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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140214140-5999-01]

RIN 0648-BD92

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Seabird Avoidance Measures

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

ACTION: Final rule.

SUMMARY: This final rule implements a Seabird Avoidance Program in the Pacific Coast Groundfish Fishery. The rule was recommended by the Pacific Fishery Management Council (Council) in November 2013 to minimize the take of ESA-listed short-tailed albatross (Phoebastria albatrus). A 2012 U.S. Fish and Wildlife Service (USFWS) Biological Opinion (Opinion) required NMFS to initiate implementation of regulations within 2 years that mandate the use of seabird avoidance measures by vessels greater than or equal to 55 feet length overall (LOA) using bottom longline gear to harvest groundfish. The seabird avoidance measures, including streamer lines that deter birds from ingesting baited hooks, are modeled after a similar regulatory program in effect for the Alaskan groundfish fishery.

DATES: Effective on [*Insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Information relevant to this final rule, which includes a final environmental assessment (EA), are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Electronic copies of this final rule are also available at the NMFS West Coast Region Web site: *http:// www.westcoast.fisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah Williams, 206-526-4646; (fax) 206-526-6736; *sarah.williams@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this rule is to reduce interactions between ESA-listed seabirds and groundfish longline gear. This final rule amends the regulations governing the Pacific Coast Groundfish Fishery (fishery) to require seabird avoidance measures—specifically, the use of streamer lines and related provisions similar to those currently mandated in the Alaskan groundfish fishery—by vessels 55 ft LOA or greater in the bottom longline fishery.

This rule is needed to minimize takes of endangered short-tailed albatross and comply with a 2012 Biological Opinion (Opinion) issued by the U.S. Fish and Wildlife Service.

In sum, the rule:

- Requires the use of streamer lines in the commercial longline fishery of the Pacific Coast Groundfish Fishery for non-tribal vessels 55 feet in length or greater;
- Requires vessels to deploy one or two streamer lines depending on the type of longline gear being set;
- Requires that streamer lines meet technical specifications and be available for inspection; and

- Allows for a rough weather exemption from using streamer lines for safety purposes. The threshold for the rough weather exemption is a Gale Warning as issued by the National Weather Service.

The rule is designed to be consistent with the requirements of the Opinion and responsive to issues raised through the public process and consultation with experts.

Comments and Responses

NMFS solicited public comment on the proposed seabird avoidance measures (79 FR 53401, September 9, 2014). The comment period ended October 9, 2014. NMFS received seven comment letters from individuals or organizations. The letters are available in their entirety from NMFS (see **ADDRESSES**) or at the following web address: *http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=NOAA-NMFS-2014-0099*. For clarity in responding, comments have been organized into the following categories, which are addressed in turn below: Monitoring, Gear Specification and Performance, Scope, Environmental Assessment, and Other.

Monitoring

Comment 1: Observers or Electronic Monitoring should be used to monitor compliance with performance and materials standards in order for the seabird avoidance regulations to be effective.

Response: NMFS agrees. The West Coast Groundfish Observer Program (WCGOP) developed and implemented a sampling protocol in 2009 and 2010 to characterize the longline fleet and its use of seabird avoidance gear. The protocol was designed to provide data on the types of streamer lines being deployed and the performance of the streamers insofar as it can be determined visually. For example, observers recorded the number of streamer lines deployed;

where the streamer lines were deployed relative to sinking hooks; the deployment of towed objects on the end of streamer lines; the extent of streamer lines relative to the water surface; the number of streamers on each line; the color and material of the streamers; the distance between streamers; the distance from the stern to the first streamer; and a range of measurements associated with the design and performance of streamer lines. The information can be used by managers to assess the performance of streamer lines at sea. Observers currently record the type of seabird avoidance gear being used. In 2015, this will include a distinction between single and double streamer lines. Observers also record the catch of seabirds which is the ultimate determinant of the performance of seabird avoidance measures. In response to this comment and the ongoing need to characterize the use of seabird avoidance gear, WCGOP will refine the sampling protocol for implementation in 2016 or earlier as opportunity allows.

