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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 191204-0101]

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: Final rule.

SUMMARY: This rule requires commercial groundfish bottom longline vessels 26 feet (7.9 meters (m)) length overall and longer managed under the Pacific Coast Groundfish Fishery Management Plan to use streamer lines while setting gear or to set gear between civil dusk and civil dawn (night set) 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 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: This final rule is effective [*INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Electronic copies of supporting documents referenced in this final rule, including a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis), which addresses the statutory requirements of the Magnuson-Stevens Fishery Conservation and Management Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act are available at the NMFS West Coast Region website at <https://www.fisheries.noaa.gov/species/west-coast-groundfish> 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

The purpose of this rule is to reduce interactions between seabirds, especially Endangered Species Act-listed species, and groundfish longline gear. 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). A 2012 U.S. Fish and Wildlife Service (USFWS) Biological Opinion on the continued operation of the Pacific Coast groundfish fishery required vessels 55 feet (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) to reduce seabird interactions. 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 2017 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. The

Council deemed the proposed regulations consistent with and necessary to implement the changes to the Seabird Avoidance Program in an August 15, 2019, letter from Council Chairman Phil Anderson to Regional Administrator Barry Thom. Additional discussion of the background and rationale for the Council's development of changes to the Seabird Avoidance Program regulations is included in the proposed rule (84 FR 48094; September 12, 2019) and is not repeated here. Detailed information, including the supporting documentation the Council considered while developing these recommendations, is available at the Council's website, www.pcouncil.org.

Seabird Bycatch Avoidance Measures

This rule amends the 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. This rule extends the streamer line requirements previously 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 rule also exempts all Pacific coast groundfish vessels subject to seabird avoidance requirements from streamer line requirements when night setting and exempts 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 National Weather Service (NWS) Small Craft Advisory for Winds is declared. This section describes the types of gear used in the fishery and the expanded seabird bycatch avoidance measures and exemptions.

The Council recommended, and NMFS is implementing, an exemption for 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 applies to all sizes of vessels; therefore, it creates 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 rule requires 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 is 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 a variant of bottom longline gear where 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. While the floats elevate the mainline, this gear is still predominantly in contact with the seafloor, and therefore is categorized as bottom longline gear as opposed to pelagic longline gear. Because of the slower sink rate of floated longline gear, streamer lines are less effective in minimizing seabird bycatch. With floated gear, that portion of the longline adjacent to the float is exposed to seabird attacks well beyond the extent of the streamer lines. Due to safety concerns, difficulty in

assessing the number of vessels using floated longline gear 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 include special requirements for floated mainline gear at this time. However, we acknowledge that there are concerns with the effectiveness of streamer lines for reducing seabird interactions for floated mainline gear. NMFS intends to pursue further research on this issue and to fulfill the terms and conditions of the 2017 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. Additional discussion of NMFS and Council consideration of this gear subtype is included in the proposed rule (84 FR 48094; September 12, 2019) and is not repeated here.

This rule requires 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 use a single streamer line while setting gear. 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 (9.5 millimeters (mm)) polyester line or material of an equivalent density.

Vessels with mast, poles, and rigging and using snap gear must use a single streamer line while setting gear. 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 (9.5 mm) polyester line or material of an equivalent density.

Vessels without mast, poles, and rigging must use at least one buoy bag line while setting gear:

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 rule exempts all Pacific coast groundfish vessels subject to seabird avoidance requirements from streamer line requirements when night setting. In the rule, we 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). This exemption applies to all sizes of vessels and therefore creates 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 rule includes weather safety exemptions due to the risk of entanglement of streamer lines in fishing gear in high winds. In addition to the existing weather safety exemptions for vessels greater than or equal to 55 ft (16.8 m) LOA, this rule includes 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 for winds (winds 21 to 33 knots) or in an area seaward of such an area.

Comments and Responses

NMFS solicited public comment on the proposed seabird avoidance measures (84 FR 48094, September 12, 2019). The comment period ended October 15, 2019. NMFS received two comment letters: one from the National Audubon Society on behalf of five organizations and the other from a private citizen. The comment letters raise similar issues regarding the potential need for additional NMFS actions. The letters are available in their entirety from NMFS (see **ADDRESSES**) or at the following web address:

<https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0063>.

Comment 1: The proposed regulations do not address the bycatch issue posed by pelagic (non-bottom) longline fishing. NMFS should consider extending the requirement for streamer lines to all forms of longline fishing.

