



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 190906-0023]**

**RIN 0648-BI99**

**Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Seabird Bycatch Avoidance Measures**

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

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

**SUMMARY:** This proposed rule would require commercial groundfish bottom longline vessels 26 feet length overall and longer managed under the Pacific Coast Groundfish Fishery Management Plan to deploy streamer lines or to set gear between civil dusk and civil dawn when fishing in Federal waters north of 36° North latitude. The action is necessary to fulfill terms and conditions of a 2017 United States Fish and Wildlife Service Biological Opinion to minimize incidental take of Endangered Species Act-listed short-tailed albatross (*Phoebastria albatrus*) by vessels in the Pacific Coast groundfish fishery. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Coast Groundfish Fishery Management Plan, and other applicable laws, including the Endangered Species Act.

**DATES:** Comments must be received by *[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]*.

**ADDRESSES:** Submit your comments, identified by NOAA-NMFS-2019-0063, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to [www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2019-0063](http://www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2019-0063), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070. Attn: Keeley Kent.

*Instructions:* NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

### **Electronic Access**

This rule is accessible via the Office of the Federal Register website at <https://www.federalregister.gov/>. Background information and documents including a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis), which addresses the statutory requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Presidential Executive Order 12866, and the Regulatory Flexibility Act are available at the NMFS West Coast Region website at <http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html> and at the Pacific Fishery Management Council’s website at <http://www.pcouncil.org>.

**FOR FURTHER INFORMATION CONTACT:** Keeley Kent, phone: 206-526-4655, or e-mail: *keeley.kent@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background and Need for Action**

The purpose of this proposed rule is to reduce interactions between seabirds, especially Endangered Species Act-listed species, and groundfish longline gear. Seabirds are known to dive on baited hooks near the sea surface when fishing vessels deploy longline gear. Birds can become entangled with, or hooked by, the gear and drown.

Streamer lines, also known as tori lines, bird scaring lines, or bait saver lines, have been shown to deter seabirds from the fishing gear groundline for a distance beyond the stern of the vessel sufficient for the groundline to sink to a depth where bait is no longer accessible to diving birds (Section 1.2 of the Analysis).

The streamer line is a line that extends from a high point on a vessel (a mast, pole, or rigging) near the stern of the vessel to a drogue (usually a buoy with a weight, such as a section of chain). As the vessel moves forward, the drogue creates tension in the line, producing a span of area from the stern where the streamer line is aloft. The aloft section includes streamers made of UV protected, brightly colored tubing spaced every 16 feet (ft) (5 meters (m)). Streamers must be heavy enough to maintain a near-vertical fence in moderate to high winds. Individual streamers extend to the water to prevent aggressive birds from getting to the groundline and interacting with hooks. Streamer lines have been effective at reducing seabird bycatch in fisheries throughout the world, including Alaskan fisheries that are similar to Pacific Coast groundfish fisheries.

In limited instances, a buoy bag line may be used in place of a streamer line. Vessels without mast, poles, and rigging must deploy at least one buoy bag line. A buoy bag line extends from a high point on the vessel to a drogue (a buoy with a weight, such as a section of chain). The buoy bag line hangs over the area where baited hooks may be accessible to seabirds, which is generally within 6.5 feet (2 m) of the sea surface.

On the West Coast, longline vessels fishing under the Pacific Coast Groundfish Fishery Management Plan (FMP) interact with short-tailed albatross, which are listed as endangered under the Endangered Species Act (ESA). Short-tailed albatross typically only dive to depths of 6.6 ft (2 m) when feeding. A 2012 U.S. Fish and Wildlife Service (USFWS) Biological Opinion on the continued operation of the Pacific Coast groundfish fishery required vessels 55 ft (16.8 m) and longer length overall (LOA) using bottom longline gear (as defined in 50 CFR 660.11) to use streamer lines (80 FR 71975; November 18, 2015). Smaller vessels were not included in the requirement. However, research since then has shown that vessel size is not a limiting factor on seabird interactions (USFWS Biological Opinion 2017).

In 2015, the Pacific Fishery Management Council's (Council) Groundfish Endangered Species Act Workgroup estimated that incidental take of short-tailed albatross in groundfish longline fisheries exceeded the incidental take level allowed in the 2012 Biological Opinion (Section 1.2 of the Analysis). Thus, NMFS reinitiated consultation in 2016 with the USFWS pursuant to Section 7 of the ESA. On May 2, 2017, USFWS published its new Biological Opinion on the fishery. The Incidental Take Statement (ITS) in the Biological Opinion lists nondiscretionary terms and conditions, one of which requires NMFS to amend the fishery regulations to require vessels fishing for groundfish in Federal waters that use longline gear to:

- i) Employ streamer lines in the commercial longline fishery of the Pacific Coast Ground Fishery consistent with the Alaska streamer line regulations for Federal waters, including the use of single streamer lines on boats 26-55 feet (7.9-16.8 m) in length, or
- ii) Set longlines after civil sunset.