Comment 2: NMFS should use either human observers or electronic means to monitor seabird interactions in the at-sea hake fishery because there is a high overlap of fishing areas with albatross occurrence; and, the fleet's practice of continuous offal discharge may attract birds. It is known that bird strikes with trawl cables cause high mortality of albatross in other regions.

Response: As described in the BiOp, seabirds are attracted to offal plumes and can strike trawl cables, sonar cables, or become entangled on nets at or near the surface. Such interactions are unlikely to be detected as they do not show up on the deck to be sampled under normal observer protocols. NMFS agrees with the need to characterize seabird mortality in the at-sea hake fishery and is committed to developing a monitoring plan; however, there are significant issues associated with both the observer program and electronic monitoring that make it premature to choose a specific course of action at this time.

Regarding the observer program, observer duties are carefully prescribed according to priorities developed to support fishery management decisions. The main priority is to monitor catch composition—including seabirds that come up with the trawl. Each processing vessel carries two observers. Observers subsample the catch to collect data used to estimate catch composition. In addition, the observers collect biological data from groundfish, protected species including seabirds, and prohibited species. Observers are required to be in the factory, below deck, for the majority of their sampling. Observation of trawl and sonar cables would occur on deck and take a significant amount of time away from catch composition sampling.

Electronic monitoring is in a developmental stage for West Coast groundfish fisheries and significant research is necessary before it is practicable to apply to seabird monitoring in the at-sea hake fishery. Similar to observers, electronic monitoring is being developed to monitor catch composition. There have not been formal investigations into the effectiveness and practicability of training cameras away from the deck to monitor trawl and sonar cables.

NMFS will pursue a monitoring plan by working through the Council and its appropriate committees, such as the Council's ESA Working Group that was established specifically to implement the Opinion; and, ad hoc committees composed to advise the Council on the development of electronic monitoring. Such committees offer a formal opportunity to engage the Council in monitoring and conservation issues and is the most appropriate opportunity to develop an effective and practicable monitoring plan.

Comment 3: Observers should record wind speed to associate weather data with seabird interactions in order to assess impacts associated with the rough weather exemption.

Response: NMFS agrees. Observers currently record weather conditions using the Beaufort scale for any sighting or take of an ESA-listed species, including short-tailed albatross.

Weather observations are currently made at the time the observer encounters the animal which, in longline fisheries, is usually during the retrieval of gear. The weather conditions during retrieval may be different from when the mortality event occurred, which is typically as gear is being set. For this reason, and in response to this comment, NMFS will modify WCGOP sampling protocols so that observers record weather conditions as longlines are being set for at least a subset of hauls. The modified protocol may not be fully effective until 2016 due to program logistics.

Comment 4: NMFS should monitor the free streamer line program to determine if lines are being used properly, ensure plastic components of the streamer lines are not illegally discarded at sea, and to avoid wasteful spending of U.S. tax dollars that are funding the program.

Response: NMFS agrees. Consistent with the response to Comment 1 above, observers are monitoring the performance of streamer lines at sea. Observers also monitor for violations of the International Convention for the Prevention of Pollution from Ships (MARPOL) that prohibits the at-sea disposal of all plastics. Observers document compliance infractions and suspected violations in their logbook and complete a written statement during debriefing.

Gear Specification and Performance

Comment 5: NMFS should exempt the requirement to use streamer lines during longline sets that take place at night. Based on 20 years of personal experience, I have never encountered a seabird on a night set. Requiring streamer lines during night sets imposes a safety risk and inconvenience without reducing seabird mortality.

Response: To address this comment, NMFS conducted an analysis to determine if seabird catch rates differ when the longline gear is set in the dark versus the light. The analysis shows a reduction in the seabird bycatch when the gear is set at night and could provide an option for

fishermen to not use streamer lines at night in the future. At this time, NMFS has determined that providing a night-setting exemption is outside the scope of the proposed rule. NMFS received comments from the Council on including an exemption for night setting, including comments from the U.S. Coast Guard representative, which supported the exemption but requested further investigation into an exemption rather than inclusion in the regulations at this time.

