buoy Bag Line Standard**

A buoy bag line (32.8 to 131.2 ft (10 to 40 m) length) is deployed so that it is within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water. The buoy bag line must extend beyond the point where the main groundline enters the water.

#### **Single Streamer Standard**

A single streamer line must be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

#### **Materials Standard:**

NMFS proposes the following minimum streamer line specifications: (1) Length of 300 feet (91.4 m), (2) Spacing of streamers every 16.4 ft (5 m), and (3) Streamer material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density. An individual streamer must hang attached to the mainline to 0.25 m above the waterline in the absence of wind.

#### **Snap Gear Streamer Guideline**

For vessels using snap gear, a single streamer line (147.6 ft (45 m) length) deployed in such a way that streamers are in the air for 65.6 ft (20 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

The Council recommended that NMFS, WSGP, USFWS, and industry engage in a cooperative study during the first year of the program to determine if modification to the performance standard for small vessels is warranted.

In the summer of 2002, USFWS funded the WSGP to conduct such a study, in cooperation with NMFS. WSGP researchers worked with owner/operators of small vessels (26 ft (7.9 m) to 55 ft (16.8 m) LOA) in several Alaska ports to test the sink rate of bird avoidance lines under the following scenarios: (1) Towing a single streamer line from small vessels with masts, poles, or rigging, while using conventional hook-and-line gear; (2) Towing a single buoy bag line from small vessels without masts, poles, or rigging, while using conventional hook-and-line gear (e.g. vessels such as bow setters and stern setters); and (3) Towing a single streamer line from small vessels using snap gear. The results of this study will be used to evaluate the effectiveness of the guidelines that have been suggested by the Council. If warranted by the research, improvements could be made to the guidelines which could then be promulgated into regulations.

#### **Proposed Offal Requirements**

The offal discharge regulation would be amended to require that prior to offal discharge, embedded hooks would be removed from offal. Otherwise, scavenging birds could become hooked while feeding on discharged fish offal. Hooked birds could eventually suffer increased mortality. Removing embedded hooks prior to fish offal being discharged is one of the mitigation measures identified in the FAO's IPOA-S.

WSGP researchers observed on some cod vessels the continual discharge of residual bait and in some cases the discharge of offal through dedicated chutes or pipes at the stern during the set, directly over baited hooks. This attracted birds into the area where baits were sinking, aggravating seabird interactions with the gear (WSGP final report). Eliminating such directed discharge of residual bait or offal over sinking longlines would reduce the attractiveness of this area to birds and thus reduce the likelihood of birds attacking the bait and becoming hooked and drowning.

#### **Seabird Reporting Requirements**

Regulations at § 679.5(a)(7)(ix)(C)(3) currently require operators of catcher vessels or catcher/processor vessels using longline gear to report the bird avoidance gear deployed using bird avoidance gear codes at Table 19 of part 679. Because this proposed rule would revise the required seabird avoidance measures, the seabird avoidance codes at Table 19 of part 679 would be revised to reflect these changes.

#### **Proposed Seabird Avoidance Plan**

NMFS proposes a Seabird Avoidance Plan that would be written and onboard the vessel and would contain the following information: (1) Vessel name, (2) Master's name, (3) Type of bird avoidance measures utilized, (4) Positions and responsibilities of crew for deploying, adjusting, and monitoring performance of deployed gear, (5) Instructions/Diagrams outlining the sequence of actions required to deploy and retrieve the gear to meet specified performance standards, and (5) Procedures for strategic discharge of offal, if any. The Seabird Avoidance Plan would be prepared and signed by vessel operator. The vessel operator's signature would indicate the operator had read the plan, reviewed it with the vessel crew, made it available to the crew, and instructed vessel crew to read it. The Seabird Avoidance plan must be made available for inspection upon request by an authorized officer (USCG boarding officer, NMFS Enforcement Officer or other designated official) or an observer.

The objective of the Seabird Avoidance Plan is to ensure that vessel operators are aware of the issue of seabird incidental take and have developed an effective plan for using the required measures on their vessels to avoid and reduce any seabird incidental take.

All seabirds from the observer-sampled portions of hauls using hook-and-line gear would be kept until sampled by the observer or as requested by an observer during non-sampled portions of hauls. The purpose of this proposed requirement is to assure that incidentally taken birds are accurately accounted for in observer reports.

