

with VHF/satellite transmitters. The project will determine the distribution and foraging behavior of adult Crabeater seals and simultaneously assess the impact that oceanographic features and prey aggregations have on foraging strategies employed. Equivalent data will be obtained for other species. Research will occur in Marguerite Bay, West Antarctic Peninsula. Opportunistic samples will be collected from dead beach cast seals for deposit in the natural history collection at the University.

The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: February 21, 2001.

**Ann D. Terbush,**

Chief, Permits and Documentation Division,  
Office of Protected Resources, National  
Marine Fisheries Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 022000C]

#### National Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries

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

**ACTION:** Notice of availability; response to public comments.

**SUMMARY:** NMFS announces the availability of the National Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries (NPOA-S). NMFS also responds to public comments received on the draft NPOA-S.

**DATES:** The final version of the NPOA-S is now in effect and available on the NMFS web site (<http://www.nmfs.gov>). Hard copies of the document are available upon request (see **ADDRESSES**).

**ADDRESSES:** Requests for hard copies of the NPOA-S should be sent to Steve Leathery, NOAA-Fisheries/SF3, Room 14434, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Steve Leathery, 301-713-2341, or fax 301-713-1193.

**SUPPLEMENTARY INFORMATION:** The United States developed an NPOA-S through a collaborative effort between NMFS, the U.S. Department of State (DOS), and the U.S. Fish & Wildlife Service (FWS), pursuant to the International Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries (IPOA-S) that was adopted by the United Nations Food and Agriculture Organization Committee on Fisheries (COFI) in February 1999. The United States will report to COFI by February, 2001, on NPOA-S development and implementation.

An outline describing the proposed structure of the draft NPOA-S was published in the **Federal Register** on September 9, 1999 (64 FR 48987). The draft NPOA-S was released for public review and comment on December 29, 1999 (64 FR 73017), and the public comment period was subsequently extended through February 7, 2000.

#### Comments and Responses

NMFS received 10 written public comments and held one public meeting during the development of the NPOA-S. NMFS considered all comments received on the draft NPOA-S when drafting the final version of the NPOA-S.

*Comment 1:* The draft NPOA-S does not fulfill the responsibilities outlined in the IPOA-S and compromises U.S. leadership in international negotiations on reducing seabird bycatch in longline fisheries.

*Response:* The IPOA-S is a voluntary measure that calls on member states to assess their longline fisheries and, if a seabird bycatch problem is determined to exist, to develop an NPOA-S to reduce seabird bycatch within 2 years. NMFS has conducted a preliminary review of seabird bycatch in U.S. longline fisheries and has determined that a seabird bycatch problem exists in several U.S. longline fisheries, including Hawaii-based pelagic longline fisheries and Alaska halibut and groundfish demersal longline fisheries. Consistent with this NPOA-S, seabird bycatch regulations are in place for Alaska longline fisheries and under development for Hawaii longline fisheries, and research is underway in Alaska and Hawaii longline fisheries to determine the effectiveness of seabird bycatch measures and to improve those measures.

NMFS, FWS, and DOS developed this NPOA-S to provide policy guidance to reduce seabird bycatch in those longline fisheries where a problem is already known to exist and to assess all other U.S. longline fisheries within 2 years to

determine whether a seabird bycatch problem exists. If a seabird bycatch problem is found to exist, a fishery-specific plan should be developed within 1 year that would implement seabird bycatch mitigation measures in that fishery within 2 years.

Although incidental (i.e., unintended) catch of seabirds in longline fisheries is often termed "bycatch," the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which is the primary law covering management of marine fishery resources in U.S. waters, specifically excludes seabirds from the definition of "fish" and, therefore, bycatch. Unless certain requirements under the Endangered Species Act are involved, the Magnuson-Stevens Act does not require implementation of measures to reduce incidental catch of seabirds. However, the Magnuson-Stevens Act authorizes implementation of fishery management measures designed to protect the marine environment from the effects of fishing activities.

In order to strengthen NMFS' ability to effectively implement seabird conservation measures in U.S. fisheries, NMFS is supporting an amendment to the Magnuson-Stevens Act that would change the definition of bycatch to include seabirds and would require fishery management plans to specifically address seabird bycatch. For the purpose of the NPOA-S, the term "bycatch" is used for incidental seabird catch, and the term "seabird" refers to those bird species that habitually obtain their food from the sea below the low water mark.

NMFS believes that the final NPOA-S demonstrates strong U.S. leadership on this important international seabird conservation issue. The United States already has seabird bycatch mitigation regulations in place for all Alaska longline fisheries and under consideration for implementation in Hawaii longline fisheries. Additionally, the United States is likely to be one of the first COFI members to complete an NPOA-S, which calls on the United States to further advance the IPOA-S at future international fisheries management fora.

*Comment 2:* The draft NPOA-S does not contain any seabird bycatch reduction guidelines or performance standards.