Comment 6: The proposed rule is inadequate and ineffective as a seabird bycatch mitigation measure. Best practices, as adopted by the Agreement on the Conservation of Albatrosses and Petrels (ACAP), do not support only using streamer lines to deter seabirds. Streamer lines should be used in conjunction with other measures such as weighting the line to maximize sink rates; actively deterring birds from baited hooks by using bird scaring lines; and, setting at night.

Response: NMFS disagrees that the proposed rule is inadequate; however, NMFS agrees that the full range of best practices described by ACAP is an important component of effective seabird conservation. NMFS and the Council considered alternatives that would have implemented the full suite of ACAP best practices in the EA (see **ADDRESSES**). The measures described in the comment (other than streamer lines) are being pursued by non-regulatory means. NMFS and partner organizations are working with fishermen to encourage voluntary implementation of measures consistent with ACAP best practices, including sinking hooks quickly, night setting, and managing discharge of offal and bait. Fishermen on the West Coast have a significant incentive to avoid seabirds in order to ensure baited hooks are available to catch fish. A hook with a seabird on it precludes that opportunity and impacts the profitability of fishing operations. For this reason and as analyzed in the EA, NMFS and the Council determined

that a non-regulatory approach to the full suite of best practices was the most appropriate at this time. This does not preclude regulatory approaches in the future should monitoring indicate that voluntary efforts are not sufficient. To that end, NMFS has worked to establish the ESA Working Group to consider new information and formulate advice on adaptive management to the Council.

Comment 7: The proposed streamer line specifications are inadequate and ineffective. The specifications used under the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) should be adopted, including: (1) minimum of height at stern of 7 m; (2) minimum streamer line length of 150 m and the use of a drogue; (3) no rough weather exemption; and, (4) the aerial extent of streamer lines should be stipulated as a performance standard (100 m is suggested).

Response: NMFS disagrees that the proposed streamer line specifications are inadequate and ineffective. The CCAMLR regulations reflect the development of seabird avoidance measures designed for the specific fisheries and seabird assemblages. The sub-Antarctic fisheries governed under CCAMLR include primarily Patagonia toothfish (*Dissostichus eleginoides*), which is fished with the Spanish method of bottom longlining, where the gear is more buoyant than that used on the West Coast. The majority of the vessels are large (30–50 m) and deploy gear from the stern at speeds of 10–13 knots. The prevalent seabirds incidentally taken are albatrosses and petrels species, many of which dive to foraging depths that are substantially deeper than the North Pacific albatross and other species that occur off the West Coast.

In contrast, West Coast groundfish fisheries target primarily sablefish, which is a demersal species fished with bottom gear consisting of groundlines to which relatively short gangions are attached. In general, vessels deploy gear from the stern. The prevalent seabird

species incidentally taken are fulmars, gulls, and albatrosses.

The CCAMLR streamer line specifications are designed to provide more aerial coverage than is necessary or appropriate for West Coast groundfish fisheries. The minimum stern height, line length, and aerial extent specifications cover a greater area because longlines used in those fisheries are more buoyant and extend further behind the vessel than occurs in fisheries covered under this rule, and because the seabird species taken in CCAMLR fisheries dive to deeper depths than those on the West Coast. The specifications in this rule were recommended based on extensive research that demonstrated them to be effective in Alaskan groundfish fisheries, where the targeted fish species, vessels, and seabirds are similar and, in some cases, identical. More information on this research and the effectiveness of the streamer line specification in this final rule is available in the Opinion or EA (see **ADDRESSES**).

NMFS notes however that preliminary research by Washington Sea Grant indicates that some vessels in West Coast groundfish fisheries are using floats on gangions to avoid predation by non-marketable bottom fish (i.e., hagfish). The floats may reduce the effectiveness of these streamer line specifications by keeping baited hooks in the water column past the extent of streamer lines. It is unclear at this time how widespread the use of floats is, how much it influences seabird catch rates, and what alternatives are appropriate if floats are determined to be a significant issue affecting seabird catch rates. Because the research is preliminary, and because the streamer line specifications in this final rule have been demonstrated to be effective in reducing seabird mortality and are required by the Opinion, NMFS is finalizing this rule and will continue to monitor its effectiveness to determine if future changes are warranted. NMFS is also continuing to support Washington Sea Grant in conducting this research and has worked to establish the ESA Working Group to consider new information and formulate advice on adaptive

management to the Council.