#### **Use of Multiple Seabird Avoidance Measures**

Many sources acknowledge that using seabird avoidance measures in combination may be more effective in reducing incidental take. NMFS regulations for Alaska have reflected this multi-use concept. One example would be measures to sink baited gear quickly (line weighting), used in conjunction with surface deterrents (e.g. streamer lines, buoy bag lines) that are designed to prevent seabirds from accessing areas where baited hooks may be temporarily available. Current regulations allow for night-setting and use of a lining tube (device that deploys hook-and-line gear below the water's surface) as sole seabird avoidance measures. Tests conducted in the WSGP research study indicate that the incidental catch of fulmars and the

attack rate of Laysan albatrosses actually increased during night-time sets. Similarly, the use of a line shooter (hydraulic device designed to set lines at a speed slightly faster than the vessel's speed during setting) in the 1999 Pacific cod fishery was the only deterrent that significantly increased the rate of seabird incidental catch. Because lining tube performance was variable and limited by a number of factors, and because the device is costly and inappropriate for some vessels, the lining tube was not recommended to be used as a sole seabird avoidance measure. Therefore, under this proposed rule these three measures or methods (night-setting, line shooter, lining tube) would not be allowed for use as sole seabird avoidance measures and if used, must be accompanied by an additional required seabird avoidance measure.

#### **Applicability of Seabird Avoidance Regulations While Fishing for CDQ Halibut**

Paragraphs § 679.32(f)(2)(v) and § 679.42(b)(2) would require use of seabird avoidance measures on all vessels of a specified length that are fishing in U.S. Convention waters off Alaska for Pacific halibut, whether the vessels are engaged in IFQ fisheries or CDQ fisheries. At the time the seabird avoidance measures were required in the Pacific halibut fishery (63 FR 11161, March 6, 1998), the fixed gear halibut CDQ allocations were managed as part of the IFQ program and implementing regulations were codified at Part 679 Subpart D (§ 679.40). In 1999, regulations governing halibut CDQ fishing were revised to clarify which elements of the halibut IFQ regulations applied to the halibut CDQ fishery (64 FR 20210 April 26, 1999). These regulations are found at § 679.30 and inadvertently did not include reference to the seabird avoidance gear and methods requirements.

Paragraph § 679.32(f)(2)(v) would be amended by adding the phrase "and seabird avoidance requirements at § 679.42(b)(2)" so that it reads as follows: "The CDQ group, vessel owner or operator, and registered buyer must comply with all of the IFQ prohibitions at § 679.7(f) and seabird avoidance requirements at § 679.42(b)(2)".

Paragraph § 679.42(b)(2) would be amended by adding the phrase "CDQ halibut" so that it reads as follows: "Seabird avoidance gear and methods. The operator of a vessel using gear authorized at § 679.2 while fishing for IFQ halibut, CDQ halibut, or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for

seabird avoidance gear and methods set forth at § 679.24(e)."

#### **Proposed Definitions at § 679.2**

Definitions are proposed at § 679.2 for two previously undefined terms: "snap gear" (as a type of "authorized fishing gear") and "seabird." These proposed definitions pertain specifically to seabirds incidentally taken during fishing operations using hook-and-line gear and are necessary for the clarity of the proposed regulations for seabird avoidance measures.

#### **Proposed Respecification of Paragraphs at § 679.24(e)**

Seabird avoidance requirements currently in § 679.24 (e)(2)(i), (ii), and (iii) would be redesignated as paragraphs (e)(2)(iv), (e)(2)(v)(A), and (e)(2)(vi). These requirements will be retained and call for operators of specified vessels to conduct fishing operations in the following manner: (i) use hooks that when baited, sink as soon as they are put in the water; and (ii) if offal is discharged while gear is being set or hauled, it must be discharged in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station; and (iii) make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the birds.

#### **Classification**

At this time, NMFS has not determined that the regulatory amendment this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. Most catcher vessels and some catcher/processors harvesting groundfish and halibut off Alaska meet the definition of a small entity under the Regulatory Flexibility Act (RFA). In 2000, the total number of catcher vessels and catcher/processors using hook-and-line gear that caught groundfish off Alaska was 1,004 and 44, respectively. These numbers account for the vessels that operated in both the BSAI and GOA. Of these, approximately 1,006

would be subject to the revised seabird avoidance measures and would be considered to be small entities. In 2000, 1,694 vessels landed halibut from U.S. Convention waters off Alaska, and approximately 1,294 vessels landing halibut would be subject to the revised seabird measures (and assumed to be "small" under RFA criteria).

