

Dated: June 28, 2000.

Donald J. Barry,

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 000622191-0191-01; I.D. 041700D]

RIN 0648-AO35

#### Fisheries off West Coast States and in the Western Pacific; Pelagics Fisheries; Measures To Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery

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

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

**SUMMARY:** NMFS proposes a rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) that would require operators of vessels registered for use under Hawaii pelagic longline limited access permits to use two or more of six specific bird mitigation techniques when fishing with pelagic longline gear north of 25° N. lat.; annually attend a protected species workshop conducted by NMFS; and release all hooked or entangled sea birds in a manner that maximizes their post-release survival. This proposed rule would reduce fishery impacts on black-footed and Laysan albatrosses that are accidentally hooked or entangled and killed by Hawaii pelagic longliners during the setting and hauling of longline gear. This proposed rule would also reduce the potential for interactions between pelagic longline fishing vessels and endangered short-tailed albatrosses, which are known to occasionally visit the Northwestern Hawaiian Islands.

**DATES:** Comments on this proposed rule must be received at the appropriate address or fax number, (see **ADDRESSES**) no later than 5 p.m., Hawaiian standard time, on August 21, 2000.

**ADDRESSES:** Written comments on this proposed rule must be sent to Kathy Cousins, NMFS Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd. Suite 1101, Honolulu HI 96822; or sent via facsimile (fax) to 808-973-2941.

Comments will not be accepted if submitted via e-mail or Internet. Copies of a background document on the proposed regulatory action, including an environmental assessment (EA) and initial regulatory flexibility analysis (IRFA), are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:**

Kathy Cousins, 808-973-2937, fax 808-973-2941, e-mail kathy.cousins@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The Hawaii-based domestic pelagic longline fishery operates under a limited access regime with a maximum of 164 transferable permits. The number of active vessels in the fishery has ranged from 110 to 120; in 1998, there were 114 active vessels. Data on Hawaii-based pelagic longline interactions with seabirds have been collected by NMFS observers since 1994. Estimated annual black-footed albatross mortalities caused by pelagic longline gear range from a 1996 low of 1,568, to a 1994 high of 1,994; there were 1,963 mortalities estimated to have taken place in 1998. Laysan albatross estimated annual mortalities caused by pelagic longline gear range from a low in 1996 of 1,047 to a high in 1994 of 1,828, with 1,479 mortalities estimated to have occurred in 1998. There have been no observed fishery interactions with short-tailed albatrosses, although two short-tail albatrosses have been sighted near Hawaii pelagic longline operations at sea on separate occasions. In response to concerns expressed by the U.S. Fish and Wildlife Service (FWS), researchers, and conservationists about these fishery-related impacts on albatross populations, the Council has proposed regulatory changes under FMP framework procedures. These proposed changes were developed by the Council's Pelagics Plan Team, Advisory Panel, and Scientific and Statistical Committee. The Council discussed various alternative sea bird mitigation measures at its June 1999 meeting and again at its October 1999 meeting, when final action was taken to recommend to NMFS the measures set forth in this proposed rule.

The first proposed measure would require operators of vessels registered for use with Hawaii pelagic longline limited access permits to employ 2 or more of 6 specific bird take mitigation techniques when longlining north of 25° N. lat. Individual pelagic longline vessel operators would choose which 2 or more of the 6 mitigation methods to

employ based on their vessel operations and at-sea conditions. The six mitigation methods approved by the Council are: (1) discharge offal strategically from the side of the vessel opposite the gear while the vessel is setting or hauling pelagic longline gear; (2) begin to set pelagic longline gear at least 1 hour after sunset and complete the setting operation at least 1 hour before sunrise using only such lighting necessary for crew safety; (3) use only completely thawed bait which has been dyed blue; (4) tow a buoy or tori (bird) line, meeting the specifications proposed under 50 CFR 660.33(b)(4) while the longline gear is being set and hauled; (5) attach weights of at least 45 grams to branch lines within 1 meter of each hook; and, (6) set the line using a line setting machine with weights of at least 45 grams attached to branch lines within 1 meter of each hook. These techniques have been tested individually and were found to mitigate 71 to 98 percent of seabird interactions as compared to normal Hawaii pelagic longline operations.