Comment 8: Vessels should not be permitted to take excessive numbers of seabirds. Vessels should be required to move to night setting for the remainder of the fishing season if seabird bycatch exceeds 0.01 seabirds per 1000 hooks in a set, or until the vessel is able to demonstrate a line sink rate of a minimum of 0.3 m/second to 15 m depth. Applying a performance standard quickly halts lax and ineffective fishing practices.

Response: A system does not currently exist within NMFS to hold individual vessels accountable for seabird mortality in real time. Similarly, it is not feasible for NMFS to monitor and enforce sink rates of longline gear on individual vessels. More importantly, NMFS does not believe such a system is necessary given that the final regulations are designed to effectively reduce seabird bycatch in the fleet where most of the seabirds are taken.

Scope of the Regulations

Comment 9: Vessels smaller than 55 ft should be required to use seabird avoidance measures to minimize the chance that such vessels will take ESA-listed short-tailed albatross and other seabirds.

Response: NMFS agrees that there may be a risk to short-tailed albatross from longline vessels under 55 ft; however, it would be premature to require that they use seabird avoidance gear at this time. The Opinion specifies that this rule apply to larger vessels for the following reasons: (1) vessels under 55 ft have not been observed to interact with short-tailed albatross; (2) vessels under 55 ft are being encouraged through formal outreach described in the EA (see **ADDRESSES**) to deploy seabird avoidance measures on a voluntary basis; and, (3) NMFS does not have an appropriate technical specification for streamer lines proven to be safe for smaller vessels. To address the latter, Washington Sea Grant is conducting research to determine safe

and effective seabird avoidance measures for vessels under 55 ft. In limiting the requirement specified in the Opinion to vessels 55 ft and over, USFWS further required NMFS to adapt management as appropriate in response to that research and ongoing monitoring. NMFS is committed to review new information as it becomes available to determine if these regulations should be adapted to cover smaller vessels. To that end, NMFS has worked to establish the ESA Working Group to consider new information and formulate advice on adaptive management to the Council.

Comment 10: NMFS should require that seabird avoidance measures be deployed in the at-sea hake fishery because there is a high overlap of fishing areas with albatross occurrence and the fleet's practice of continuous offal discharge that may attract birds. It is known that bird strikes with trawl cables cause high mortality of albatross in other regions.

Response: NMFS agrees that there is a potential threat to seabirds associated with the at-sea hake fishery; however, it is premature to regulate that fishery at this time. As described in the response to Comment 2 above, NMFS will pursue a monitoring plan to assess the level of threat and appropriate responses. Regulating the at-sea hake fishery is outside the scope of this rule, which is focused on implementing requirements stipulated by USFWS in the Opinion. USFWS recognized the potential for interaction between seabirds and the at-sea hake fishery but determined that the focus of seabird avoidance measures should be the longline fleet. In doing so, USFWS further required NMFS to adapt management as appropriate in response to new information. NMFS is committed to reviewing new information as it becomes available to determine if these regulations should be adapted to other fisheries such as the at-sea hake fishery. To that end, NMFS has worked to establish the ESA Working Group to consider new information and formulate advice on adaptive management to the Council.

Environmental Assessment

Comment 11: The EA must analyze whether short-tailed albatross are at higher risk of entanglement during high wind events.

Response: NMFS agrees. The EA, in Section 4.1.1, acknowledges the uncertainty regarding seabird behavior during rough weather and concludes the exemption is not expected to significantly influence the overall reduction in seabird bycatch. NMFS is not aware of additional information pertinent to assessing the effects of rough weather on seabird encounters by longline vessels but will continue to monitor observer data and adapt management as new information becomes available. To that end, NMFS has worked to establish the ESA Working Group to consider new information and formulate advice on adaptive management to the Council.

Comment 12: The EA does not adequately assess the effects of vessels under 55 ft on short-tailed albatross.

Response: NMFS disagrees. Consistent with the response to Comment 9, the EA acknowledges there may be a risk to short-tailed albatross from vessels under 55 ft and incorporates voluntary conservation and ongoing research into analysis of the status quo alternative (See **ADDRESSES**).