To the extent that any of these vessels are partners with CDQ groups, the proposed rule could indirectly impact the six CDQ groups representing the 65 western Alaska communities that are eligible for the CDQ Program. The CDQ groups and the communities they represent all are small entities under the RFA. To the degree that CDQ vessels can pass along costs to CDQ groups, this would reduce the direct impact on the vessels themselves, but only by redistributing these impacts among the broader universe of "small entities".

Under the proposed rule, the measures required of all applicable vessels over 26 ft (7.9 m) LOA would be expected to be of minimal cost. A bird streamer line is estimated to cost \$50 to \$250 and line weights represent a variable cost depending upon the necessary amount of weights to sink the baited hooks. Procedural or operational changes may be required in fishing operations.

The incidental take limit for short-tailed albatrosses could be exceeded during longline fishing operations. If the regulatory revisions under the proposed rule improve and strengthen the current seabird avoidance measures, then the likelihood of encountering and taking a short-tailed albatross would be reduced. Therefore, the likelihood of a fishery closure and its ensuing economic impacts would be reduced. If the anticipated take of short-tailed albatrosses was exceeded in either the groundfish fishery or the halibut fishery, the actual economic impacts resulting from a modification of the reasonable and prudent measures established to minimize take of short-tailed albatrosses would depend upon the revised measures, which could range from closures. The economic impact of fishery closures would depend upon the length of time of the closed period and the extent of the closure. The 1999 exvessel value of the Pacific cod fishery for hook-and-line gear was estimated at approximately \$72 million, approximately \$71 million for the sablefish fishery, and totaled approximately \$150 million for all groundfish species caught with hook-and-line gear. The 2000 exvessel value of the Pacific halibut fishery was estimated at \$67 million. Such

economic impacts on small entities could result in a substantial reduction in annual gross revenues and could, therefore, potentially have a significant adverse economic impact on a substantial number of small entities. Data are currently not available upon which to draw net revenue conclusions about these probable effects.

The Council considered recommending performance standards for seabird avoidance measures used on vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA. Until further information becomes available, performance standards for these smaller vessels are suggested only as guidelines at this time.

Alternatives to the proposed seabird avoidance measures were also considered. The status quo alternative, while posing no additional burden on small entities, would not alter the operations of the hook-and-line fisheries in ways that would significantly reduce the potential for the incidental take of seabirds. The second alternative to the proposed action is based on the Council's recommendation for revisions to seabird avoidance measures in 1999. Those recommendations would have revised existing regulations to require weighted groundlines, the deployment of bird scaring lines when a lining tube was used for the deployment of gear at depth, and an exemption for small vessels (<35 ft (10.7 m)). The proposed seabird avoidance measures are preferred to this second alternative because they specifically address performance and material standards for bird scaring lines, which the second alternative does not. The correct design and deployment of bird scaring lines are known to improve the effectiveness of these seabird avoidance devices. The third alternative to the preferred regulations, based on recommendations from a two-year research study conducted by the WSGP on the effectiveness of seabird avoidance measures and includes all of the measures of the proposed alternative, except that there is no consideration for smaller vessels. Consequently, the third alternative would not mitigate the impacts on small entities. The improvements made to the existing seabird avoidance measures are expected to be much greater under the proposed action than with any of the other alternatives that were considered and evaluated.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction

Act (PRA). The requirement for a Seabird Avoidance Plan has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 8 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. The following information would be collected from vessel operators: type of seabird avoidance measure used; description of each crew station's function for all tasks related to deploying, adjusting, and monitoring the performance of deployed seabird avoidance measures; diagrams and/or descriptions of the sequence of actions taken by the crew to deploy and retrieve the seabird avoidance measures.

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 these or any other aspects of the collection of information to NMFS at the ADDRESSES above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503 (Attention: NOAA Desk Officer).

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 requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

A copy of the EA/RIR/IRFA can be obtained from NMFS (see ADDRESSES).

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 31, 2003.

**Rebecca Lent,**

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

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2 the definition for "snap gear" under "authorized fishing gear" is added and the definition for "seabird" is added in alphabetical order to read as follows:

#### § 679.2 Definitions.

\* \* \* \* \*

*Authorized fishing gear*\* \* \*

(17) *Snap gear* means a type of hook-and-line gear where the hook and gangion are attached to the groundline using a mechanical fastener or snap.

\* \* \* \* \*

*Seabird* means those bird species that habitually obtain their food from the sea below the low water mark.

