material distinct from the material from which it was transformed.

* * * * *

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and Free Trade Agreements apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country and Free Trade Agreement country construction materials.

* * * * *

(d) United States law will apply to resolve any claim of breach of this contract.

(End of clause)

Alternate I (Jan 2004)

As prescribed in 225.7503(b), delete the definitions of ''Free Trade Agreement country'' and ''Free Trade Agreement country construction material'' from the definitions in paragraph (a) of the basic clause, add the following definition of ''Chilean construction material'' to paragraph (a) of the basic clause, and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

''Chilean construction material'' means a construction material that—

(1) Is wholly the growth, product, or manufacture of Chile; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Chile into a new and different construction material distinct from the materials from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act, the Chile Free Trade Agreement, and the Singapore Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country and Chilean construction material.

(c) The Contractor shall use only domestic, designated country, or Chilean construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate ''none''.]

[FR Doc. 04–568 Filed 1–12–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket No. FRA–1999–6439, Notice No. 9]

[RIN 2130–AA71]

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule; correction and announcement of public hearing.

SUMMARY: On December 18, 2003, FRA published an Interim Final Rule (IFR) in the **Federal Register** (68 FR 70585) addressing the use of locomotive horns at highway-rail grade crossings. FRA is interested in receiving public comments on all aspects of the IFR. In the IFR, FRA announced that it would schedule a public hearing to allow interested parties the opportunity to comment on these issues. This notice announces the scheduling of the public hearing and makes one technical correction to the IFR.

DATES: Correction: The correction to part 222 is effective December 18, 2004.

Public Hearing: The date of the public hearing is February 4, 2004, at 9:30 a.m. in Washington, DC. Any person wishing to participate in the public hearing should notify FRA's Docket Clerk by telephone (202–493–6030), by fax (202–493–6068), or by mail at the address provided below at least five working days prior to the date of the hearing. The notification should identify the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address.

ADDRESSES: (1) Docket Clerk: Written notification should identify the docket number of this proceeding (Docket No. FRA–1999–6439) and must be submitted to Ms. Ivornette Lynch, Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590.

(2) Public Hearing: The public hearing will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590 (telephone 202–493–6299); or Kathryn Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590 (telephone 202–493–6038).

SUPPLEMENTARY INFORMATION:

Technical Correction

■ In interim final rule document 03–30606 beginning on page 70586 in the issue of Thursday, December 18, 2003, make the following correction:

Appendix C to Part 222 [Corrected]

■ 1. On page 70677, in the first column, in the first paragraph, in the first line, the parenthetical sentence ''(New Quiet Zones within the Chicago Region will reflect an increased risk index of 17.3 percent.)'' is removed.

Issued in Washington, DC, on January 8, 2004.

Allan Rutter,

Administrator.

[FR Doc. 04–705 Filed 1–12–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030130026–3323–02; I.D. 121202B]

RIN 0648–AM30

Fisheries of the Exclusive Economic Zone off Alaska; Halibut Fisheries in U.S. Convention Waters Off Alaska; Management Measures to Reduce Seabird Incidental Take in the Hook-and-Line Halibut and Groundfish Fisheries

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to revise regulations requiring seabird avoidance measures in the hook-and-line groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) and in the Pacific halibut fishery in U.S. Convention waters off Alaska. This action is intended to improve the current requirements and further mitigate interactions with the short-tailed albatross (Phoebastria albatrus), an endangered species protected under the Endangered Species Act (ESA), and with other seabird species in hook-and-line fisheries in and off Alaska, and thus further the goals and objectives of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act), the Northern Pacific Halibut Act of 1982 (Halibut Act), the Migratory Bird Treaty Act (MBTA), and the ESA.

DATES: Effective February 12, 2004.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action maybe be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or by calling (907) 586–7228. Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this rule may be submitted to NMFS, Alaska Region, and by email to *David__Rostker@omb.eop.gov*, or fax to (202)395–7285.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, (907) 586–7424, or *Kim.Rivera@noaa.gov*.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the GOA and the BSAI in the exclusive economic zone (EEZ) are managed by NMFS under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq*.) and are implemented by regulations at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. The Halibut Act, 16 U.S.C. 773 *et seq*., authorizes the Council to develop, and NMFS to implement, halibut fishery regulations that are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC).

This action is intended to reduce the incidental take of seabirds in hook-and-line fisheries. The Magnuson-Stevens Act emphasizes the importance of reducing bycatch to maintain sustainable fisheries. Although seabirds are not included within the Magnuson-Stevens Act's ''bycatch'' definition, efforts to reduce the incidental take of seabirds in fisheries are consistent with the Magnuson-Stevens Act's objective to conserve and manage the marine environment. In addition, the NMFS' guidelines for implementing the Magnuson-Stevens Act's national standards for fishery conservation and management note that other applicable laws, such as the Marine Mammal Protection Act, the ESA, and the MBTA, require that Councils consider the impact of conservation and management measures on living marine resources other than fish; i.e. marine mammals and birds. Additionally, reducing the take of migratory birds is addressed in NMFS' National Bycatch Strategy (available at *http://www.nmfs.noaa.gov/ bycatch__images/ FINALstrategy.pdf).* The 1998 NMFS' report ''Managing the Nation's Bycatch'' and the NMFS' National Bycatch Strategy use a working definition of ''bycatch'' that is more expansive than the definition in the Magnuson-Stevens Act and includes the incidental take of seabirds as ''bycatch.'' That more expansive definition is used in this preamble.

Background

Awareness of seabird incidental take and incidental mortality in commercial fishing operations off Alaska has been heightened in recent years. Further information on this issue was provided in the preambles to the proposed and final rules implementing seabird avoidance measures in the GOA and BSAI hook-and-line groundfish fisheries (62 FR 10016, March 5, 1997, and 62 FR 23176, April 29, 1997) and in the Pacific halibut fishery off Alaska (62 FR 65635, December 15, 1997, and 63 FR 11161, March 6, 1998) and the EA/RIR/FRFAs prepared for those actions. Additional background information is available in the final report prepared and submitted to the Council and NMFS by the Washington Sea Grant Program (WSGP), Solutions to Seabird Bycatch in Alaska's Demersal Longline Fisheries (available at *http://www.wsg.washington.edu/ pubs/ seabirds/ seabirdpaper.html*). NMFS published the proposed rule for this action in the **Federal Register** on February 7, 2003 (68 FR 6386), which described the proposed regulatory amendment and invited comments from the public. NMFS received 11 letters containing 50 different comments on the proposed rule, which are summarized and responded to in the section Response to Public Comments of this document.

Incidental Seabird Mortality off Alaska

The NMFS North Pacific Groundfish Observer Program office has documented incidental take of seabird species in the GOA and BSAI groundfish fisheries since 1989. Since 2000, the seabird bycatch estimates have been incorporated into the seabird section of the Ecosystem Considerations chapter of the Council's annual Stock Assessment and Fishery Evaluation reports for the GOA and BSAI groundfish fisheries (SAFE). Estimates of the annual seabird incidental take for the Alaska groundfish fisheries, based on 1993 to 1999 observer data, were provided in the EA/RIR/IRFA prepared for the proposed rule. Approximately 15,700 seabirds were killed (taken) annually in the combined BSAI and GOA groundfish hook-and-line fisheries (14,500 in the BSAI and 1,200 in the GOA) at the average rates of 0.10 and 0.03 birds per 1,000 hooks in the BSAI and in the GOA, respectively. Approximately 60 percent of the 15,700 seabirds taken are northern fulmars (*Fulmaris glacialis*), the most abundant seabird species off Alaska. Based on 2000 to 2002 observer data, the average annual estimate of seabirds taken in the combined BSAI and GOA groundfish hook-and-line fisheries was 11,180 (10,672 in the BSAI and 507 in the GOA) at the average rates of 0.05 and 0.014 birds per 1,000 hooks in the BSAI and in the GOA, respectively. Since 2000 in the BSAI, the average annual estimate of the total number of seabirds caught has declined from about 18,000 birds to less than 4,000 in 2002 (corresponding bycatch rates declining from 0.09 birds/1,000 hooks to 0.018). Since 2000 in the GOA, the average annual estimate of the total number of seabirds caught has declined from about 750 birds to less than 300 in 2002 (corresponding bycatch rates declining from 0.02 birds/1,000 hooks to 0.007). With one exception, northern fulmars continue to comprise the vast majority of birds taken. The exception is that in 2002 in the BSAI, gull species comprised over 60 percent of the estimated seabird bycatch. Northern fulmars accounted for the 2nd largest species category that year, 18 percent of the total seabird bycatch.