Two geographical management options were investigated and the management area (north of 25° N. lat.) was selected by the Council because it encompasses the area with 95 percent of the fleet's annual average incidental seabird catch and impacts 33 percent of the average annual fleet effort. The second management area option (north of 23° N. lat.) was rejected because it would impact an additional 11 percent of fishing effort without significantly reducing incidental seabird catch.

A no action alternative was rejected because it would not meet the seabird conservation objective. A second rejected alternative would have required similar mitigation techniques, however, the choice of which 2 seabird take mitigation measures to use would have been made by the Council for all vessels fishing north of 25° N. lat. This alternative would have required all pelagic longline fishing vessels to use seabird mitigation methods without regard to particular vessel operating patterns and at-sea conditions. This rejected alternative would likely have resulted in unduly burdensome impacts on fishing operations. A third rejected alternative would have prohibited longline fishing within the exclusive economic zone (EEZ) around Hawaii north of 23° N. lat. This alternative was rejected because it would have potentially reduced seabird interactions by a maximum of only 62 percent.

The second proposed measure would require all owners and operators of longline vessels holding Hawaii longline limited access permits to attend

annual protected species workshops conducted by NMFS. These workshops would educate Hawaii-based pelagic longline fishery participants on fishery impacts on populations of seabirds, sea turtles, and other protected resources, provide information on protected species identification, answer questions concerning the most effective ways to deploy required mitigation measures, and provide information on additional voluntary modifications to fishing operations to further minimize interactions with protected marine species. These workshops would also provide an ongoing forum for vessel operators to express their concerns and observations to NMFS concerning the incidental take of protected species.

The third proposed measure would require Hawaii pelagic longline vessel operators to release all hooked or entangled birds in a manner that maximizes their chances of post-release survival. Vessel operators would be required to: (1) stop the vessel (to remove line tension) when a bird is hooked or entangled; (2) bring hooked or entangled birds on board using dip nets (which are required in separate regulations at 65 FR 16436 that were published on March 28, 2000, and effective on April 27, 2000, for retrieving incidentally caught sea turtles); (3) remove externally embedded hooks; and, (4) cut the line as close as possible to ingested hooks that cannot be safely removed.

#### Classification

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

The Council prepared an EA that discusses the environmental impacts that may result from implementation of this proposed rule. A copy of the EA is available from the Council (see ADDRESSES).

NMFS prepared an IRFA that describes the economic impact that this proposed rule, if adopted, would have on small entities. A complete copy of this analysis is available from the Council (see ADDRESSES). In the IRFA analysis NMFS considered a variety of seabird take mitigation alternatives that had a range of economic impacts on HI pelagic longline vessel owners and operators.

This proposed rule would potentially affect all 164 Hawaii pelagic longline fishery limited entry permit holders (114 of which were active in 1998). The proposed measures are expected to have at least a minor economic impact on vessel operators or owners because of the requirement for vessel operators to use seabird mitigation measures,

including the requirement to carry and have ready dip nets, bolt cutters, pliers, and small knives. The actual economic impacts to individual permit holders for the entire range of proposed management measures is uncertain; it would depend on individual fishing vessel operating patterns, which seabird take mitigation measures are employed, and how vessel operators respond to the proposed new regulations. Direct costs to individual vessels for the range of fishery operational seabird take mitigation measures in the preferred alternative range from zero for night setting to \$4,800 per year for the purchase and maintenance of towed deterrents. The non-operational measures (workshop attendance and careful release of live seabirds) are not anticipated to have significant economic impacts on fishery participants.