\* \* \* \* \*

3. In § 679.24, paragraph (e) is revised as follows:

#### § 679.24 Gear limitations.

\* \* \* \* \*

(e) *Seabird avoidance program for vessels fishing with hook-and-line gear*—(1) *Applicability*. The operator of a vessel that is longer than 26 ft (7.9 m) LOA fishing with hook-and-line gear must comply with the seabird avoidance requirements as specified in paragraphs (e)(2) through (e)(4) of this section while fishing for:

- (i) IFQ halibut or CDQ halibut,
- (ii) IFQ sablefish, and
- (iii) Groundfish in the EEZ off Alaska.

(2) *Seabird Avoidance Requirements*. The operator of a vessel described in paragraph (e)(1) of this section must:

(i) *Gear onboard*. Have onboard the vessel the seabird avoidance gear as specified in paragraph (e)(4) of this section;

(ii) *Gear inspection*. Upon request by an authorized officer or observer, make the seabird avoidance gear available for inspection;

(iii) *Gear use*. Use seabird avoidance gear as specified in paragraph (e)(4) of this section that meets performance and material standards as specified in paragraph (e)(5) of this section, while hook-and-line gear is being deployed.

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

(v) *Offal discharge*. (A) If offal is discharged while gear is being set or hauled, discharge offal in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge



site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station.

(B) Remove hooks from any offal that is discharged.

(C) Eliminate directed discharge through chutes or pipes of residual bait or offal from the stern of the vessel while setting gear. This does not include baits falling off the hook or offal discharges from other locations that parallel the gear and subsequently drift into the wake zone well aft of the vessel.

(D) For vessels not deploying gear from the stern, eliminate directed discharge of residual bait or offal over sinking hook-and-line gear while gear is being deployed.

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

(3) *Seabird Avoidance Plan.* A Seabird Avoidance Plan must:

(i) Be written, current, and onboard the vessel.

(ii) Contain the following information:

(A) Vessel Name.

(B) Master's Name.

(C) Type of bird avoidance measures utilized.

(D) Positions and responsibilities of crew for deploying, adjusting, and monitoring performance of deployed gear.

(E) Instructions and/or diagrams outlining the sequence of actions required to deploy and retrieve the gear to meet specified performance standards.

(F) Procedures for strategic discharge of offal, if any.

(G) The NMFS "Seabird Avoidance Plan" form completed and signed by vessel operator. Vessel operator's signature shall indicate the operator has read the plan, reviewed it with the vessel crew, made it available to the crew, and has instructed the vessel crew to read it.

(iii) Be made available for inspection upon request by an authorized officer or observer.

(4) *Seabird Avoidance Gear Requirements.* (also see Table 20 of this part.) The operator of a vessel identified in paragraph (e)(1) of this section must comply with the following requirements:

(i) While fishing with hook-and-line gear other than snap gear in NMFS Reporting Area 649 (Prince William Sound), 659 (Eastern GOA Regulatory Area, Southeast Inside District), or state waters of Cook Inlet:

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this

section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 32 ft (9.8 m) LOA with masts, poles, or rigging.

(C) A minimum of a single streamer line as specified in paragraph (e)(5)(ii)(B) of this section must be used by vessels greater than 32 ft (9.8 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(D) A minimum of a single streamer line of a standard as specified in paragraph (e)(5)(ii) of this section must be used by vessels greater than 55 ft (16.8 m) LOA.

(ii) While fishing with hook-and-line gear other than snap gear in Federal waters (EEZ) not including NMFS Area 659.

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of a single streamer line as specified in paragraph (e)(5)(ii)(B) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(C) A minimum of paired streamer lines of a standard as specified in paragraph (e)(5)(iii) of this section must be used by vessels greater than 55 ft (16.8 m) LOA.

(iii) While fishing with snap gear. (A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of a single streamer line as specified in paragraph (e)(5)(iv)(B) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(C) A minimum of a single streamer line of a standard as specified in paragraph (e)(5)(iv) of this section and one other device as specified in paragraph (e)(6) of this section must be

used by vessels greater 55 ft (16.8 m) LOA with masts, poles, or rigging.

(5) *Seabird Avoidance Gear Performance and Material Standards.* (i) Buoy Bag Line Weather Exception—In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a buoy bag line is discretionary.