The annual seabird bycatch estimates based on observer data from 1993 through 2002 exhibit extreme inter-annual variation, as did the take numbers and bird attack rates on baits in the WSGP study. The bycatch rate in 2002 may have decreased because fishermen are becoming more diligent and skilled using seabird avoidance measures, outreach efforts are successful, or the 1999–2000 WSGP research program's collaborative industry approach may have acted to change fishermen's behavior and improve the effective deployment of seabird avoidance measures. Many other factors, both anthropogenic and non-anthropogenic, may affect seabird hooking and entanglement in longline gear. These factors may include geographic location of fishing activity; time of day; season; type of fishing operation and gear used; bait type; condition of the bait; length of time

baited hooks remain at or near the surface of the water; water and weather conditions; availability of food (including bait and offal); bird size; bird behavior (feeding and foraging strategies); bird abundance and distribution; physical condition of the bird, and the quality and correct deployment of seabird avoidance gear.

Council's Final Action

For a more detailed description of the Council's final action, based in part on WSGP research results and recommendations, see the preamble to the proposed rule (68 FR 6386, February 7, 2003).

Summary of the Revised Final Seabird Avoidance Measures

For more detailed descriptions of the seabird avoidance requirements, see the preamble to the proposed rule (68 FR 6386, February 7, 2003). Seabird avoidance measures apply to the operators of vessels using hook-and-line gear for (1) Pacific halibut in the Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) management programs (0 to 200 nautical miles (nm)), (2) IFQ sablefish in EEZ waters (3 to 200 nm) and waters of the State of Alaska (0 to 3 nm), except waters of Prince William Sound and areas in which sablefish fishing is managed under a State of Alaska limited entry program (Clarence Strait, Chatham Strait), and (3) groundfish (except IFQ sablefish) with hook-and-line gear in the U.S. EEZ waters off Alaska (3 to 200 nm).

Operators of all applicable vessels using hook-and-line gear are required to comply with the following bird line requirements (see Table 20):

For Applicable Vessels, Using Hook-and-Line Gear Including Snap Gear, Operating in Inside Waters (NMFS Area 649, NMFS Area 659, and State Waters of Cook Inlet): (1) a minimum of 1 buoy bag line of a specified performance standard is required of vessels greater than 26 ft (7.9 m) length overall (LOA) and less than or equal to 55 ft (16.8 m) LOA that are without masts, poles, or rigging, (2) a minimum of one buoy bag line of a specified performance standard is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 32 ft (9.8 m) LOA and with masts, poles, or rigging, (3) a minimum of one streamer line of a specified performance standard is required of vessels greater than 32 ft (9.8 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (4) a minimum of one streamer line of a specified performance standard is required of vessels greater than 55 ft (16.8 m) LOA.

For Applicable Vessels, Using Other than Snap Gear, and Operating in the EEZ (not including NMFS Area 659): (1) a minimum of one buoy bag line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA that are without masts, poles, or rigging, (2) a minimum of one streamer line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (3) except for vessels using snap gear, a minimum of paired streamer lines of a specified performance standard is required of vessels greater than 55 ft (16.8 m) LOA.

For Operators of Vessels, Using Hook-and-line Gear Other than Snap Gear, Fishing for IFQ Halibut, CDQ Halibut, or IFQ Halibut in Waters Shoreward of the EEZ (except for IPHC Area 4E, see below): the same requirements included in the preceding paragraph apply.

For Applicable Vessels Using Snap Gear and Operating in the EEZ (not including NMFS Area 659): (1) a minimum of one buoy bag line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and that are without masts, poles, or rigging, (2) a minimum of one streamer line of a specified performance standard and one other specified device is required of vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging, and (3) a minimum of one streamer line of a specified performance standard is required of vessels greater than or equal to 55 ft (16.8 m) LOA and with masts, poles, or rigging.

Other seabird avoidance devices and methods include weights added to groundline, a buoy bag line or streamer line of specified performance standards, and strategic offal discharge to distract birds away from the setting of baited hooks, that is, discharge fish, fish parts (i.e. offal) or spent bait to distract seabirds away from the main groundline while setting gear.

Gear Performance and Material Standards

To enhance the effectiveness and improve the enforcement of seabird avoidance measures, this rule specifies the gear performance and material standards for larger vessels (vessels greater than or equal to 55 ft (16.8 m) LOA). Voluntary guidelines for gear performance and material standards for smaller vessels (vessels greater than or equal to 26 ft (7.9m) and less than 55 ft (16.8 m) LOA) were provided in the preamble to the proposed rule (68 FR 6386, February 7, 2003). The only standard applied to seabird avoidance gear for smaller vessels in this rule is discussed in Weather Safety Factor.

Standards for Larger (Greater than 55 ft (16.8 m) LOA) Vessels

Paired Streamer Standard Larger vessels must deploy a minimum of two streamer lines while setting hook-and-line gear. Preferably, both streamer lines are deployed prior to the first hook being set. At least one streamer line must be deployed before the first hook is set and both streamers must be fully deployed within 90 seconds. Further, streamer lines must be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern for vessels under 100 ft (30.5 m) and 196.9 ft (60 m) aft of the stern for vessels 100 ft (30.5 m) or over. For vessels deploying gear from the stern, the streamer lines must be deployed from the stern, one on each side of the main groundline. 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.

Materials Standard The following minimum streamer line specifications must be met: (1) length of 300 feet (91.4 m), (2) spacing of streamers every 16.4 ft (5 m), and (3) streamer material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density. An individual streamer must hang attached to the mainline to 0.25 m above the waterline in the absence of wind.

Snap Gear Streamer Standard For vessels using snap gear, a single streamer line [147.6 ft (45 m) length] must be deployed in such a way that streamers are in the air for 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.

Single Streamer Standard A single streamer line must be deployed 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.

Materials Standard The single streamer line materials standard is the same as the materials standard for paired streamer lines.

Offal Requirements The offal discharge regulation is amended to require that prior to offal discharge,

embedded hooks are removed from offal.

Weather Safety Factor In winds exceeding 45 knots (storm or Beaufort 9 conditions), the deployment of streamer lines (either single or paired) or buoy bag lines is discretionary. For vessel operators required to use paired streamer lines, in winds exceeding 30 knots, but less then or equal to 45 knots (near gale or Beaufort 7 conditions), a single streamer must instead be deployed from the windward side of the vessel.

Exemption for Vessels 32 ft (9.8m) LOA or Less in State Waters of IPHC Area 4E

Operators of vessels less than 32 ft (9.8m) LOA using hook-and-line gear and fishing in state waters of IPHC Area 4E are exempt from using seabird avoidance measures.

Seabird Reporting Requirements

Regulations at § 679.5(a)(7)(ix)(C)(3) currently require operators of catcher vessels or catcher/processor vessels using longline gear to report the bird avoidance gear deployed using gear codes at Table 19 to part 679. Because this rule revises the required seabird avoidance measures, the seabird avoidance codes at Table 19 to part 679 are revised to reflect these changes.

Seabird Avoidance Plan

A Seabird Avoidance Plan that is written and onboard the vessel must contain the following information: (1) Vessel name, (2) master's name, (3) type of bird avoidance measures utilized, (4) positions and responsibilities of crew for deploying, adjusting, and monitoring performance of deployed gear, (5) instructions and/or diagrams outlining the sequence of actions required to deploy and retrieve the gear to meet specified performance standards, and (5) procedures for strategic discharge of offal, if any. The Seabird Avoidance Plan is prepared and signed by the vessel operator. The vessel operator's signature indicates the operator has read the plan, reviewed it with the vessel crew, made it available to the crew, and instructed vessel crew to read it. The Seabird Avoidance Plan must be made available for inspection upon request by an authorized officer (USCG boarding officer, NMFS Enforcement Officer or other designated official) or an observer.

Seabird Data Collection by Observers

Operators of observed vessels are required to collect seabirds from the observer-sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls.

Applicability of Seabird Avoidance Regulations While Fishing for CDQ Halibut

Paragraphs § 679.32(f)(2)(v) and § 679.42(b)(2) require the use of seabird avoidance measures on all vessels of a specified length that are fishing in U.S. Convention waters off Alaska for Pacific halibut, whether the vessels are engaged in IFQ fisheries or CDQ fisheries.

Definitions at § 679.2

Definitions are added at § 679.2 for two previously undefined terms: ''snap gear'' (as a type of ''authorized fishing gear'') and ''seabird.≥

Redesignation of Paragraphs at § 679.24(e)

Seabird avoidance requirements currently in § 679.24 (e)(2)(i), (ii), and (iii) are redesignated as paragraphs (e)(2)(iv), (e)(2)(v)(A), and (e)(2)(vi), respectively.