*Response:* The final NPOA-S provides policy guidance to the Regional Fishery Management Councils (Councils) and the NMFS Regions to assess all U.S. longline fisheries within the next 2 years to determine if a seabird bycatch problem exists beyond what was determined in the preliminary

assessment. If a seabird bycatch problem is found to exist, a fishery-specific plan should be developed within 1 year that would implement seabird bycatch mitigation measures in that fishery within 2 years.

Additionally, NMFS has proposed an amendment to the Magnuson-Stevens Act that would include seabirds in the bycatch definition and thus require that fishery conservation and management measures, to the extent practicable, minimize seabird bycatch and to the extent that seabird bycatch cannot be avoided, minimize the mortality of such bycatch.

NMFS believes that individual longline fishery interactions with seabirds constitute unique situations that require development of fishery-specific seabird bycatch mitigation measures. It is not possible to state explicit seabird bycatch reduction standards for individual fisheries or for the nation as a whole. The NPOA-S recommends that additional data should be collected on seabird-fishery interactions in all U.S. longline fisheries in order to assess seabird bycatch and determine the effectiveness of seabird bycatch mitigation measures.

*Comment 3:* The NPOA-S should contain a well-defined schedule for seabird bycatch assessments and for implementing seabird protection measures.

*Response:* NMFS agrees. In response to this comment, the final version of the NPOA-S contains a more detailed implementation schedule. Within a year, and each subsequent year, the Councils and NMFS Regions will jointly prepare annual implementation reports. Within 2 years, assessments of all the U.S. longline fisheries should be completed; if a seabird bycatch problem is found to exist, a fishery-specific plan should be established within 1 year that would implement seabird bycatch mitigation measures in that fishery within 2 years.

NMFS and FWS will assume joint responsibility for preparing a biennial report to COFI on the NPOA-S. Implementation of the NPOA-S will be assessed every 4 years by NMFS and FWS to evaluate progress to date, prioritize future actions, and identify cost-effective strategies for increasing the plan's effectiveness.

*Comment 4:* The NPOA-S should state the explicit goal of eliminating seabird bycatch in U.S. longline fisheries.

*Response:* NMFS disagrees. Such a perspective represents a change of national and international policy on fishery bycatch issues. NMFS believes that the focus of the NPOA-S should be

on reducing seabird bycatch to the maximum extent practicable.

*Comment 5:* The draft NPOA-S advocates a regional approach to reducing seabird bycatch in U.S. longline fisheries. Such an approach without required actions will not effectively reduce seabird bycatch.

*Response:* Addressing seabird bycatch at the regional level is consistent with the IPOA-S and calls on the Councils to recommend seabird bycatch mitigation measures that are tailored to individual longline fisheries and that would be incorporated in regulations. NMFS will use these regionally based Council recommendations to take action to require fishery management measures that effectively reduce seabird bycatch.

*Comment 6:* There should be national-level coordination and oversight to ensure consistent and effective regional implementation of the NPOA-S.

*Response:* NMFS agrees. NMFS and FWS will continue to work in close partnership and with the DOS through the activities of the Interagency Seabird Working Group (ISWG) to accomplish the goals of the NPOA-S, including consistent and effective regional implementation of the NPOA-S. The ISWG was formed in February, 1999 for the express purpose of drafting the NPOA-S based on the IPOA-S guidelines. This working group was composed of members from NMFS, FWS, and DOS, many of whom served on a similar U.S. working group during development of the IPOA-S.

Several commenters suggested continuing the ISWG in varying capacities during NPOA-S implementation. NMFS agrees that the ISWG has continuing value as a resource for helping ensure consistent and effective regional implementation of the NPOA-S, for helping prepare a biennial report to COFI on the NPOA-S, and for helping assess implementation of the NPOA-S every 4 years to evaluate progress to date, prioritize future actions, and identify cost-effective strategies for increasing its effectiveness. However, the ISWG will not function as a certifying body for fishery management measures, as some commenters have suggested, and ISWG membership will be limited to NMFS, FWS, and DOS staff.

NMFS has assigned coordination and oversight responsibility to the Domestic Fisheries Division of the Office of Sustainable Fisheries (Sustainable Fisheries) to help ensure consistent and effective regional implementation of the NPOA-S. All Council-developed fishery management actions are submitted to Sustainable Fisheries for review, and are

implemented under authority of the Secretary of Commerce.

*Comment 7:* The draft NPOA-S does not state the need for additional funding and does not identify specific research goals or projects.

*Response:* The final NPOA-S suggests that there should be research into developing effective, fishery-specific seabird bycatch mitigation measures. In addition to regional assessments of seabird/longline interactions, the NPOA-S emphasizes the importance of increased NMFS observer coverage and additional observer training on seabird identification. The NPOA-S also emphasizes continued cooperation between FWS and NMFS on seabird bycatch mitigation issues, including assessment of existing seabird bycatch mitigation measures and research and development of new measures.