Other

Comment 13: The groundfish fishery operates in important seabird foraging habitat as well as critical habitat of leatherback sea turtles and green sturgeon. Streamer lines may have unintended consequences if they are lost overboard. Streamers should be made of plant-based materials in order to minimize the biological risks associated with ingestion by marine animals.

Response: In response to this comment, NMFS consulted with NOAA's Marine Debris Program to determine if there is evidence for streamer lines as marine debris in areas such as

Alaska and Hawaii, where there are existing requirements for longline vessels to use them. Streamers (the plastic component of streamer lines) have been observed during shoreline clean-ups in Alaska; however, the quantity relative to other marine debris is very low. Reports from shoreline cleanups in Hawaii have not noted the presence of streamers. Given the low incidence of observed streamers, it would not be reasonable to change design specifications at this time. Streamer lines are constructed of materials, including plastics, sufficient to withstand at-sea conditions. A change in the material specifications would require significant research to ensure streamer lines would continue to function by reducing seabird entanglement. Such research is not practicable at this time. NMFS notes that intentional disposal at sea is unlikely because fishermen are subject to MARPOL, which prohibits the at-sea disposal of plastics.

Comment 14: NMFS should ensure authorization of fisheries complies with the Migratory Bird Treaty Act (MBTA).

Response: NMFS agrees. The final regulations are consistent with the MBTA.

Comment 15: NMFS should provide, and crewmembers should be required to attend, workshops to identify and distinguish short-tailed albatross from other albatrosses and also to safely release live short-tailed albatrosses.

Response: NMFS agrees that education and outreach is an important component of seabird conservation; however, NMFS disagrees that it should be required. NMFS has provided funding for Washington Sea Grant to conduct outreach that has included mailings to all fixed-gear permit holders, port meetings with fishermen, an internet site, and educational exhibits at trade shows. The material includes information on seabird avoidance, species identification, and how to handle hooked albatross. NMFS believes that these efforts have been successful in educating fishermen on issues related to seabird bycatch.

Comment 16: A number of commenters were in support of the proposed regulations.

Response: NMFS acknowledges this comment.

Changes from the Proposed Rule

There are no substantial changes from the proposed rule. NMFS made one modification to re-locate the regulatory text so that it is grouped with other groundfish regulations. The goal of this change is to locate the seabird avoidance program regulations near other programs that apply to multiple sectors of the groundfish fishery.

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law.

NMFS and the Council prepared a final Environmental Assessment (EA) for this regulation and concluded that there would not be a significant impact on the human environment as a result of this rule. A copy of the EA is available from NMFS (see **ADDRESSES**).

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

The Regulatory Flexibility Act requires Federal agencies to conduct a full RFAA unless the agency can certify that the proposed and/or final rule would not have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not

repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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 FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a public notice that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office, and the guide will be posted on the NMFS West Coast Region website and emailed to the groundfish fishery listserve. The guide and this final rule will be available upon request.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in

the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior "no jeopardy" conclusion. NMFS also reaffirmed its prior determination that implementation of the FMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concluded that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concluded that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

West Coast pot fisheries for sablefish are considered Category II fisheries under the Marine Mammal Protection Act (MMPA), indicating occasional interactions. All other West Coast groundfish fisheries, including the trawl fishery, are considered Category III fisheries under the MMPA, indicating a remote likelihood of or no known serious injuries or mortalities to

marine mammals. MMPA section 101(a)(5)(E) requires that NMFS authorize the taking of ESA-listed marine mammals incidental to U.S. commercial fisheries if it makes the requisite findings, including a finding that the incidental mortality and serious injury from commercial fisheries will have a negligible impact on the affected species or stock. As noted above, NMFS concluded in its biological opinion for the 2012 groundfish fisheries that these fisheries were not likely to jeopardize Steller sea lions or humpback whales. The eastern distinct population segment of Steller sea lions was delisted under the ESA on November 4, 2013 (78 FR 66140). On September 4, 2013, based on its negligible impact determination dated August 28, 2013, NMFS issued a permit for a period of 3 years to authorize the incidental taking of humpback whales by the sablefish pot fishery (78 FR 54553).