The preferred alternative would mitigate sea bird take and minimize economic impacts on vessel operators by: (1) keeping all fishing areas open and (2) allowing vessel operators to choose which 2 seabird take mitigation methods to use when fishing north of 25° N. lat. based on their individual fishing vessel operations and at-sea conditions. Under this alternative it is likely that those vessels that already set at night (primarily pelagic longline vessels targeting swordfish) would adopt night setting as one of their 2 required seabird mitigation measures, while those vessels that already use line-setting machines (primarily pelagic longline vessels targeting tuna) would employ line setters and weighted branch lines as one of their 2 required seabird mitigation measures. In this manner, negative economic impacts that result from requirements to use seabird mitigation measures would be avoided and impacts on vessel operations and catch rates minimized.

There were 3 rejected alternatives. The first, a no action alternative, was rejected because it failed to meet the management objective of mitigating seabird takes in the pelagic longline fishery.

The second rejected alternative, in which the Council would specify which two or more seabird take mitigation measures would be employed by all HI pelagic longline vessels, was rejected because it did not allow fishermen flexibility to choose the most effective measures based on individual vessel operating conditions and at-sea conditions. The economic impacts would vary depending on which 2 specific mitigation methods the Council required. Night setting would have uneven revenue impacts (due to changes in catch rates) depending on the type of

fish the vessel is targeting, while the other mitigation measures have unpredictable revenue impacts due to a lack of data. Direct costs to the pelagic longline fishery for the range of mitigation measures considered vary from zero (night setting) to \$4,800 per year for the purchase and maintenance of towed deterrents.

The third rejected alternative, a prohibition on all pelagic longline fishing within the EEZ around Hawaii north of 23° N. lat., was rejected because it would have reduced seabird interactions by a maximum of only 62 percent. The economic impact would, at maximum, be the ex-vessel revenue forgone resulting from the prohibition on longline fishing in the closed area. This is estimated to average \$6.4 million annually (1994–1998). It is likely that some of this lost revenue would be made up by displacement of longline effort to other areas; however, the result of such changes is difficult to predict or quantify.

Consultation under section 7 of the Endangered Species Act (ESA) was initiated within NMFS for these measures to determine whether the effect of the proposed action on threatened and endangered sea turtles and marine mammals is likely to be adverse. This consultation is expected to conclude soon. Formal consultation under section 7 of the ESA between NMFS and FWS is ongoing to examine whether the fishery, as managed under the proposed measures, is likely to jeopardize the continued existence of the endangered short-tailed albatross.

#### 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: June 28, 2000.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, 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 AND IN THE WESTERN PACIFIC

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

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 660.22, new paragraphs (ee), (ff), and (gg) are added to read as follows:

**§ 660.22 Prohibitions.**

\* \* \* \* \*

(ee) Fish for Pacific pelagic management unit species using pelagic longline gear with a vessel registered for use under a Hawaii pelagic longline limited access permit north of 25° N. lat. without employing two or more of the seabird mitigation measures described in § 660.33(b).

(ff) Fail to release seabirds that are caught by pelagic longline gear in a manner that maximizes their long-term survival as described in § 660.33(a).

(gg) Operate a vessel used to fish for Pacific pelagic management unit species using pelagic longline gear with a vessel registered for use under a Hawaii pelagic longline limited access permit after September 30, 2000, without a certificate showing completion of a NMFS workshop on protected species as described in § 660.34.

3. A new § 660.33 is added to subpart C to read as follows:

**§ 660.33 Pelagic longline seabird mitigation measures.**

The operator of a vessel registered for use under a Hawaii pelagic longline limited access permit and engaged in fishing for Pacific pelagic management unit species using pelagic longline gear north of 25° N. lat. must:

(a) Release seabirds that are caught by pelagic longline gear in a manner that maximizes their long-term survival. The vessel operator must have on board the vessel a long-handled dip net, bolt cutters, pliers, and a knife. If a seabird is hooked, the operator must stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net. Vessel crew must work in pairs to remove hooks from seabirds. The vessel operator must ensure that hooks are not removed backward, as this will cause further damage to the seabird. The vessel operator must ensure that the line is cut as close as possible to the hook, that the hook barb is pushed out point first through a small knife incision and then cut off using bolt cutters, and that the hook shank is removed. If an ingested hook is in the bird's stomach and cannot be removed, the vessel operator must ensure that the line is cut as close as possible to the hook. After removing entangled lines or hooks from seabirds, the vessel operator must ensure that the birds are left to recover on board the vessel for a short period before being released; and