(ii) *Single Streamer Standard.* (A) A single streamer line must:

(1) Be a minimum of 300 feet (91.4 m) in length;

(2) Have streamers spaced every 16.4 ft (5 m);

(3) Be deployed before the first hook is set in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

(4) Have individual streamers that hang attached to the mainline to 9.8 in (0.25 m) above the waterline in the absence of wind.

(5) Have streamers constructed of material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density.

(B) *Weather Exception.* In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a single streamer line is discretionary.

(iii) *Paired Streamer Standard.* (A) At least one streamer line must be deployed before the first hook is set and two streamer lines must be fully deployed within 90 seconds.

(B) *Weather Exceptions.* In conditions of wind speeds exceeding 30 knots (near gale or Beaufort 7 conditions), a single streamer must be deployed from the windward side of the vessel. In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of paired streamer lines is discretionary.

(C) Streamer lines must. (1) Be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern for vessels under 100 ft (30.5 m) and 196.9 ft (60 m) aft of the stern for vessels 100 ft (30.5 m) or over;

(2) Be a minimum of 300 feet (91.4 m) in length;

(3) Have streamers spaced every 16.4 ft (5 m);

(4) For vessels deploying hook-and-line gear from the stern, the streamer lines must be deployed from the stern, one on each side of the main groundline.

(5) For vessels deploying gear from the side, the streamer lines must be deployed from the stern, one over the main groundline and the other on one side of the main groundline.

(6) Have individual streamers that hang attached to the mainline to 9.8 in

(0.25 m) above the waterline in the absence of wind.

(7) Have streamers constructed of material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density.

(iv) *Snap Gear Streamer Standard.* (A) For vessels using snap gear, a single streamer line must:

(1) Be deployed before the first hook is set in such a way that streamers are in the air for 65.6 ft (20 m) aft of the stern and within 6.6 ft (2 m) horizontally of the point where the main groundline enters the water.

(2) Have a minimum length of 147.6 ft (45 m).

(B) *Weather Exception.* In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a single streamer line is discretionary.

(6) *Other Seabird Avoidance Devices and Methods* as required at paragraphs (e)(4)(ii)(A) and (B) and (e)(4)(iii) of this section include the following:

(i) Add weights to groundline.

(ii) Use a buoy bag line or single streamer line, of standards as appropriate and as specified in paragraph (e)(5) of this section.

(iii) Strategic offal discharge to distract birds away from the setting of

baited hooks. Discharge fish, fish parts (i.e. offal) or spent bait.

(7) *Other methods.* The following measures or methods must be accompanied by the applicable seabird avoidance gear requirements as specified in paragraph (e)(4) of this section:

- (i) Night-setting,
- (ii) Line shooter, or
- (iii) Lining tube.

(8) *Seabird Avoidance Exemption.* Notwithstanding any other paragraph in this part, operators of vessels 32 ft (9.8 m) LOA or less using hook-and-line gear in IPHC Area 4E in waters shoreward of the EEZ are exempt from seabird avoidance regulations.

4. In § 679.32, paragraph (f)(2)(vi) is added to read as follows:

**§ 679.32 Groundfish and halibut CDQ catch monitoring.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(vi) The CDQ group, and vessel owner or operator must comply with all of the seabird avoidance requirements at § 679.42(b)(2).

\* \* \* \* \*

5. In § 679.42, paragraph (b)(2) is revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

6. In § 679.50, paragraph (f)(1)(viii)(F) is added to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 2007.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(viii) \* \* \*

(F) Collecting all seabirds that are incidentally taken on the observer-sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls.