The ITS requires that NMFS implement these regulation changes as soon as practical, but initiation of implementation shall not exceed a three-year period after the date of the Biological Opinion.

The Council evaluated the requirements of the ITS and analyzed an action to amend the regulations implementing the FMP to address seabird bycatch in the fishery at its November 2018, April 2019, and June 2019 meetings. The Council recommended a preferred alternative at its April 2019 meeting and took final action in June 2019. NMFS is proposing modifications to the existing Seabird Avoidance Program regulations for the Pacific Coast groundfish fishery through this proposed rule to incorporate the Council's recommendation.

### **Description of the Pacific Coast Groundfish Longline Fishery**

As described in Section 3.5.1 of the Analysis, groundfish longline vessels are grouped into the following four fisheries:

- (1) Vessels with a sablefish fixed gear endorsed Federal groundfish limited entry permit may participate in the primary sablefish fishery with vessel-specific sablefish catch limits assigned according to permit possession;
- (2) Vessels with fixed gear endorsed Federal groundfish limited entry permit but without the sablefish endorsement;

- (3) Vessels with a trawl endorsed groundfish limited entry permit participate in the Shorebased Individual Fishing Quota (IFQ) Program fishery and may use any legal groundfish gear. A portion of vessels possessing these endorsed permits and the necessary quota pounds use longline gear to catch sablefish (“gear switchers”). From an operational standpoint these vessels are comparable to the limited entry category described above; and,
- (4) Vessels without a Federal permit are subject to daily and weekly trip limits for groundfish species. Vessels without a Federal permit participate in the open access fishery, and are subject to state permitting requirements as applicable.

Overlapping with these permit categories, vessels may be described as participating in the non-nearshore or nearshore fishery. The non-nearshore fishery principally targets sablefish on the continental slope and may also land other associated species such as thornyheads. The nearshore fishery, as the name implies, fishes closer to shore and primarily in state waters, principally landing various rockfish species (Section 3.5.1 of the Analysis). The 2017 Biological Opinion excluded any groundfish fisheries in state waters from the proposed action, therefore this proposed rule only applies to vessels fishing in federal waters, delineated as the exclusive economic zone, 3-200 nautical miles (5.6-370.4 kilometers) from shore.

Section 3.5.2 of the Analysis indicates that 37 large vessels (vessels greater than or equal to 55 ft (16.8 m) LOA) and 387 small vessels (vessels greater than or equal to 26 ft (7.9 m) and less than 55 ft (16.8 m) LOA) participated in the non-nearshore fishery using longline gear during the 2013-2017 baseline period. During the baseline period, the Analysis found a considerable amount of variation in the number of participating vessels from year to year, especially in the small vessel category. On average, 22 large vessels and 199 small vessels

participated in these federal fisheries annually, suggesting that vessels move in and out of the fishery over time.

Section 3.5.4 of the Analysis compares annual engagement levels to annual revenues for small and large vessels participating in the non-nearshore fishery. The Analysis indicates that most of the vessels participating in this fishery make relatively few trips annually. In terms of the number of trips, 80 percent of small vessels and 90 percent of large vessels make 10 or fewer trips per year. Despite the low apparent level of participation, the Analysis found that most vessels earn the majority of their annual revenue from this fishery. In terms of annual revenue, 77 percent of small vessels and 73 percent of large vessels derive 90 percent or more of total ex-vessel revenue from the fishery annually. The primary ports of landing for these vessels from 2013 to 2017 were Monterey, Fort Bragg, CA; Brookings, Coos Bay, Newport, OR; and ports on the south and central coast of Washington (Section 3.5.6 of the Analysis).

### **Proposed Seabird Bycatch Avoidance Measures**

This proposed rule would amend the existing Seabird Avoidance Program regulations for the Pacific Coast groundfish fishery at 50 CFR 660.21 to implement the requirements of the 2017 USFWS Biological Opinion. The existing Seabird Avoidance Program regulations apply to vessels greater than or equal to 55 ft (16.8 m) LOA engaged in commercial fishing for groundfish with bottom longline gear. Vessels using snap gear must deploy a minimum of a single streamer line. Vessels not using snap gear must deploy paired stream lines. Pacific Coast treaty Indian fisheries and anglers engaged in recreational fishing for groundfish are exempt from the regulations. The existing regulations also exempt vessels when a National Weather Service Gale Warning is in effect.