Changes to the Seabird Avoidance Measures from the Proposed Rule

The notice of proposed rulemaking specified seabird avoidance requirements for operators of vessels fishing with hook-and-line gear in NMFS Reporting Areas 649, 659, or state waters of Cook Inlet and while fishing in the EEZ [see 68 FR 6394, columns 1 and 2 and Table 20 at 6398 (February 7, 2003)]. A comment received during the public comment period (see Comment 1) noted that it was not clear if the proposed regulations applied to vessels fishing in State waters. The commenter recalled that the Council's action specified that these vessels fishing in State waters for species other than halibut would be subject to regulations adopted by the Alaska Board of Fisheries (Board). The commenter is correct and the final rule is clarified to indicate that the requirements for operators of vessels fishing in the EEZ also apply to vessel operators fishing for IFQ halibut, CDQ halibut, and IFQ sablefish in waters shoreward of the EEZ. NMFS regulates IFQ and CDQ fishermen participating in each of these three fisheries in State waters (0–3 nm), including implementation of seabird avoidance requirements. These clarifications are made with a new paragraph at § 679.24(e)(4)(iv), minor revisions at § 679.24(e)(4)(ii) and (iii), revision of the title legend of Table 20, and the corresponding text changes to Table 20. Companion clarifications are also made for the requirements in IPHC Area 4E.

The notice of proposed rulemaking specified seabird avoidance requirements for operators of vessels fishing with hook-and-line gear, other than snap gear, in NMFS Reporting Areas 649 and 659, or state waters of Cook Inlet and for operators of vessels that use snap gear [see 68 FR 6394, columns 1 and 2 and Table 20 at 6398 (February 7, 2003)]. A comment received during the public comment period (see Comment 2) noted that it was not clear whether the proposed regulation for vessels with snap gear and the corresponding language in Table 20 apply to vessels when fishing only in the EEZ or when fishing in any area, including inside state waters (NMFS Areas 649 and 659). The commenter noted that the Council's final action was that the requirements for inside waters apply to all hook-and-line gear types (i.e. including snap gear) and that the specific requirements for vessels using snap gear apply only when fishing in the EEZ. The commenter is correct. The Council's final action on seabird avoidance measures was that the requirements for inside waters would apply also to vessels using snap gear. The specific snap gear requirements were not intended to apply to vessels fishing in the inside waters. Changes from the proposed regulation at § 679.24(e)(4)(i) and (iii) and in Table 20 are made in the final rule. Companion clarifications are also made for the requirements in IPHC Area 4E.

The notice of proposed rulemaking revised the bird avoidance codes in Table 19 to correspond to the proposed changes in seabird avoidance measures. See 68 FR 6396 and 6397, February 7, 2003. A comment addressed under Comment 13 noted that the regulations should more clearly specify that more than one device, and therefore more than one code, can be used at the same time. The commenter is correct that more than one device can be used at a time; therefore NMFS makes this clarification in the recordkeeping and reporting requirements at § 679.5(c)(1)(xvii).

The notice of proposed rulemaking specified that operators of vessels required to carry one or more observers must provide assistance that would include collecting all seabirds that are incidentally taken on the observer-sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls. See 68 FR 6395, February 7, 2003. When the notice of proposed rulemaking was drafted in 2002, the regulatory responsibilities for vessels carrying observers were codified at § 679.50(f)(1). A final rule was published on December 6, 2002, 67 FR 75295, that extended the effective date of the existing regulations for the interim North Pacific Groundfish

Observer Program (Observer Program) and also amended regulations governing the Observer Program. The amended regulations included a redesignation of paragraph § 679.50 (f) to paragraph § 679.50(g). This final rule reflects the correct designation for the paragraph in § 679.50 on vessel responsibilities. The new paragraph (1)(viii)(F) of this section, which will require operators of vessels to provide assistance to observers in the form of collecting all seabirds that are incidentally taken on the observer-sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls, will now be codified in paragraph (g) of this section.

The notice of proposed rulemaking specified that seabird avoidance measures would be required on all vessels of a specified length that are fishing in U.S. Convention waters off Alaska for Pacific halibut, whether the vessels are engaged in IFQ fisheries or CDQ fisheries. The proposed regulation for the halibut CDQ fisheries was designated at § 679.32 (f)(2)(vi). See 68 FR 6395, February 7, 2003. When the notice of proposed rulemaking was drafted in 2002, the regulatory responsibilities for halibut CDQ vessel operations were codified at § 679.32(f). A final rule was published on July 29, 2003, 68 FR 44473, that revised extensively certain requirements for the IFQ and CDQ programs for the Pacific halibut fishery and also amended regulations governing these programs. The amended regulations included redesignations of some of the sub-paragraphs of paragraph § 679.32 (f)(2) to § 679.4(e). This seabird final rule reflects the correct designation for the paragraph in § 679.32(f) on halibut CDQ. A new paragraph (5) will be added to this section, and will require the CDQ group, and vessel owner or operator to comply with all of the seabird avoidance requirements at § 679.42(b)(2).

Response to Public Comments

NMFS received 11 letters containing 50 different comments on the proposed seabird avoidance measures. The summarized comments and responses to them follow:

Comment 1: In general, the proposed rule reflects the intent of the Council's final action. However, clarification is needed to the proposed regulation specifying use of seabird avoidance measures in State waters. The proposed regulatory language at Part 679.24(e)(4)(i) and text in Table 20 implies that vessels fishing in State waters for species other than halibut are subject to the federal regulations, in essence pre-empting State regulations. The Council's action specified that these vessels would be subject to regulations adopted by the Alaska Board of Fisheries (Board). For example, if an operator were fishing hook-and-line gear for Pacific cod in NMFS Area 649 (Prince William Sound), an exact reading of the proposed rule would lead him/her to believe that compliance with the federal regulations is required even if federal regulations conflicted with regulations adopted by the Board.

Response: The final rule will clarify the applicability of these seabird avoidance regulations to vessels fishing in State of Alaska waters. In particular, the title legend of Table 20 has been revised to indicate that the reader must refer to § 679.24(e)(1) for applicable fisheries. Section 679.24(e)(1) indicates that the operator of a vessel that is longer than 26 ft (7.9 m) LOA fishing with hook-and-line gear must comply with the seabird avoidance requirements as specified in paragraphs (e)(2) through (e)(4) of this section while fishing for IFQ halibut or CDQ halibut, IFQ sablefish, and groundfish in the EEZ off Alaska. Further a new paragraph § 679.24(e)(4)(iv) is added that clearly indicates what seabird avoidance measures must be used while fishing for IFQ halibut, CDQ halibut, or IFQ sablefish in waters shoreward of the EEZ. NMFS promulgates fishery regulations, including seabird avoidance requirements, for these three fisheries in State waters (0–3 nm). The State of Alaska will promulgate seabird avoidance regulations applicable to its groundfish fisheries in State waters. At its March 2002 meeting, the Board approved a proposal that will change state groundfish regulations to parallel these new Federal regulations governing seabird avoidance measure requirements for operators in hook-and-line fisheries.

Comment 2: It is unclear if the proposed regulation at § 679.24(e)(4)(iii) for vessels with snap gear, and the corresponding language in Table 20, apply to vessels only when fishing in the EEZ, or when fishing in any area, including the inside state waters (NMFS Areas 649 and 659). The commenter's recollection of the final Council action was that the requirements for inside waters apply to all hook-and-line gear types (i.e. including snap gear), and the specific requirements for vessels using snap gear applies only when fishing in the EEZ. Clarification of how these two components interact would be helpful.

Response: The Council's final action intended that seabird avoidance measures would apply to vessels using snap gear in inside state waters as well. Consequently, the regulations at § 679.24(e)(4) were revised from the proposed rule to clarify this point. The text in Table 20 has also been changed as a result.

Comment 3: The commenter believes that insufficient data have been collected to justify the extensive regulatory revisions based on individual vessel classes and fishing areas. Without adequate research to justify these revisions, the rules should impose a conservative management plan consistent for all vessels in all the fishing areas.