NMFS has reinitiated section 7 consultation on the Pacific Coast Groundfish FMP with respect to its effects on listed salmonids. In the event the consultation identifies either reasonable and prudent alternatives to address jeopardy concerns, or reasonable and prudent measures to minimize incidental take, NMFS would coordinate with the Council to put additional alternatives or measures into place, as required. After reviewing the available information, NMFS has concluded that, consistent with sections 7(a)(2) and 7(d) of the ESA, this action will not jeopardize any listed species, would not adversely modify any designated critical habitat, and will not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The 2012 Opinion evaluated the risks of continued operation of the

Pacific Coast groundfish fishery on ESA-listed seabirds, including short-tailed albatross. The 2012 Opinion included a Term and Condition requiring NMFS to promulgate regulations mandating the use of streamer lines by longline vessels 55 feet LOA or greater, patterned on the Alaska streamer line regulations. Accordingly, for the fishery to be exempt from the ESA section 9 prohibition regarding take of a listed species, NMFS must initiate implementation of streamer line regulations by November 21, 2014. The 2012 Opinion anticipates the yearly average take of one short-tailed albatross killed from longline hooks or trawl cables. As the short-tailed albatross population is expanding, it is expected to result in more interactions with the Pacific Coast Groundfish Fisheries. This action would implement one of the Terms and Conditions of the 2012 Opinion and reduce the risk of exceeding the take limits of short-tailed albatross, which in turn would reduce the risk of economic harm to the fishing industry that could result from the incidental take limit being exceeded. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, or bull trout critical habitat.

This final rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

This final rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. The regulations have no direct effect on the tribes and were deemed by the Council as "necessary or appropriate" to implement the FMP as amended.

List of Subjects in 50 CFR Part 660

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

Dated: November 10, 2015.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated 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 § 660.11, add paragraph (6)(i)(A) and reserved paragraph (6)(i)(B) to the definition of "Fishing gear" and add the definition for "Seabird" in alphabetical order to read as follows:

§ 660.11 General definitions.

* * * * *

Fishing gear * * *

(6) * * *

(i) * * *

(A) Snap gear means a type of bottom longline gear where the hook and gangion are attached to the groundline using a mechanical fastener or snap.

(B) [Reserved]

* * * * *

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

* * * * *

3. In § 660.12, add paragraph (a)(15) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(15) Fail to comply with the requirements of the Seabird Avoidance Program described in § 660.21 when commercial fishing for groundfish using bottom longline gear.

* * * * *

4. Add § 660.21 to read as follows:

§ 660.21 Seabird Avoidance Program.

This section contains the requirements of the Seabird Avoidance Program.

(a) *Purpose*. The purpose of the Seabird Avoidance Program is to minimize interactions between fishing gear and seabird species, including short-tailed albatross (*Phoebastria albatrus*).

(b) *Applicability*. The requirements specified in paragraph (c) of this section apply to the following fishing vessels:

(1) Vessels greater than or equal to 55 ft (16.8 m) LOA engaged in commercial fishing for groundfish with bottom longline gear as defined in § 660.11 pursuant to the gear switching provisions of the Limited Entry Trawl Fishery, Shorebased IFQ Program as specified in § 660.140(k), or pursuant to Subparts E or F of this Part, except as provided in paragraph (b)(2) of this section.

(2) *Exemptions*. The requirements specified in paragraph (c) of this section do not apply to Pacific Coast treaty Indian fisheries, as described at § 660.50, or to anglers engaged in recreational fishing for groundfish, as described in Subpart G of this Part.

(c) *Seabird Avoidance Requirements*—(1) *General Requirements.* The operator of a vessel described in paragraph (b)(1) of this section must:

(i) Gear onboard. Have onboard the vessel seabird avoidance gear 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 standards specified in paragraph (c)(3) of this section while bottom longline and snap gears are being deployed.

(iv) Handling of hooked short-tailed albatross.