This proposed rule would extend the streamer line requirements currently in place for vessels greater than or equal to 55 ft (16.8 m) LOA to vessels greater than or equal to 26 ft (7.9 m) and less than 55 ft (16.8 m) LOA using bottom longline gear, as defined under 50 CFR 660.11, when fishing north of 36° N. latitude. This proposed rule would also exempt all Pacific coast groundfish vessels subject to seabird avoidance requirements from streamer line requirements when night setting and exempt vessels greater than or equal to 26 ft (7.9 m) and less than 55 ft (16.8 m) LOA from using streamer lines when a small craft advisory is declared. This section details the features of the proposed expanded seabird bycatch avoidance measures.

The Council recommended exempting vessels fishing south of 36° N. latitude due to the rare presence of short-tailed albatross in this area, and as a result, decreased likelihood of interaction with fishing gear. This exemption would apply to all sizes of vessels; therefore, it would create a new exemption for the vessels greater than or equal to 55 ft (16.8 m) LOA that have been subject to streamer line requirements since 2015.

Bottom longline gear includes snap gear, which is a variant of this gear type in which the gangion and hook are attached to the groundline by means of a mechanical fastener or snap, usually during gear deployment. Because vessel operators may snap the gangion and hook to the groundline during deployment, this gear configuration often means that vessels deploy the gear at a slower speed than standard bottom longline gear. This action would require a different streamer line configuration for vessels using snap gear that are greater than or equal to 26 ft (7.9 m) and less than 55 ft (16.8 m) LOA to accommodate the slower snap gear deployment speed and would be consistent with the existing regulations for vessels greater than or equal to 55 ft (16.8 m) LOA.

A portion of the vessels participating in this fishery use floated longline gear. Floats are attached to the mainline at the midpoint between the weights that sink the gear to the seafloor. The floats elevate the mainline off the seafloor to minimize depredation by “sea lice” (isopods) and hagfish, which can occur when baited hooks are immobile on the seafloor. The Analysis found that because of the slower sink rate of floated longline gear, streamer lines are less effective in minimizing seabird bycatch. With floated gear, that portion adjacent to the float, is exposed to seabird attacks well beyond the extent of the streamer lines. As part of this action, the Council considered special seabird bycatch mitigation measure requirements for vessels using floated mainline gear (see Section 3.7 of the Analysis) due to differences in the length of gear within potential bird strike depths beyond the normal extent of streamer lines. Specifically, the Council considered whether to only allow vessels using this gear type to set at night. However, due to safety concerns raised during the analysis of the action, difficulty in assessing the number of participants this action would affect because of data limitations, and concerns about the burden such a requirement would place on vessels that may typically only conduct day trips, the Council did not recommend special requirements for floated mainline gear at this time. However, the Council acknowledged concerns with the effectiveness of streamer lines for reducing seabird interactions for floated mainline gear and requested NMFS and the industry collaborate on research on strategies to modify floated mainline gear so that streamer lines are more effective, or adjust the configuration of streamer lines to make them more effective for floated mainline gear. NMFS intends to pursue further research both to meet the Council’s recommendation and to fulfill the terms and conditions of the Biological Opinion, which directs NMFS to conduct research that investigates new or improved methods of reducing bycatch of short-tailed albatross that are safe and effective within the longline fishery. This term and condition also specifically

notes that NMFS should pursue research on the effect of floating gear on albatross bycatch and improved methods to minimize risk of bycatch.

The Biological Opinion requires that the streamer line configurations of this action be consistent with the Alaska streamer line regulations (50 CFR 679.24(e)). To meet this term and condition, this proposed rule would require the following configurations of streamer lines for vessels greater than or equal to 26 ft (7.9 m) and less than 55 ft (16.8 m) LOA.

*Vessels with mast, poles, and rigging and not using snap gear would be required to deploy a single streamer line. The single streamer line must:*

1. Be a minimum of 300 ft (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 at least eight streamers out of the water aft of the vessel; and
6. 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.

*Vessels with mast, poles, and rigging and using snap gear must deploy a single streamer line.*

*The single streamer line must:*

1. Be a minimum of 147.6 ft (45 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 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;
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 at least four streamers out of the water aft of the vessel; and
6. 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.