Response: The factors potentially affecting seabird hooking and entanglement on hook-and-line gear are numerous and complex. The solutions to reduce seabird/vessel interactions will reflect this complexity as well. Factors may include geographic location of fishing activity; time of day; season; type of fishing operation and gear used; bait type; condition of the bait; length of time baited hooks remain at or near the surface of the water; water and weather conditions; availability of food (including bait and offal); bird size; bird behavior (feeding and foraging strategies); bird abundance and distribution; and physical condition of the bird. When establishing effective requirements that reduce the potential for seabird interactions with gear and the associated mortality of seabirds, considering or accounting for any of these factors, to the extent possible and practicable is desirable. Based on information from the WSGP study, the Council's Science and Statistical Committee (SSC), several U.S. Fish &Wildlife Service (USFWS) marine bird surveys, and anecdotal information from the commercial longline fleet off Alaska, the seabird avoidance measures required of vessel operators reflect the area fished, vessel length, vessel type, and gear type. This base of knowledge is sufficient to modify the existing regulations. NMFS agrees that additional research may help elucidate the bird/vessel interaction, particularly for smaller vessels because most of the work thus far has been conducted on larger vessels. In general, research to date have focused work on locations of higher bird bycatch rates (BSAI) and on vessel types that appear to catch more birds (larger processing vessels). In response to the SSC's recommendation for additional studies on smaller vessels, WSGP researchers began work in the summer of 2002 with vessel owners to evaluate the need for mitigation devices as well as performance standards that could be achieved on these vessels that operate quite differently from larger vessels.

Studies were conducted on vessels from 26 ft (7.9 m) to 55 ft (16.8 m) LOA, with and without superstructure (i.e. poles, masts, rigging). Results may lead to further revisions to seabird avoidance measures if warranted. NMFS believes the final rule implements a conservative management plan that accounts for the fleet diversity and differences between vessels types and geographic areas in likelihood of hooking and entangling seabirds.

Comment 4: Three commenters suggested that paired streamer lines should be used on more vessels than is proposed. One commenter believed they should be required on all vessels capable of conducting fishing operations with paired streamer lines deployed. This would mean that any vessel over 26 ft (7.9 m) LOA with masts or other rigging must deploy paired streamer lines. Another commenter suggested that all longline vessels over 35 ft (10.7 m) LOA should be required to use paired streamer lines while setting gear. If owners of vessels 35 (10.7 m) to 55 ft (16.8 m) LOA can document to a NMFS official that deployment of 2 streamer lines from their vessel is not practical, then other means, such as a single streamer line, other towed deterrent, and weighting the groundline to achieve a sink rate of 0.3 m per second, would be acceptable alternatives.

Response: Based on best available information, NMFS has determined that the new requirements will place paired streamer lines on those vessels that can safely and practicably use them in an effective manner to reduce bycatch of seabirds. Paired streamer lines will be required on vessels over 55 ft (16.8 m) LOA. In 2000 these vessels accounted for 98 percent, 67 percent, and 59 percent of the harvest by hook-and-line vessels in the BSAI groundfish, GOA groundfish, and halibut fisheries, respectively. Of the 1,006 vessels that harvested groundfish in either the BSAI or GOA in year 2000, 687 were smaller catcher vessels (26 (7.9 m) to 55 ft (16.8 m) LOA), 275 were vessels over 55 ft LOA and will be required to use paired streamer lines, and 44 vessels that also process their catch were all over 55 ft (16.8 m) LOA and will be required to use paired streamer lines. In the IFQ halibut fishery, 308 vessels were over 55 ft (16.8 m) LOA and will be required to use paired streamer lines. Smaller catcher vessels numbered 1,145 and these vessels will be required to use single streamer lines or similar devices. The higher bird bycatch rates in the BSAI compared to the GOA (0.05 birds/1,000 hooks vs 0.014 birds/1,000 hooks; 2000–2002 average annual rate) may reflect higher bycatch rates of larger processing vessels as compared to smaller vessels that do not process catch. One factor that contributes to birds getting hooked on hook-and-line gear is whether the vessel processes fish and discharges offal, an attractant to birds. Smaller vessels (i.e. the majority of vessels in the GOA and in the halibut fishery) often retain whole fish on ice for delivery to shoreside plants. In the absence of fish offal discharged around these vessels, fewer birds are attracted and thus fewer are vulnerable to getting hooked. Additionally, deploying paired streamer lines on smaller vessels with narrower beam widths is not practicable. Paired lines can become easily tangled and may pose safety hazards to the vessel and crew during the deployment of gear. These smaller vessels will be required to use single streamer lines in most instances. The WSGP study found that single streamer lines effectively reduced seabird bycatch by 71 to 96 percent compared to a control of no deterrent. Single streamer lines will be an adequate deterrent for use on these smaller vessels.

A system does not currently exist within NMFS to provide for individual vessel accountability whereby vessels could demonstrate if the deployment of paired streamer lines was practicable. Thus, such a system, as suggested by the commenter, is not feasible at this time. 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 component most responsible for seabird bycatch.

Comment 5: Vessels not required to use paired streamer lines should be required to use at least two bird deterrent methods and should operate at speeds slow enough to permit longlines to sink at a rapid rate and not extend far behind the vessel at or near the surface of the water.

Response: The use of multiple deterrent devices is one effective way to reduce gear interactions with seabirds. In those geographic areas where seabirds are more likely to be encountered (i.e. in the EEZ), NMFS will require vessels not required to use paired streamer lines to use a minimum of two methods or devices (single streamer line, buoy bag line, adding weights to groundline, or strategic offal discharge). NMFS agrees that deploying gear at slower speeds is an effective way to allow baited hooks to sink more quickly, thus becoming inaccessible to seabirds. Because the vessel speed used by a vessel operator will depend upon many other factors, including water and wind conditions, NMFS will not include this method as a required option. WSGP has produced an educational outreach video that has been widely distributed to Alaska fishermen. This video demonstrates that slowing the speed of the vessel during gear deployment can successfully sink gear more quickly, away from the reach of birds.

Comment 6: Three commenters suggested mandatory training for vessel crews or operators on the proper use and deployment of streamer lines. One of the commenters further suggested that the workshops could also cover seabird identification, use of other seabird deterrents, and to discuss any innovations in seabird avoidance in the industry. These workshops would be conducted annually by NMFS and USFWS and could be similar to the protected species workshops that have been conducted in Hawaii for the longline fleet since 1996.

Response: Over the past several years, NMFS has conducted or collaborated with groups conducting seminars, workshops, and industry meetings to provide outreach and training about the effective use and deployment of seabird deterrent devices, discuss new innovations in seabird avoidance, and cover seabird identification. These sessions have been well attended and beneficial to participants. Additionally, the WSGP, in collaboration with the USFWS, NMFS, and longline industry associations, has produced an informational outreach video that has been widely distributed to longline fishermen. Given the very large fleet of vessels deploying hook-and-line gear off Alaska (up to 2,000 vessels), NMFS is not able at this time to provide mandatory training workshops for vessel owners and their crew. Such mandatory workshops have worked in other areas, such as Hawaii, due to the much smaller fleet (several hundred vessels). NMFS is satisfied that the outreach and training program in the Alaska fleet is effective and NMFS will continue to provide for and be involved in future opportunities for outreach and training.

Comment 7: The manufacture of streamer lines should be strictly monitored to assure that only properly designed and constructed streamer lines are used by the fishing vessels.

Response: The vast majority of the streamer lines currently in use have been provided by a USFWS ''streamer line give-away program.'' The Pacific States Marine Fisheries Commission (PSMFC) is responsible for constructing and distributing the streamer lines and it consulted with WSGP for construction standards. These lines, when properly

deployed, meet the performance and material standards specified in the revised regulations. PSMFC has an ample supply of streamer lines in stock at port distribution sites throughout Alaska and in Seattle. This stock should be adequate to meet the immediate demand for streamer lines when the new requirements become effective. NMFS regulations specify the performance and material standards for the streamer lines. Streamer lines can be constructed from relatively inexpensive and readily available materials, thus increasing the practicability of streamer line construction and use by fishermen. NMFS does not regulate or control the manufacture of streamer lines, nor is this a necessary element for the effective use and deployment of streamer lines by fishermen. NMFS can more efficiently convey this type of information through its support of outreach materials such as the WSGP video on deterrent devices.

Comment 8: Three commenters have recommended that NMFS should require observer coverage on vessels fishing for halibut in order to monitor gear interactions with seabirds. One commenter suggested that due to concerns that additional gear mitigation studies may not be conducted rapidly enough for incorporation into management requirements and that the studies will not be adequate to address the entire problem, the regulations should also be expanded to cover the observer-monitoring programs on the smaller vessels and the halibut fishery. The other commenter suggested that the coverage in the halibut fishery should be at least 80 percent of all vessels over 60 ft (18.3 m) LOA and perhaps 15 percent of vessels from over 26 ft (7.9 m) LOA to 60 ft (18.3 m) LOA. Currently there is no assessment of seabird bycatch in this fishery despite the U.S.'s National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries (NPOA) which requires an assessment of all such fisheries for seabird bycatch to be completed by February 2003. Additionally, the Biological Opinion issued by USFWS in 1999 included a conservation recommendation that all vessels over 60 ft (18.3 m) LOA carry observers for the purposes of monitoring seabird bycatch.