(A) Safe release of live short-tailed albatross. Make every reasonable effort to ensure short-tailed albatross brought on board alive are released alive and that, whenever possible, hooks are removed without jeopardizing the life of the bird(s). If the vessel operator determines, based on personal judgment, that an injured bird is likely to die upon release, the vessel operator is encouraged to seek veterinary care in port. Final disposition of an injured bird will be with a

Wildlife Rehabilitator. If needed, phone the U.S. Fish and Wildlife Service at 503-231-6179 to assist in locating a qualified Wildlife Rehabilitator to care for the short-tailed albatross.

(B) Dead short-tailed albatross must be kept as cold as practicable while the vessel is at sea and frozen as soon as practicable upon return to port. Carcasses must be labeled with the name of vessel, location of hooking in latitude and longitude, and the number and color of any leg band if present on the bird. Leg bands must be left attached to the bird. Phone the U.S. Fish and Wildlife Service at 503-231-6179 to arrange for the disposition of dead short-tailed albatross.

(C) All hooked short-tailed albatross must be reported to U.S. Fish and Wildlife Service Law Enforcement by the vessel operator by phoning 360-753-7764 (WA); 503-682-6131 (OR); or 916-414-6660 (CA) as soon as practicable upon the vessel's return to port.

(D) 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*. The operator of a vessel identified in paragraph (b)(1) of this section must comply with the following gear requirements:

(i) Snap gear. Vessels using snap gear as defined at § 660.11 must deploy a minimum of a single streamer line in accordance with the requirements of paragraphs (c)(3)(i) through (ii) of this section, except as provided in paragraph (c)(2)(iii) of this section.

(ii) Bottom longline. Vessels using bottom longline gear must deploy streamer lines in accordance with the requirements of paragraphs (c)(3)(i) and (iii) of this section, except as provided in paragraph (c)(2)(iii) of this section.

(iii) Weather Safety Exemption. Vessels 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) *Gear performance and material standards.* (i) Material standards for all streamer lines. All streamer lines must:

(A) Have streamers spaced a maximum of every 16 ft 5 in (5 m).

(B) Have individual streamers that hang attached to the mainline to 10 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.

(ii) Snap gear streamer line standards. For vessels using snap gear, a streamer line must:

(A) Be a minimum length of 147 ft 7 in (45 m).

(B) Be deployed so that streamers are in the air a minimum of 65 ft 7 in (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.

(iii) Bottom longline streamer line standards. Vessels using bottom longline gear but not snap gear must use paired streamer lines meeting the following requirements:

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

(B) Streamer lines must be deployed so that streamers are in the air a minimum of 131 ft (40m) aft of the stern for vessels under 100 ft (30.5 m) LOA and 197 ft (60m) aft of the stern for vessels 100 ft (30.5 m) or over.

(C) At least one streamer line must be deployed in accordance with paragraph (c)(3)(iii)(B) before the first hook is set and a second streamer line must be deployed within 90 seconds thereafter.

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

(E) For vessels deploying bottom longline 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.

5. In § 660.140, revise paragraph (k)(1)(iv) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(k) ***

(1) ***

(iv) The vessel must comply with prohibitions applicable to the limited entry fixed gear fishery as specified at § 660.212, gear restrictions applicable to limited entry fixed gear as specified in §§ 660.219 and 660.230(b), and management measures specified in § 660.230(d), including restrictions on the fixed gear allowed onboard, its usage, and applicable fixed gear groundfish conservation area restrictions, except that the vessel will not be subject to limited entry fixed gear trip limits when fishing in the Shorebased IFQ Program. Vessels using bottom longline and snap gears as defined at § 660.11 are subject to the requirements of the Seabird Avoidance Program described in § 660.21.

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6. In § 660.230, add paragraph (b)(5) to read as follows:

§ 660.230 Fixed gear fishery-management measures.

* * * * *

(b) * * *

(5) Vessels fishing with bottom longline and snap gears as defined at § 660.11 are subject to the requirements of the Seabird Avoidance Program described in § 660.21.

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7. In § 660.330, revise paragraph (b)(2)(i) to read as follows:

§ 660.330 Open access fishery-management measures.

* * * * *

(b) * * *

(2) * * *

(i) Fixed gear (longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be attended at least once every 7 days. Vessels fishing with bottom longline and snap gears as defined at § 660.11 are subject to the requirements of the Seabird Avoidance Program described in § 660.21.

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