NMFS acknowledges that assessing seabird bycatch and researching the effectiveness of mitigation measures is costly, and that the final NPOA-S includes ambitious objectives and goals. Additional funding required for implementing the final NPOA-S needs to be addressed by the individual management entities. NMFS has historically not received sufficient appropriated funds to monitor seabird bycatch in all U.S. longline fisheries. The cost of previous seabird bycatch mitigation research studies ranged between \$150,000 and \$227,000. NMFS further acknowledges that cooperation with the fishing industry led to the use of commercial longline vessels in seabird mitigation research studies, which resulted in significant cost savings. NMFS will use the final NPOA-S as guidance in its strategic planning and budget processes.

Assessment of seabird bycatch via fishery observer programs is also expensive, with variable costs relating to the degree of necessary program development (i.e., creation of a new program or modification of an existing program), and whether industry shares costs or fully funds individual longline observer programs. Agency costs for observer programs have ranged from several hundred thousand to several million dollars annually.

*Comment 8:* The draft NPOA-S does not state or impose regulations requiring the use of seabird bycatch mitigating measures, even in those longline fisheries where a seabird bycatch problem is known to already exist.

*Response:* NMFS agrees. The Magnuson-Stevens Act provides the authority for managing fishery resources in the United States. Fishery management plans (FMPs) are developed by the Councils, in

consultation with NMFS, and are implemented by regulations promulgated under the authority of the Secretary of Commerce. Public participation is an important part of the Council process, where a wide variety of viewpoints are considered when developing FMPs and FMP amendments.

NMFS considers the NPOA-S to be a clear statement of policy that provides guidance to the Councils and NMFS Regions to conduct seabird bycatch assessments and reduce seabird bycatch in U.S. longline fisheries. In those U.S. longline fisheries where seabird bycatch problems are already known to exist, including Alaska groundfish and halibut demersal longline fisheries and Hawaii pelagic longline fisheries, seabird bycatch regulations are already in place, are undergoing further refinement, or are under development. NMFS considers it inappropriate to include regulations in the NPOA-S that were not developed through the Council process.

NMFS notes, however, that the final NPOA-S does call on the Councils, in partnership with NMFS, to prescribe appropriate and effective mitigation measures and to develop regulations if a seabird bycatch problem exists. Additionally, the NPOA-S provides guidance to the Councils and NMFS to consider all existing information in determining whether development of precautionary seabird bycatch mitigation measures is warranted, even prior to completing formal seabird bycatch assessments. Such an approach is consistent with U.S. marine fisheries policy on using the precautionary approach for developing fisheries management actions in the face of scientific uncertainty.

*Comment 9:* The draft NPOA-S does not contain specific guidelines for education, outreach, and training on the seabird bycatch issues.

*Response:* NMFS considers outreach and education to be of utmost importance. The final NPOA-S states that the Councils and NMFS should engage longline fishermen in education and outreach activities that will increase awareness of seabird bycatch issues and the importance of employing seabird bycatch mitigation measures.

#### Changes from the Proposed NPOA-S

NMFS made a number of changes in the final NPOA-S pursuant to public comments that were submitted on the draft NPOA-S. The final NPOA-S requires that seabird bycatch be reduced to the maximum extent practicable. The final NPOA-S provides a time line for Council and NMFS action when a seabird bycatch problem is found to

exist, and requires that a fishery-specific plan be established within 1 year to develop seabird bycatch mitigation measures in that fishery within 2 years. The final NPOA-S also calls for additional NMFS observer training in seabird identification, cooperative research between the longline fishing industry and seabird scientists, and coordination of U.S. research with international research efforts to reduce seabird bycatch. The section describing efforts that should be taken by the United States to encourage other nations to develop individual NPOA-S is expanded. The annual report describing seabird bycatch research and mitigation efforts is explained in greater detail. Finally, Executive Order 13186, "Responsibilities of Federal Agencies to Protect Migratory Birds," is addressed.

Dated: February 22, 2001.

**William T. Hogarth,**

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

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#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

##### Denying Entry to Textiles and Textile Products Produced in Certain Companies in Bangladesh

February 23, 2001.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs directing Customs to deny entry to shipments manufactured in certain companies in Bangladesh.

**EFFECTIVE DATE:** March 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were

unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies (see **Federal Register** notice 64 FR 41395, published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA is directing the U.S. Customs Service to deny entry to textiles and textile products manufactured by the following Bangladesh companies for two years: Eldest Garments, A.M. Inspection, Fashion International, Newtex Apparel and Runa Textile. Customs has informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Should CITA determine that this decision should be amended, such amendment will be published in the **Federal Register**.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

#### Committee for the Implementation of Textile Agreements

February 23, 2001.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: The U.S. Customs Service has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, U.S. Customs has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the U.S. Customs Service to issue regulations regarding the denial of entry of shipments from such companies (see directive dated July 27, 1999 (64 FR 41395), published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and U.S. customs law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA directs the U.S. Customs Service, effective for goods exported on and after March 1, 2001 and extending through February 28, 2003, to deny entry to textiles and textile products manufactured by the following Bangladesh companies: Eldest Garments, A.M. Inspection, Fashion International, Newtex Apparel and Runa