Response: NMFS is exploring additional options to monitor seabird mortality in the halibut and small boat fleets. Observer programs are subject to serious safety, logistical, funding, service delivery, and resource constraints. For example, observer costs range from $355 to over $2,000 per day, depending on program structure, size, area of operation, and other factors. Issues like these are not easy problems to solve, but NMFS has been making progress in two areas. NMFS has funded and supported research by the IPHC to evaluate alternative monitoring systems that rely on video technology rather than observers. NMFS and the IPHC are coordinating to have that report published and available in 2004. NMFS will coordinate with the IPHC and the USFWS in 2004 to discuss report recommendations and other options with regard to the Biological Opinion for the halibut fishery. The Council and NMFS are interested in expanding monitoring to groundfish vessels less than 60 ft (18.3 m) LOA for a variety of fishery management goals in addition to that of assessing seabird incidental take. Staff are coordinating with the Council to address potential options for Observer Program redesign that might provide coverage to these smaller vessels. These efforts continue as NMFS evaluates the costs and benefits of monitoring options and coverage levels, and addresses the constraints noted above. This work has not advanced far enough to evaluate the coverage levels recommended by the commenter, although the IPHC report does evaluate costs of alternate monitoring methods for two coverage levels. Any expansion of observer coverage requirements will require subsequent regulatory amendments.

The 1999 USFWS Biological Opinion conservation recommendations are discretionary agency activities. While observer coverage has not yet been implemented in these fisheries, NMFS did address this conservation recommendation as evident from the series of steps described above.

Comment 9: Three commenters recommended that NMFS report annually on seabird bycatch. The catch per unit effort (CPUE) should be listed by bird species for each boat with reference to boat size, numbers of hooks set, avoidance gear used, and by fishing area. Data when observers are aboard should be segregated to determine any variation in CPUE when observers are not aboard. One commenter suggested that NMFS should be required to report by March of every year on seabird bycatch and estimates derived from the bycatch data. The annual report should include: observed and estimated number of seabird interactions and seabird takes by species, the estimated take by fishing set type and rate of take per 1,000 hooks, an analysis of what deterrents are being used and their effectiveness in reducing seabird interactions, and details of observer coverage and the total number of observed hooks. The Biological Opinion issued by USFWS for the Hawaii pelagic longline fishery requires such an annual report; this should also be required for the Alaska fishery.

Response: NMFS notes that estimates of seabird bycatch have been reported annually for several years, although not at the level of detail described by the commenter. Annual seabird bycatch is estimated by year, gear type, and region (BSAI and GOA) and can be found in the seabird section of the Ecosystem Considerations chapter of the annual SAFE Report, found at www.afsc.noaa.gov/refm/reem. The initial draft of this annual report is usually available to the public in October, with the final report usually available in December. Although NMFS agrees providing bycatch estimates to the public in a timely manner is important, the databases needed for this work are finalized in February or later each year, precluding an earlier distribution. While the reports to date have not included the level of detail described by the commenter, NMFS agrees that improved reporting of seabird bycatch estimates is an important goal. Several technical and scientific reports that provide estimates of seabird bycatch for more precise time/area/fishery cells are being prepared. The authors will consider addressing the recommendations made above in these reports.

Due to various data confidentiality considerations, NMFS does not release specific data identified by vessel in a report such as that described by the commenter. Specific data may be released on a case-by-case basis. Some vessel-specific data are available for release, as identified at § 679.50(k), but seabird bycatch data are currently not included in that category. NMFS is using vessel-specific data to identify vessels that have incidental take higher than fleet averages, and hopes to work with individual owners and operators to reduce seabird bycatch on their vessels. Industry-sponsored programs use vessel-specific data and this approach appears to be very effective in reducing seabird incidental take. Through broad-scale analysis, vessel-specific work, and continued coordination with industry, NMFS will be able to develop a measure of the effectiveness of the seabird avoidance measures. However, precise evaluations require experimental design and testing, as was conducted by the WSGP. The commenter also requested an analysis of vessel-specific or fleet-wide CPUEs comparing when observers are onboard with when they are not. That type of analysis is not possible, because NMFS does not have CPUE data

for vessels when no observer is on board.

NMFS acknowledges the requirement in the Biological Opinion for the Hawaiian longline fishery to provide annual reports of seabird incidental take, but notes such a requirement is not necessary for the North Pacific groundfish fisheries because these reports have been made available annually for several years. NMFS recognizes the importance of this information to stakeholders and plans to continue to provide these estimates and to produce reports with greater detail.

Comment 10: For the same reasons stated in comment 8, the commenter urges that the regulations be formally reviewed on a yearly basis and that the rules be revised as needed to enforce the proper and effective use of methodology to reduce bycatch until bird bycatch approaches zero.

Response: As new information becomes available on improvements that can be made to existing seabird bycatch reduction efforts, NMFS will consider this information and make appropriate recommendations for effective management. Seabird bycatch estimates are calculated annually and reported within the Council's SAFE reports for the Alaska groundfish fisheries. This provides a regular opportunity for the evaluation of bycatch estimates in the context of bycatch reduction efforts.

Comment 11: To address the inadequacy of the current state of knowledge on this seabird bycatch problem, the commenters urge that research to quantify the effectiveness of mitigation gear be continued; the research be expanded to determine the optimum gear deployment for small- and mid-sized vessels; and that the development of fishing and avoidance gear that decreases bycatch but does not (or minimally) interfere with fishing efficiency be continued and funded at an adequate level to provide meaningful results within the next three years.

Response: Our knowledge and understanding of seabird incidental take has improved greatly in recent years. Research to quantify the effectiveness of mitigation gear should be continued. NMFS is using three general approaches concurrently to quantify mitigation effectiveness. First, NMFS will continue monitoring seabird incidental take in commercial fisheries. As the seabird avoidance measures are used correctly, we expect the total incidental take to be greatly reduced. Current data collection procedures will allow for a general assessment of that over time. Second, NMFS will assist in the transfer of knowledge about effective seabird gear deployment from vessels with low or zero bycatch to vessels that experience higher levels of bycatch. Finally, NMFS will continue support for dedicated research using the collaborative model that has proved so successful. NMFS is currently providing partial support to WSGP in its efforts to develop new weighted groundlines which sink the gear faster while reducing safety issues for crewmembers. NMFS also supports efforts conducted by small vessel operators to develop mitigation measures specific to their fishery. That work is coordinated through the University of Alaska Marine Advisory Program and funded primarily through the USFWS. See responses to Comments 19 and 45 for more detailed information about these various research initiatives.

Comment 12: It is imperative that government agencies and research institutions work at an accelerated pace to properly quantify the problems and the success of bird deterrent gear in all vessel classes and in all the fisheries.

Response: NMFS is coordinating efforts with the USFWS, WSGP, Alaska Sea Grant Program, the University of Washington, North Pacific Albatross Working Group, Alaska Seabird Working Group, various fishery associations, and individual fishermen and researchers to work on priority issues and to avoid duplication of projects. We also share and exchange information with our partners in the southern oceans, so that each can learn from one another's activities. Agency seabird specialists are working to identify possible funding sources and develop appropriate projects to quantify problems and develop solutions where problems are thought to be greatest, and where we can have the most positive effect.

Comment 13: Three commenters suggested that the bird avoidance codes that longline fishermen and observers record need to be clarified and made consistent with each other. Also, the regulations need to be clarified that more than one device, and therefore more than one code, can be used at the same time. One commenter suggested that including both the ''lining tube'' and the ''line shooter'' in the same code category renders those data unusable for examining the efficacy of either method.

Response: The bird avoidance codes used by fishermen for recording information in their logbooks are in Table 19 and are revised in this final rule to reflect the revised measures. Codes for vessel logbooks are established by the NMFS Alaska Region Office and codes used by observers are established by the Observer Program. Table 19 has been provided to the Observer Program so that of bird code information can be recorded consistently. NMFS agrees that multiple bird avoidance devices can be used at one time and that the regulations need to be clarified that more than one code can be recorded. This final rule revises the recordkeeping and reporting requirements accordingly. Mitigation methods are most effectively evaluated using rigorous scientific protocols in controlled experiments, such as that used in the WSGP research study. Data collected by observers on the type of mitigation device used will be of limited use in scientific evaluations of specific gear alternatives. The numerous other variables in a commercial fishing setting that can impact the probability of birds being hooked would confound an analysis using observer data on mitigation type. Table 19 focuses on seabird avoidance measures that are required. The lining tube and line shooter are not represented by separate codes because neither is a required measure.