*Vessels without mast, poles, and rigging must deploy at least one buoy bag line:*

1. 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.
2. Have a buoy bag line that hangs over the area where baited hooks may be accessible to seabirds, which is generally within 6.5 feet (2 m) of the sea surface.

This proposed rule would exempt all Pacific coast groundfish vessels subject to seabird avoidance requirements from streamer line requirements when night setting. This proposed rule would define night setting as deployment of gear between civil dusk (defined as one hour after local sunset) and civil dawn (defined as one hour before local sunrise). As described in Section 3.7.1.1 of the Analysis, deploying gear between civil dusk and civil dawn is an effective seabird bycatch mitigation measure due to the primarily day-time foraging patterns of short-tailed albatross. This exemption would apply to all sizes of vessels; it therefore would create a new exemption for the vessels greater than or equal to 55 ft (16.8 m) LOA that have been subject to streamer line requirements since 2015.

Finally, this proposed rule would include weather safety exemptions due to the risk of entanglement of streamer lines in fishing gear in high winds. Currently, vessels greater than or equal to 55 ft (16.8 m) LOA are exempt from deploying streamer lines when fishing in an area under a National Weather Service (NWS) Gale warning (winds 34 to 47 knots). This proposed rule would create a weather safety exemption for vessels greater than or equal to 26 ft (7.9 m) and less than 55 ft (16.8 m) LOA when fishing in an area under a NWS Small Craft Advisory (winds 21 to 33 knots) or in an area seaward of such an area.

### **Anticipated Effects of this Proposed Rule**

This proposed rule would reduce the likelihood of interactions between seabirds and groundfish longline vessels and therefore reduce the risk of seabird bycatch in this fishery, specifically for endangered short-tailed albatross (Section 3.7.1.1 of the Analysis). As enumerated in Section 3.5.2 of the Analysis, this proposed rule would annually affect, on average, 199 vessels greater than or equal to 26 ft (7.9 m) and less than 55 ft (16.8 m) LOA that would be subject to streamer line or night setting requirements. Additionally, this proposed rule would annually affect, on average, 22 vessels greater than or equal to 55 ft (16.8 m) LOA that would be exempt from the use of streamer lines when night setting.

Under this proposed rule, vessels greater than or equal to 26 ft (7.9 m) and less than 55 ft (16.8 m) LOA would need to obtain and use a streamer line when setting their gear. A single streamer line costs around \$125 in materials and labor. As part of this action, Oregon Sea Grant is distributing a number of streamer lines free of charge to fishery participants (Section 3.7.2.1 of the Analysis). Streamer lines may have to be replaced over time depending on wear and tear. Vessels may also choose to night set in lieu of obtaining and using a streamer line. If a vessel were not already equipped to night set, new or upgraded deck lighting may be necessary (Section

3.7.2.1 of the Analysis). There may be no additional costs borne by fishery participants subject to this proposed rule if participants obtain a free streamer line or are already equipped for night setting. Conversely, participants may be required to purchase a streamer line or deck lighting to facilitate night setting.

Using streamer lines adds to the complexity of deploying the gear. This would result in a modest increase in indirect cost (any additional labor involved in deploying streamer lines) and there is a small risk of the streamer lines entangling in the fishing gear if deployed improperly, which could reduce fishing time and thus catch (Section 3.7.3.1 of the Analysis). Relative to night setting, reduced visibility at night could make it more difficult to operate the vessel and conduct fishing operations. However, many vessels both small and large participating in the fishery make multi-day trips (see Section 3.5.5 of the Analysis) and some vessels already set gear at night, suggesting that the impact of voluntarily operating at night would be minimal (Section 3.7.3.1 of the Analysis). The Coast Guard requires navigation lights for all power-driven vessels (as defined in 33 CFR 83.26), regardless of whether the vessels exclusively operate during the day. Additionally, the Coast Guard provides recommendations for determining safe speeds for daytime and nighttime operations (<https://www.navcen.uscg.gov/pdf/navRules/navrules.pdf>). Assuming vessels were following these requirements and guidance, vessels practicing prudent judgement could operate safely at night.

### **Information Solicited**

Public comment is sought on all aspects of this proposed rule. In particular, NMFS is requesting information on implementing a weather exemption for vessels greater than or equal to 26 ft (7.9 m) and less than 55 ft (16.8 m) LOA and whether the inclusion of areas seaward of a

small craft wind advisory in a weather-based exemption from streamer line use is appropriate and understandable. See **ADDRESSES** above for information on how to submit a comment.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

There are no relevant federal rules that may duplicate, overlap, or conflict with this action.