\* \* \* \* \*

7. In part 679, table 19 is revised and table 20 to part 679 is added to read as follows:

**BILLING CODE 3510-22-S**

Table 19 to Part 679. Seabird Avoidance Gear Codes

| VESSEL LOGBOOK   |   |
|--|---|
| CODE   | SEABIRD AVOIDANCE GEAR OR METHOD.   |
| 1  | <u>Paired Streamer Lines</u> : Used during deployment of hook-and-line gear to prevent birds from taking hooks. Two streamer lines used, one on each side of the main groundline. Each streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(iii). |
| 2  | <u>Single Streamer Line</u> : Used during deployment of hook-and-line gear to prevent birds from taking hooks. The streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(ii).  |
| 3  | <u>Single Streamer Line, used with Snap Gear</u> : Used during the deployment of snap gear to prevent birds from taking hooks. The streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(iv).  |
| 4  | <u>Buoy Bag Line</u> : Used during the deployment of hook-and-line gear to prevent birds from taking hooks. A buoy bag line consists of two components: a length of line (without streamers attached) and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(i).   |
| Other Device used in conjunction with Single Streamer Line or Buoy Bag Line. |   |
| 5  | <u>Add weights to groundline</u> : Applying weights to the groundline for the purpose of sinking the hook-and-line gear more quickly and preventing seabirds from accessing the baited hooks.   |
| 6  | <u>Additional Buoy Bag Line or Single Streamer Line</u> : Using a second buoy bag line or streamer line for the purpose of enhancing the effectiveness of these deterrent devices at preventing seabirds from accessing baited hooks.   |
| 7  | <u>Strategic Offal Discharge</u> : Discharging fish, fish parts (i.e. offal) or spent bait for the purpose of distracting seabirds away from the main groundline while setting gear.  |
| Additional Device Used.  |   |
| 8  | <u>Night Fishing</u> : Setting hook-and-line gear during dark (night time hours).   |

|   |   |
|---|---|
|   | <p><u>Line Shooter</u>: A hydraulic device designed to deploy hook-and-line gear at a speed slightly faster than the vessel's speed during setting.</p> |
|   | <p><u>Lining Tube</u>: A device used to deploy hook-and-line gear through an underwater-setting device.</p>   |
|   | <p><u>Other</u> (Describe)</p>  |
| 9 | <p><b>No Deterrent Used Due to Weather.</b> [See weather exceptions at § 679.24(e)(5)(i)(B), (e)(5)(ii)(B), (e)(5)(iii)(B), (e)(5)(iv)(B).]</p>         |
| 0 | <p><b>No Deterrent Used.</b></p>  |

Table 20 to Part 679. Seabird Avoidance Gear Requirements for Vessels, based on Area, Gear, and Vessel Type.

|   |   |
|---|---|
| <b>If you operate a vessel deploying hook-and-line gear, other than snap gear, in NMFS Reporting Area 649 (Prince William Sound), 659 (Eastern GOA Regulatory Area, Southeast Inside District) or state waters of Cook Inlet, and your vessel is...</b> | <b>Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...</b>           |
| >26 ft to 32 ft LOA   | minimum of one buoy bag line  |
| >32 ft to 55 ft LOA and does not have masts, poles, or rigging  | minimum of one buoy bag line  |
| >32 ft to 55 ft LOA and has masts, poles, or rigging  | minimum of a single streamer line   |
| >55 ft LOA  | minimum of a single streamer line of a standard specified at § 679.24(e)(5)(ii)                                   |
| <b>If you operate a vessel deploying hook-and-line gear, other than snap gear, in the EEZ (not including Area 659), and your vessel is...</b>   | <b>Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...</b>           |
| >26 ft to 55 ft LOA and does not have masts, poles, or rigging  | minimum of one buoy bag line and one other device <sup>1</sup>  |
| >26 ft to 55 ft LOA and has masts, poles, or rigging  | minimum of a single streamer line and one other device <sup>1</sup>   |
| >55 ft LOA  | minimum of paired streamer lines of a standard specified at § 679.24(e)(5)(iii)                                   |
| <b>Except for vessels operating in state waters of IPHC Area 4E, if you operate a vessel deploying hook-and-line gear, and it is snap gear, and your vessel is...</b>   | <b>Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...</b>           |
| >26 ft to 55 ft LOA and does not have masts, poles, or rigging  | minimum of one buoy bag line and one other device <sup>1</sup>  |
| >26 ft to 55 ft LOA and has masts, poles, or rigging  | minimum of a single streamer line and one other device <sup>1</sup>   |
| >55 ft LOA  | minimum of a single streamer line of a standard specified at § 679.24(e)(5)(iv) and one other device <sup>1</sup> |
| <b>If you operate a vessel deploying hook-and-line gear, other than snap gear, in IPHC Area 4E (not including state waters), and your vessel is...</b>  | <b>Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...</b>           |

|  |  |
|--|--|
| >26 ft to 55 ft LOA and does not have masts, poles, or rigging | minimum of one buoy bag line and one other device <sup>1</sup>                     |
| >32 ft to 55 ft LOA and has masts, poles, or rigging           | minimum of a single streamer line and one other device <sup>1</sup>                |
| >55 ft LOA   | minimum of paired streamer lines of a standard specified at §<br>679.24(e)(5)(iii) |

<sup>1</sup>other device = weights added to groundline, another buoy bag line or single streamer line, or strategic offal discharge

[see § 679.24(e)(6) for more details]

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