Comment 14: Three commenters supported the use of the proposed Seabird Avoidance Plan. It was thought to be a useful tool for boat captains and/or managers to further develop or clarify their vessel's bird avoidance plan. It could also serve the purpose of reminding the crew about what they need to do. Is this plan submitted just once a year? This proposed collection of information is necessary and even critical to the goals of the agency to greatly reduce/eliminate seabird bycatch.

Response: The objective of the Seabird Avoidance Plan is to ensure that vessel operators are aware of the issue of seabird incidental take and have developed an effective plan for using the required measures on their vessels to avoid and reduce any seabird incidental take. The Seabird Avoidance Plan is kept onboard the vessel and must be made available for inspection upon request by an authorized officer or observer, thus it is not submitted or mailed to NMFS. The Seabird Avoidance Plan is to be current and thus should be revised or updated whenever any elements change.

Comment 15: A commenter expressed concern that increasing seabird mortality from longline fisheries is affecting the populations of albatross and other seabirds. Further, since the adoption of regulations in Alaska longline fisheries in 1997, about 88,000 seabirds were estimated to be taken. The commenter believes this is convincing information that the current regulations are ineffective.

Response: Seabird bycatch in demersal groundfish fisheries off Alaska has declined 78.4 percent between 2000 and 2002. That decline could be due to numerous factors (see response to comment 3), including the voluntary implementation of the seabird avoidance measures described in this regulation by some fishery components beginning in 2001. These final regulations apply to demersal groundfish and halibut longline fisheries off Alaska. The measures delineated here are designed to reduce seabird bycatch in these fisheries. Additional research may provide the means to virtually eliminate seabird incidental take by these fisheries and greatly reduce or eliminate any seabird population decline that these fisheries may cause. Determining how current mortality levels may affect populations is difficult, given the lack of assessments for many of these species. NMFS is currently awaiting the results of a population status assessment being undertaken by USFWS for Laysan and black-footed albatross. The relatively low take levels of these two species in the Alaska hook-and-line fisheries is not likely impacting these species at the population level. The population of the endangered short-tailed albatross is currently increasing at an annual rate of 7 to 8 percent, despite incidental takes which may occur.

The cumulative effects of all longline mortality on seabird populations in the North Pacific are not well understood. The fishery-specific seabird bycatch estimates for fisheries operating in international waters and those of several nations' EEZs are not available. While we may greatly reduce the incidental take of albatross by implementing these measures in Alaskan demersal groundfish fisheries, efforts need to continue at the national and international levels as well. A recent paper published on potential cumulative effects of North Pacific pelagic longline fisheries on albatross populations illustrates the need for such cooperation (R.L. Lewison &L.B. Crowder, 2003, Estimating fishery bycatch and effects on a vulnerable seabird population. Ecological Applications 13:743–753). NMFS has played a role in these efforts and will continue to do so.

Although seabird mortalities in demersal groundfish fisheries have not been eliminated, NMFS actions to reduce seabird bycatch off Alaska have reduced seabird mortality and brought this issue to the attention of all vessel owners, operators, and crew. The regulatory climate supported a truly collaborative approach among the fishing industry, academia and agencies and allowed vessel operators some flexibility to test a variety of measures on their own. Operators were able to provide guidance to WSGP to choose those measures for testing that were the most likely to be effective while also preserving the safety of the crew and maintaining catch levels of target species. The current regulatory revisions resulted from that process.

Comment 16: The NMFS seabird bycatch estimates are very conservative as many birds fall off the lines after drowning and are not counted. One study estimated that mortality can be underestimated by 30 percent to 95 percent. A recent report from a Hawaiian longline project documents at least 30 percent more mortality from albatross hooked but never retrieved.

Response: NMFS agrees that if hooked or entangled birds fall or drop off the hooks (referred to as ''drop-offs'') prior to the gear being retrieved onboard, then the estimates of seabird mortalities from pelagic or demersal longline gear would be conservative. However, the examples used to suggest the degree to which this might occur for demersal longline gear are inappropriate. Drop-offs may occur while the gear is being deployed, while the gear is fishing, or during gear retrieval. While the degree to which drop-offs occur at any of these stages is unknown, drop-offs are most likely to occur when the gear has reached the surface and is being pulled out of the water. At that point the seabird carcass becomes heavy (no longer positive or neutrally buoyant) and is most likely, relative to other drop-off conditions, to tear off of the hook before being brought onboard. Using studies from other areas, fisheries, or gear types to develop an estimator for drop-offs in the North Pacific demersal longline fishery is inappropriate given differences in gear, monitoring protocol, predatory species, and/or seabird species. We are aware of one study from the southern oceans, that reported birds were under-sampled by onboard observers by up to 95 percent due to drop-offs (R. Gales, N. Brothers, and T. Reid, 1998. Seabird mortality in the Japanese tuna longline fishery around Australia, 1988–1995. Biological Conservation 86:37–56). However, these drop-offs occurred at the surface alongside the vessel. Because of the way observers were tasked in that particular fishery, they only counted those seabirds that were brought onboard the vessel. North Pacific groundfish observers spend sampling time directly monitoring the gear as it is being retrieved, and count all catch and bycatch regardless of whether it drops off the gear near the surface, is removed from the gear by the crew outboard of the vessel, or is brought onboard. Thus, the report of underestimated mortality from the report noted above cannot be extrapolated to the groundfish longline fishery. As noted earlier, assuming that the conditions causing drop-offs in a pelagic longline fishery for tuna off Hawaii are the same as those that may operate in a demersal longline fishery for groundfish off Alaska is not appropriate. NMFS is interested in accounting for unmonitored drop-off on demersal gear and is exploring the feasibility and options for conducting field research to explore this issue. Meanwhile, annual seabird bycatch estimates, viewed over several years, are an important index of bycatch levels and the effectiveness of seabird avoidance measures.

Comment 17: Under the current regulations, seabird mortality is up considerably in Alaska. During the 3–year period (1993–1996) before any regulations, an average of 14,527 seabirds were killed. From 1997–2001, an average 17,513 seabirds were killed in the Alaska groundfish fisheries.

Response: Many factors, both anthropogenic and non-anthropogenic, may affect seabird hooking and entanglement in longline gear. These factors may include geographic location of fishing activity; time of day; season; type of fishing operation and gear used; bait type; condition of the bait; length of time baited hooks remain at or near the surface of the water; water and weather conditions; availability of food (including bait and offal); bird size; bird behavior (feeding and foraging strategies); bird abundance and distribution; physical condition of the bird, and then of course the quality and correct deployment of seabird avoidance gear. These various factors are complex and very likely contribute to the extreme interannual variation in seabird bycatch estimates. Since 2000 in the BSAI, the average annual estimate of the total number of seabirds caught has declined from about 18,000 to less than 4,000 (78 percent reduction). Since 1998 in the GOA, the average annual estimate of the total number of seabirds caught has declined from about 1,500 to less than 300 (80 percent reduction). Although changes in bycatch from one year to the next are not necessarily a reflection of the successes or failures of the longline fleet to reduce bycatch, addressing the quality and performance standards of seabird avoidance gear is one direct method to affect change in the bycatch levels and rates.

Comment 18: Despite the conclusiveness of the WSGP study on the effectiveness of paired streamer

lines, the Council delayed its final action in October 2001 to accommodate fishermen that objected to the use of paired lines on their smaller vessels. The Council then adopted a proposal, approved by NMFS, that would exempt over 95 percent of all Alaska longline vessels from required use of paired streamer lines.

Response: The Council infrequently takes both initial and final action at a single meeting, particularly on an item which generates public comment and testimony. WSGP presented the results of its study to the Advisory Panel (AP), SSC, and the Council in October, public testimony on both the study and the draft EA/RIR/IRFA occurred in October, and the Council then commented on the draft EA/RIR/IRFA and took its initial action. Final action by the Council occurred at its next meeting in December. See the response to Comment 4. Paired streamer lines will be required on vessels over 55 ft (16.8 m) LOA and in 2000 these vessels accounted for 98 percent, 67 percent, and 58 percent of the harvest by hook-and-line vessels in the BSAI groundfish, GOA groundfish, and halibut fisheries, respectively. The BSAI groundfish fishery accounts for 85 percent of the combined BSAI and GOA hook effort (228 million hooks estimated). The remaining vessels that are over 26 ft (7.9 m) LOA and up to 55 ft (16.8 m) LOA, will be required to use single streamer lines in most instances. The WSGP study found that single streamer lines effectively reduced seabird bycatch by 71 to 96 percent compared to a control of no deterrent. Single streamer lines will be an adequate deterrent for use on these smaller vessels.