An initial regulatory flexibility analysis (IRFA) was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action is contained in the **SUMMARY** section and at the beginning of the **SUPPLEMENTARY INFORMATION** section of the preamble. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

The RFA (5 U.S.C. 601 *et seq.*) requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any business/organization independently owned and operated and not dominant in its field of operation (including its affiliates). A small harvesting business has combined annual receipts of \$11 million or less for all affiliated operations worldwide. A small fish-processing business is one that employs 750 or fewer persons for all affiliated operations worldwide.

For marinas and charter/party boats, a small business is one that has annual receipts not in excess of \$7.5 million. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A nonprofit organization is determined to be “not dominant in its field of operation” if it is considered small under one of the following Small Business Administration (SBA) size standards: environmental, conservation, or professional organizations are considered small if they have combined annual receipts of \$15 million or less, and other organizations are considered small if they have combined annual receipts of \$7.5 million or less.

The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

*Description and estimate of the number of small entities to which the rule applies, and estimate of economic impacts by entity size and industry*

This proposed rule would directly affect groundfish longline vessels. These vessels are defined as small entities based on the criteria provided above. Baseline information reported in Section 3.5.2 of the Analysis suggests that as many as 387 of such vessels greater than or equal to 26 ft (7.9 m) and less than 55 ft (16.8 m) LOA could be subject to the requirement to use

streamer lines or set gear at night. An additional 37 vessels greater than or equal to 55 ft (16.8 m) LOA could be subject to elements of the proposed action (area exemptions south of 36° N. latitude, night setting option) and also qualify as small entities. These counts are the maximum estimate, as vessels move in and out of the fishery between years.

There is not a strict one-to-one correlation between vessels and entities; some persons or firms likely have ownership interests in more than one vessel. Furthermore, as discussed in Section 3.5.4 of the Analysis, most of these vessels had a relatively low level of participation in the fishery during the baseline period, although in principal any level of participation would trigger seabird avoidance requirements (streamer line use, night setting). Given these factors, the actual number of entities regulated by this action could be lower than the preceding estimates.

*Description of Proposed Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule*

There are no proposed reporting or record-keeping requirements with this proposed rule. All longline vessels, whether classified as small or not, would be subject to new compliance requirements under this proposed rule to either use streamer lines or night set in order to reduce seabird interactions.

*Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule*

The proposed regulations do not create overlapping regulations with any state regulations or other federal laws.

*A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities*

There are no significant alternatives to the proposed rule that would accomplish the stated objectives in a way that would reduce economic impacts of the proposed rule on small entities. This action responds to a non-discretionary term and condition in the 2017 USFWS Biological Opinion, which specifies the mitigation measures that must be implemented to reduce the risk of short-tailed albatross takes. For that reason, there are no significant alternatives to the proposed action evaluated in this IRFA.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 6, 2019.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Program,

National Marine Fisheries Service.

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

**PART 660--FISHERIES OFF WEST COAST STATES**

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

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.21, revise paragraphs (b), (b)(1), (c)(1) through (3), to read as follows:

**§ 660.21 Seabird Avoidance Program.**

\* \* \* \* \*

(b) *Applicability.* The requirements specified in paragraph (c) of this section apply to the following fishing vessels when operating within the EEZ north of 36° N. latitude:

(1) Vessels greater than or equal to 26 ft (7.9 m) LOA engaged in commercial fishing for groundfish with bottom longline gear, including snap gear, as defined under “Fishing gear” in § 660.11, including those operating under the gear switching provisions of the Limited Entry Trawl Fishery, Shorebased IFQ Program as specified in §660.140(k), or those operating under the limited entry fixed gear fishery in subpart E or under the open access fishery in subpart F of this part, except as provided in paragraphs (b)(2) of this section.

\* \* \* \* \*

(c) \* \* \*

(1) *General Requirements.* The operator of a vessel described in paragraph (b)(1) of this section must comply with the following requirements, unless operating under the provisions of paragraph (c)(3) of this section:

(i) Gear onboard. Have onboard the vessel seabird avoidance gear meeting the material standards specified in paragraph (c)(1)(iv) of this section and in accordance to the vessel size and gear type specific requirements as specified in paragraph (c)(2) 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 (c)(2) of this section that meets the material standards specified in paragraph (c)(1)(iv) of this section while bottom longline and snap gears are being deployed.