Response: This comment is outside the scope of this action. As noted earlier in this preamble in the “Seabird Bycatch Avoidance Measures” section, this rule applies to bottom longline gear, which includes floated longline gear. The West Coast groundfish fishery does not use pelagic longlines. Pelagic longline gear is used in the West Coast Highly Migratory Species fishery to target tuna, swordfish, and other billfish. More information about the West Coast Highly Migratory Species fishery can be found at <https://www.fisheries.noaa.gov/management-plan/west-coast-highly-migratory-species-management-plan>.

Comment 2: The proposed rule does not reflect the direction in the Council’s motion to develop enforceable floated mainline gear configurations that can sink within the streamer line zone to reduce seabird interactions.

Response: As discussed in the proposed rule and elsewhere in this final rule, 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 2017 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 short-tailed albatross bycatch and improved methods to minimize risk of bycatch.

Comment 3: There was no mention of penalties for failure to comply with the requirements of the regulation. To be effective, this regulation should have some indication of how compliance will be measured and whether, if any, penalties exist for noncompliance.

Response: The proposed rule described the general requirements, as well as the gear requirements and performance standards that apply to vessel operators. The requirements and standards of the seabird avoidance program are enforceable under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The enforcement policy and penalties of the Magnuson-Stevens Act are described in the Code of Federal Regulations (50 CFR parts 600.735 and 600.740).

Comment 4: The proposed rule fails to acknowledge the Council's motion to account for current uncertainties and future changes to the overlap of short-tailed albatrosses and fleet effort. In its final rule, NMFS must acknowledge the Council's motion, and include tasks and timeline for NMFS to review and report back to the Council on short-tailed albatross telemetry or observer data south of 36 N. latitude.

Response: The Council and NMFS will revisit the exemption for vessels fishing south of 36° N. latitude as new data become available. The appropriate venue for this analysis is the Council's Groundfish Endangered Species Workgroup, which meets at least biennially. The Groundfish Endangered Species Workgroup includes five NMFS employees with expertise in marine mammals, fish, sea turtles, and seabirds. NMFS

intends to ensure new data on any changes to the overlap of short-tailed albatrosses and fleet effort is incorporated into the ESA Workgroup's analysis and therefore made available to the Council and NMFS for further consideration. The Council's Groundfish Endangered Species Workgroup biennially reviews bycatch estimates for certain ESA-listed species taken in the fishery, including short-tailed albatross. The Workgroup can make recommendations to the Council on data collection or management actions necessary to evaluate or minimize incidental take of these species in the groundfish fishery. The Council can then choose to further analyze and develop these recommendations for implementation in the groundfish fishery.

Changes from the Proposed Rule

There is one non-substantive change to the regulations implemented in this final rule from those in the proposed rule. NMFS determined that additional regulatory changes were required to effectuate the purpose and intent described in the proposed rule. Specifically, additional regulatory changes were needed to clarify implementation of the terms and conditions of the 2017 USFWS Biological Opinion regarding reporting and handling requirements for short-tailed albatross. The regulations in the proposed rule clarified the reporting and handling requirements for short-tailed albatross for vessels in the bottom longline fishery consistent with the 2017 Biological Opinion. This final rule modifies existing regulations at §§ 660.140(g)(1) and (g)(3)(ii)(B) and 660.604(p)(1)(ii) to ensure consistency for the reporting and handling requirements regarding short-tailed albatross for vessels in the Pacific Coast groundfish fishery. This change in the regulations clarifies that vessels using trawl gear while fishing under the Pacific Coast groundfish FMP follow the handling and reporting requirements for injured or dead

short-tailed albatross as detailed in § 660.21(c)(1)(v). The requirement that NMFS disseminate short-tailed albatross disposition instructions for fishers and observers in the Pacific Coast groundfish fishery has been in place since the 2012 Biological Opinion completed by the USFWS; the change in regulations in this final rule would clarify that those instructions also apply to trawl vessels. This change from the proposed rule is not substantive, has no on-the-water effects, and will reduce potential confusion regarding handling and reporting requirements for short-tailed albatross.

Classification

Pursuant to sections 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.