Comment 19: NMFS contends that since the WSGP study was conducted on vessels over 60 ft (18.3 m) LOA that its findings may not be applicable to smaller vessels. No evidence exists that paired streamer lines should not be applicable to vessels from 35 ft (10.7 m) to 60 ft (18.3 m) LOA. The USFWS has been funding and distributing free paired streamer lines to Alaska longliners and 42 percent of the free lines have been given to vessel owners with vessels under 55 ft (16.8 m) LOA.

Response: In the summer of 2002, the WSGP conducted a series of workshops at Alaska ports (Kodiak, Sitka, Cordova, Petersburg) on seabird avoidance for commercial longliners. WSGP staff who conducted the two-year study on larger longliners conducted these workshops and interviewed vessel skippers to ascertain what seabird avoidance measures could be deployed effectively and safely from these smaller vessels. Onboard trials were conducted in Sitka, Cordova, and Petersburg. Paired streamer lines could not be effectively deployed from these narrow-beamed vessels. Many did not have the superstructure or rigging from which to suspend the paired streamer lines. Vessel skippers reported that the paired lines tangled. Techniques for deploying single streamer lines are illustrated in the WSGP educational video that has been distributed to Alaska hook-and-line fishermen. Evidence from these WSGP port workshops as well as from vessel skippers indicates that these smaller vessels cannot effectively and safely deploy paired streamer lines. In addition to these port workshops, the WSGP, in collaboration with USFWS, has initiated a multi-year study to collect data on seabird abundance in proximity to fishing vessels, particularly in inside and nearshore waters. With the assistance of IPHC, the Alaska Department of Fish &Game (ADF&G), and NMFS, the WSGP is collecting these data from existing vessel platforms, the annual stock assessment longline surveys. Bird distribution and abundance information from these surveys may provide a clearer picture of the probability of vessels interacting with birds while fishing in these nearshore and inside waters. Preliminary information from both of these efforts by WSGP, the port workshops and bird surveys, will be available in 2004.

In 2000, the USFWS initiated a program to fund and distribute free streamer lines to Alaska longline fishermen. Each fisherman who applies receives 2 buckets, each containing a streamer line that meets the material standards being set forth in these final regulations. When skippers from smaller vessels were asked about their use of these paired streamer lines, they all indicated that they only deployed a single line and kept the second one onboard as a spare in the event of breakage or tangling.

Comment 20: The commenter believes that there should be a strong focus on many more vessels using paired streamer lines, including vessels fishing in the GOA, since they take many of the albatross killed. The GOA longline fishery accounts for on average (1993–1999) 93 percent of the black-footed albatross killed and 36 percent of the Laysan albatross killed. In 2000 and 2001, 20 black-footed albatross were taken and 160 Laysan albatross were taken in the GOA. That equates to 93 percent of all black-footed albatross killed in 2000–2001 being killed in the GOA where virtually no vessels would be required to use paired streamer lines under the proposed regulations.

Response: See responses to Comments 4 and 18. A very strong focus does exist on the required use of paired streamer lines on those vessels accounting for the vast majority of the harvest, i.e. the larger vessels. Considering all available bycatch data, the GOA longline fishery accounted for 90 percent of the black-footed albatross takes from 1993 to 2002 and 19 percent of the Laysan albatross takes during the same time period. This is a function of the distributional ranges of these respective species. Satellite telemetry data indicate that black-footed albatross travel in a more easterly direction from their breeding colonies in the Northwestern Hawaiian Islands, not typically foraging northward in the Bering Sea and western Aleutian Islands. The Laysan albatross travel in a more northerly direction from the Northwestern Hawaiian Islands, frequenting the Bering Sea and the Aleutian Islands. In 2001 and 2002, 105 black-footed albatross and 67 Laysan albatross were estimated taken in the GOA; for the same years, 4 black-footed albatross and 473 Laysan albatross were estimated taken in the BSAI. The commenter incorrectly suggests that little protection would be afforded these albatross in the GOA. Vessels accounting for about two-thirds of the GOA groundfish harvest would be required to use paired streamer lines (approximately 28 percent of the vessels that fished in 2000).

Comment 21: The commenter could find no documentation of the effectiveness of towed buoy bag lines, although most Alaskan longline vessels will be allowed to use these as their main deterrent device. The commenter urges NMFS to publish data indicating that a towed buoy bag is an effective deterrent to prevent seabird bycatch, specifically of albatross, before permitting their use in lieu of paired streamer lines. Additionally, the commenter notes that the WSGP study found that when single streamer lines were used, Laysan albatross attack rates were five times that when paired streamer lines were deployed. Despite these findings, the proposed regulations will either exempt all vessels under 55 ft (16.8 m) LOA or allow them to use either a single streamer line or a towed buoy bag. If the regulations are designed to avoid the killing of the endangered short-tailed albatross and other seabirds, why would the vast majority of longline vessels in Alaska be either exempt from mitigation measures or allowed to use a single streamer line or a towed buoy bag line?

Response: See section 4.1.2 of the EA/RIR/IRFA for documentation of the effectiveness of towed buoy bag lines.

Preliminary results from an experiment conducted by L kkeborg (Institute of Marine Research, Bergen, Norway) on a Norwegian longline vessel indicate that towed floats (i.e. buoy bag) reduced significantly the number of seabirds caught on baited hooks compared to when no seabird avoidance device was used. Appendix 5 to the EA/RIR/IRFA is an IPHC report on experiments with a bird avoidance device during IPHC longline surveys. IPHC conducted preliminary experiments in summer 1998 to evaluate the effectiveness of buoy bags in reducing the potential for seabird incidental take. The number of bait attacks by seabirds (i.e. attempts by seabirds to take baited hooks) was observed for sets when a buoy bag was towed compared to sets when no deterrent device was used (control). These observations were made for both sets using sablefish gear and sets using halibut gear. Bait attacks with the buoy bag deployed averaged 3.2 per skate for sablefish gear and 1.9 for halibut gear. Bait attacks with no deterrent device in use averaged 6.5 and 3.6 per skate for sablefish and halibut gear, respectively. The number of bait attacks with the buoy bag was about half the number with no device. Sablefish gear experienced about twice the number of attacks per skate as did the halibut gear, both with and without the bird bag, even though the sablefish gear had 4 times as many hooks. Thus, fewer bait attacks by seabirds occurred when a buoy bag was used compared to when no deterrent device was used. No comparisons were made with streamer lines.

The regulations are designed to avoid the killing of the short-tailed albatross and other seabirds and paired streamer lines are required on the vessels accounting for the vast majority of fish harvest. A more appropriate indicator of fishing and thus the possibility of bird/fishery interactions is amount of harvest rather than number of vessels. The amount of fish harvested by a single vessel varies greatly, depending upon numerous factors such as vessel size, hold capacity, length of fishing trip, and processing capability. Whereas the WSGP study found that paired streamer lines were more effective than single streamer lines (88 to 100 percent bycatch reduction compared to 71 to 96 percent for single lines), there are scenarios when single streamer lines are appropriate and can effectively reduce bycatch. The final regulations require paired streamer lines, the most effective and stringent of the devices evaluated, in those situations when more birds are more likely to be encountered fishing in the EEZ by larger vessels (and these are often the processing vessels that are more likely to attract birds due to the discharge of offal and processing waste). Single streamer lines (and in some instances buoy bags) are required of vessels fishing in inside waters where they are less likely to encounter albatross and other seabirds.

Comment 22: The proposed regulations are not consistent with the Magnuson-Stevens Act, NMFS's own policies of minimizing bycatch, the ESA, or the MBTA. In 2001, the Department of Interior's (DOI) Solicitor issued a final opinion on the applicability of the MBTA. He determined that the MBTA applies to the EEZ which means that it is illegal for U.S. citizens to kill seabirds. Over 17,000 seabirds on average are being killed annually in the Alaskan groundfish fisheries. The MBTA prohibits the take of any bird without a permit, accidentally or otherwise. The bycatch of seabirds in the Alaskan longline fishery is an illegal take and the regulations should propose to eliminate such illegal activity.