(iv) Material standards for all streamer lines. All streamer lines must:

(A) Have streamers spaced every 16.4 ft (5 m).

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

(C) 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.

(v) Handling of hooked short-tailed albatross. If a short-tailed albatross is hooked or entangled by a vessel, owners and operators must ensure that the following actions are taken:

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

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

(C) If alive, follow these instructions:

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

(2) Remove any entangled lines or hooks from the bird without further injuring the bird;

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

(4) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS or the US Fish and Wildlife immediately upon the vessel's return to port.

Do not give the bird food or water.

(5) Assess whether the bird meets the following criteria for release:

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

(ii) Able to breathe without noise;

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

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

(v) Feathers are dry.

(6) If bird does not meet criteria for release:

(i) Immediately contact NMFS or the U.S. Fish and Wildlife Service at the numbers listed on the West Coast Seabird Avoidance Measures flyer and request veterinary guidance;

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

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

(E) All incidents involving the hooking of short-tailed albatross must be reported to U.S. Fish and Wildlife Service Law Enforcement by the vessel operator within 72 hours of taking an albatross by phoning 360-753-7764 (WA); 503-682-6131 (OR); or 916-414-6660 (CA).

(F) If a NMFS observer is on board at the time of a hooking event, the observer shall be responsible for the disposition of any captured short-tailed albatross and for reporting to U.S. Fish and Wildlife Service Law Enforcement. Otherwise, the vessel operator shall be responsible.

(2) *Gear Requirements and Performance Standards.* The operator of a vessel identified in paragraph (b)(1) of this section must comply with the following gear requirements:

(i) For vessels with masts, poles, or rigging using snap gear as defined at §660.11, the following requirements apply:

(A) Vessels must deploy a minimum of a single streamer line in accordance with the requirements of paragraphs (c)(1)(iv) of this section, except as provided in paragraph (c)(2)(iv) of this section.

(B) Streamer lines must be a minimum length of 147.6 ft (45 m).

(C) Streamer lines must be deployed so that streamers are in the air a minimum of 65.6 ft (20 m) aft of the stern and within 6 ft 7 in (2 m) horizontally of the point where the main groundline enters the water before the first hook is set. A minimum of 4 streamers must be out of the water aft of the stern.

(ii) For vessels with masts, poles, or rigging using bottom longline other than snap gear, as defined under 660.11 “Fishing Gear” paragraph (6)(B), the following requirements apply:

(A) Streamer lines must be a minimum length of 300 feet (91.4 m).

(B) The number of streamer lines required and the streamer line deployment requirements vary by vessel length as follows:

(1) Vessels greater than or equal to 26 feet (7.9 m) and less than 55 feet (16.8 m) LOA must use a minimum of one streamer line. Streamer line must 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. A minimum of 8 streamers must be out of the water aft of the stern.

(2) Vessels greater than or equal to 55 feet (16.8 m) LOA must use paired streamer lines. At least one streamer line must 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. A minimum of 8 streamers

must be out of the water aft of the stern. The second streamer line must be deployed within 90 seconds thereafter.

(i) For vessels deploying gear from the stern, the streamer lines must be deployed from the stern, one on each side of the main groundline.

(ii) 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.

(iii) Vessels without masts, poles, or rigging. A minimum of 1 buoy bag line must be used by vessels without superstructure, including masts, poles, or rigging. The buoy bag line must hang over the area where baited hooks may be accessible to seabirds, which is generally within 6.5 feet (2 m) of the sea surface.

(iv) The following weather safety exemptions apply, based on vessel length:

(A) Vessels greater than or equal to 26 feet (7.9 m) and less than 55 feet (16.8 m) LOA are exempted from the requirements of paragraph (c)(1)(iii) of this section when a National Weather Service Small Craft Advisory for Winds is in effect, or other National Weather Service Advisory for wind speeds exceeding those that trigger a Small Craft Advisory for Winds. This exemption applies only during the time and within the area indicated in the National Weather Service Weather Advisory or in an area seaward of such an area.

(B) Vessels 55 feet and longer (16.8 m) LOA are exempted from the requirements of paragraph (c)(1)(iii) of this section when a National Weather Service Gale Warning is in effect. This exemption applies only during the time and within the area indicated in the National Weather Service Gale Warning.

(3) *Night setting*. The operator of a vessel described in paragraph (b)(1) of this section, that begins and completes deployment of gear between one hour after local sunset and one hour before local sunrise is exempt from the provisions of paragraphs (c)(1) and (c)(2) of this section.

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