NMFS prepared a final regulatory flexibility analysis (FRFA) under section 604 of the Regulatory Flexibility Act (RFA), which incorporates the initial regulatory flexibility analysis (IRFA). A summary of any significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action are addressed below. NMFS also prepared a Regulatory Impact Review (RIR) for this action. A copy of the RIR is available from NMFS (see **ADDRESSES**), and per the requirements of 5 U.S.C. 604(a), the text of the FRFA follows:

Final Regulatory Flexibility Analysis

As applicable, section 604 of the Regulatory Flexibility Act (RFA) requires an agency to prepare a final regulatory flexibility analysis (FRFA) after being required by that section or any other law to publish a general notice of proposed rulemaking and

when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of any significant issues raised by the public comments, NMFS's responses to those comments, and a summary of the analyses completed to support the action.

Analytical requirements for the FRFA are described in the RFA, section 604(a)(1) through (6). FRFAs contain:

1. A statement of the need for, and objectives of, the rule;
2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
4. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The “universe” of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (*e.g.*, user group, gear type, geographic area), that segment will be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objective of this Final Rule

The need for and objective of this final rule is described above in the Background section of the preamble and not repeated here.

Summary of Significant Issues Raised During Public Comment

NMFS published a proposed rule to modify the Seabird Avoidance Program for the West Coast groundfish fishery on September 12, 2019 (84 FR 48094). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on October 15, 2019. NMFS received two comment letters on the proposed rule. No comments were received specific

to the IRFA. The Chief Counsel for Advocacy of the SBA did not file any comments on the IRFA or the proposed rule.

A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply

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.

This 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 rule (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.

Recordkeeping, Reporting, and Other Compliance Requirements

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

Description of Significant Alternatives to this Final Rule that Minimize Economic Impacts on Small Entities

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

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office (see **ADDRESSES**), and the guide will be included in a public notice sent to all members of the groundfish email group. To sign-up for the groundfish email group, click on the “subscribe” link on the following website: <https://www.fisheries.noaa.gov/species/west-coast-groundfish#commercial>. The guide and this final rule will also be available on the West Coast Region’s website (see **ADDRESSES**) and upon request.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 4, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 660--FISHERIES OFF WEST COAST STATES

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) introductory text, (b)(1), and (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 (9.5 mm) 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 U.S. Fish and Wildlife Service 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 U.S. Fish and Wildlife Service 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 in paragraph (6)(i) of the definition of fishing gear in § 660.11, 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 (2) of this section.

3. In § 660.140, revise paragraphs (g)(1) and (g)(3)(ii)(B) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(g) * * *

(1) *General.* Shorebased IFQ Program vessels may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. With the exception of vessels on a declared Pacific whiting IFQ trip and engaged in maximized retention, and vessels fishing under a valid EM Authorization in accordance with § 660.604 of subpart J, prohibited and protected species (except short-tailed albatross as directed by § 660.21(c)(1)(v)) must be discarded at sea; Pacific halibut must be discarded as soon as practicable and the discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Non-IFQ species and non-groundfish species may be discarded at sea, unless otherwise required by EM Program requirements at § 660.604 of subpart J. The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer or EM system.

* * * * *

(3) * * *

(ii) * * *

(B) *Seabirds, marine mammals, and sea turtles.* Short-tailed albatross must be reported as soon as possible and directions for surrendering must be followed as directed by § 660.21(c)(1)(v). Marine mammals and sea turtles must be reported to NMFS as soon as possible (206-526-6550) and directions for surrendering or disposal must be followed. Whole body specimens must be labeled with the vessel name, electronic fish ticket number, and date of landing. Whole body specimens must be kept frozen or on ice until arrangements for surrendering or disposing are completed. Unless directed otherwise, after reporting is completed, seabirds, marine mammals, and sea turtles may be disposed by incinerating, rendering, composting, or returning the carcasses to sea.

* * * * *

4. In § 660.604, revise paragraphs (p)(1)(ii) and (p)(2) to read as follows:

§ 660.604 Vessel and first receiver responsibilities.

* * * * *

(p) * * *

(1) * * *

(ii) Large individual marine organisms (*i.e.*, all marine mammals, sea turtles, and non-ESA-listed seabirds, and fish species longer than 6 ft (1.8 m) in length) may be discarded. For any ESA-listed seabirds that are brought on board, vessel operators must follow any relevant instructions for handling and disposition under § 660.21(c)(1)(v).

* * * * *

(2) *Non-trawl shorebased IFQ*. A vessel operator on a declared limited entry groundfish non-trawl, shorebased IFQ trip must retain all salmon and must discard Dungeness crab caught seaward of Washington or Oregon, Pacific halibut, green sturgeon, eulachon, sea turtles, and marine mammals. All other catch may be discarded following instructions in the VMP, except as required by the Seabird Avoidance Program at § 660.21(c)(1)(v).

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