(b) Use at least two of the following six seabird mitigation methods:

(1) *Discharge offal strategically.* While pelagic longline gear is being set or hauled, fish, fish parts, or bait must be

discharged on the opposite side of the vessel from where the longline is being set or hauled. Sufficient quantities of offal must be retained between sets for this purpose;

(2) *Night setting.* Begin setting pelagic longline gear at least 1 hour after local sunset and complete the setting process at least 1 hour before local sunrise, utilizing only enough deck lighting to ensure safety;

(3) *Blue-dyed bait.* Thaw, and dye blue, all bait used. The color intensity of the blue-dyed bait must conform to a level specified by a color quality control card issued by NMFS;

(4) *Towed deterrent.* While setting and hauling the gear, employ a tori (bird) line or towed buoy that meets the specifications of this paragraph. The point of attachment between the tori line, or towing line for the towed buoy, and the towing pole to which it is attached must be 4 to 8 m above the sea surface. The tori line or towing line for the towed buoy must be constructed of material that is between 5 mm and 8 mm in diameter. The tori line must be a minimum of 150 m in length and be weighted at the end so that it streams directly over the pelagic longline gear, even in cross winds. If a towed buoy is used, it must be an inflatable type rubber buoy at least 50 in. (127 cm) in circumference. The buoy must be attached to the towing pole by a line which is at least 175 ft (53.3 m) long, and must be towed to maintain a distance of approximately 150 ft (45.7 m) behind the vessel during setting and approximately 90 ft (27.4 m) during hauling operations. For both types of deterrents, swivels must be placed every 20 m along the line to reduce twisting. A total of 7–10 pairs of streamers must be attached to the line at 5 m intervals beginning 10 m from the point of attachment to the towing pole. The streamers must be made of a heavy, flexible material which allows them to move freely and be attached to the line using three-way swivels or adjustable snaps. The tori line, or towing line for the buoy, must be attached to a towing pole at the stern of the vessel that is positioned such that it is directly above the baited hooks as they are deployed or hauled back. The streamers must be constructed and deployed in a manner such that they each skim the water's surface in the area where the gear is being set and hauled;

(5) *Weighted branch lines.* Attach a weight of at least 45 g to each branch line within 1 m of each hook; or

(6) *Line-setting machine with weighted branch lines.* Set the mainline using a line-setting machine (e.g. Lindgren-Pitman model LS-4) operating

at least 1.3 times the average setting speed of the vessel. A weight of at least 45 g must be attached to each branch line within 1 m of the hook.

4. A new § 660.34 is added to subpart C to read as follows:

**§ 660.34 Annual protected species workshops.**

The owner and operator of a vessel registered for use under a Hawaii pelagic longline limited access permit and engaged in fishing for Pacific pelagic management unit species using pelagic longline gear must annually attend a NMFS workshop on protected species and receive a protected species workshop certificate before commencing fishing each fishing season. For the years 2000 and 2001, all vessel owners and operators must have attended a protected species workshop by September 30, 2000. The vessel owner must ensure the vessel operator is certified. An owner or operator must maintain proficiency sufficient to perform the procedures required by relevant protected species regulations of NMFS, and must attend and satisfactorily complete a formal training session approved by the Administrator of PIAO, in order to obtain his or her protected species workshop certificate. Owners and operators may be required to attend additional formal training sessions if there are substantial changes in the fishery, fishing gear, or mitigation techniques. Additional training may be required for any owner or operator who is found by the Administrator of PIAO, to lack proficiency in the application of mitigation techniques presented at the workshop. NMFS may waive the requirement to attend these workshops by notice to all vessel owners and operators.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 000504124–0124–01; I.D. 011900B]

RIN 0648–AK11

**Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Prohibition on the Use of Set Net Fishing Gear**

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