Response: The final regulations are consistent with the Magnuson-Stevens Act, NMFS's bycatch policies, the ESA, and the MBTA. The U.S. Government has never applied the MBTA outside U.S. territorial waters. The Department of the Interior has advised that the opinion to which the commenter refers has never been put into effect and remains under review within the Department of the Interior, and is therefore not relevant to this rulemaking.

Comment 23: Two commenters urge that all vessels at or over 100 ft (30.5 m) LOA should deploy, in addition to the paired streamer lines, another mitigation measure at all times. This measure would be: (1) additional line weights or a weighted groundline sufficient to sink the baited hooks at a rate of 0.3 meters per second, or (2) an underwater lining tube sufficient to deploy the lines at least 2 meters underwater at line setting and to assure that the lines sink the baited hooks below 10 meters when 100 meters aft of the stern.

Response: Given the proven effectiveness of avoidance gear that these vessels will be required to use (88–100 percent seabird bycatch reduction), the use of additional measures will remain at the discretion of the vessel operator. The WSGP study concluded that although adding weight to groundlines will sink gear faster, differences in vessel speed or setting logistics could reduce or eliminate the advantage of using weighted groundlines. Further, for the weighting to be practical and effective at reducing seabird bycatch, the weight must be integrated into the line itself rather than added at each deployment. Prototype integrated weight (IW) groundlines are currently being evaluated for efficacy and practicability in reducing seabird bycatch. Once the study is completed and results available, NMFS can evaluate the need for IW groundlines in the Alaska fisheries.

The WSGP study also evaluated the efficacy of the lining tube at reducing seabird bycatch. Given some operational limitations to its performance, as well as its cost (approximately $40,000 per unit), the mandatory use of a lining tube is not warranted. Operational limitations include depth below the surface at which the tube delivered gear changed with sea conditions, vessel loading causes variation in tube's effectiveness, propeller turbulence may cause the groundline to resurface, occasionally the groundline jumps out of the slot that runs along the side of the tube, and the lining tube can only be fitted to vessels that set gear from their lower decks.

Comment 24: Two commenters urge that NMFS should prohibit the discharge of offal during the deployment of longline gear or the presence of offal on the water within 300 ft (91.4 m) of the vessel during line setting. NMFS should also require that fish hooks be removed from discarded bait.

Response: NMFS agrees that regulating the discharge of offal from longline vessels can increase the range of effective options used to reduce seabird bycatch. The final regulations will require that if offal is discharged while gear is being set or hauled, it must be done in a manner that distracts seabirds from baited hooks to the extent practicable. The discharge site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station. Additionally, hooks must be removed from any offal that is discharged. Lastly, operators of vessels discharging offal while gear is being set must eliminate directed discharge through chutes or pipes of residual bait or offal from the stern of the vessel. This would not include baits falling off the hook or offal discharges from other locations that parallel the gear and subsequently drift into the wake zone well aft of the vessel. For vessels not deploying gear from the stern, the directed discharge of residual bait or offal over sinking hook-and-line gear while gear is being deployed must be eliminated.

Comment 25: Two commenters urge that NMFS should require that longlines be set in such a way that if weights are added to the groundline, they do not cause the line to become taut.

Response: NMFS regulations essentially address this point when they require that the operators of applicable vessels must use hooks that when baited, sink as soon as they are put in the water. See response to Comment 23. Once new scientific information becomes available about IW groundlines, NMFS could consider if changes to the regulations are necessary regarding the weighting of groundlines.

Comment 26: NMFS should require the collection of seabird bycatch data (such as the number and species of seabirds hooked per thousand hooks) and should evaluate the effectiveness of paired streamer lines and other mitigation measures. Such data could be collected by observers or vessel operators. NMFS should compile these data annually and share this information at annual workshops attended by longline fishermen.

Response: NMFS requires the collection of seabird bycatch data in the Alaska groundfish fisheries. These data are collected by observers and analyzed annually to calculate seabird bycatch estimates for the BSAI and GOA groundfish fisheries. The estimates are included in the Council's annual SAFE report in the seabird section of the Ecosystem Considerations chapter. Seabird bycatch estimates are available back to 1993. This information is publicly available and can be found at the NMFS Alaska Region's seabird website *http://www.fakr.noaa.gov/protectedresources/ seabirds/actionplans.htm*

In the Biological Opinion on the Effects of the Total Allowable Catch (TAC) -Setting Process for the Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish Fisheries to the Endangered Short-tailed Albatross (Phoebastria albatrus) and Threatened Steller's Eider (Polysticta stelleri) (TAC BiOp) issued by the USFWS in September 2003, NMFS is directed to collect information on the deployment and use of seabird avoidance measures for the largest possible sample of hook-and-line gear sets. Data shall be collected by observers, or other non-self-reporting means, and shall begin no later than January 1, 2004. These data will be summarized and reported to USFWS by September 30 of the calendar year following the report year. In response to this requirement, NMFS's Observer Program has established protocols for groundfish observers on longline vessels to collect this information beginning in 2004. Information about seabird bycatch estimates and the effectiveness of required seabird avoidance measures can be conveyed to the longline fishermen using these measures as well as other members of the interested public. However, some caution must be used when evaluating changes in annual levels of seabird bycatch. Seabird bycatch estimates display extreme inter-annual variation and seabird bycatch can be influenced by a complex myriad of factors, not just the use of seabird avoidance measures (see response to Comment 17). One cannot assume that increases in bycatch levels are solely attributable to lack of use of seabird avoidance measures by fishermen, or conversely that reductions in seabird bycatch levels are entirely due to the successful use of seabird avoidance gear.

Comment 27: NMFS should require all vessels with observers to participate in a computerized reporting system of seabird bycatch that protects their privacy but serves as part of a peer review report card. This is currently done voluntarily by 38 freezer-longliners in the BSAI through a private consultant. The WSGP study supported such a peer review system. NMFS should require all vessels with observers to participate, including the GOA longliners with observers.

Response: The peer-reviewed report card initiated by industry and shared among 38 freezer-longliners is a very effective program in which participants appear to have realized tremendous reductions in seabird bycatch on their vessels. NMFS plays a key role in supporting this program through the inseason data reporting system and web-based data access. Participants choose to share data among themselves and work through a private consultant who has appropriate data-sharing agreements and data access permissions. Because the program was voluntary and all participants provided documentation allowing the consultant access to their confidential data, it was a relatively easy program to support. However, concerns of data confidentiality would make it much more difficult to require such a program for all demersal longline vessels that carry observers. Development and implementation of such a program is outside the scope of this rulemaking. NMFS is pursuing an alternative and complementary approach to develop staff expertise on seabird avoidance measures, to internally identify vessels that have higher than average seabird incidental take, and then to offer these gear experts to vessels to assist with proper deployment of seabird avoidance measures. Meanwhile, NMFS will continue to support voluntary programs that adopt the model used by the freezer-longliners.

Comment 28: Before vessels are exempt from using paired streamer lines in winds measured at 30 knots or greater, another effective deterrent measure such as an underwater lining tube or weighted line should be used. The commenter noted that at 3 different NOAA weather buoy locations, winds exceeded 30 knots on 71, 90, and 23 days respectively for time periods ranging from about 330, 365, and 330 days, respectively. If it is unsafe to set paired streamer lines in high winds, how can the crew set miles of lines with baited hooks and haul them in and take fish from them in the same winds?

Response: The final regulations allow vessels normally required to use paired streamer lines, to deploy a single streamer line from the windward side of the vessel in winds exceeding 30 knots. This relaxation of the requirement for paired streamer lines is to address safety concerns. The windward side deployment of a single line is designed to prevent approaching seabirds from accessing the baited hooks. As discussed previously, single streamer lines have a proven effectiveness of 71 percent to 96 percent reduction in seabird bycatch; thus it is not necessary to require measures such as a lining tube or weighted groundlines as an alternative. Also, one of the operational limitations of the lining tube noted by WSGP researchers and others is that in rough sea conditions (e.g. high winds), the exit end of the lining tube periodically reaches the water's surface, thwarting the intent of sub-surface gear deployment. Information from NOAA's National Data Buoy Center indicates that the average wind speed at the 3 buoys noted by the commenter never exceeded an average wind speed of 30 knots (460066, south Aleutians; 46035, Bering Sea, north of Adak Island; and 46001, GOA, south of Kodiak). Safety concerns in commercial fisheries are a priority for NMFS and the U.S. Coast Guard. National Standard 10 of the Magnuson-Stevens Act requires that the conservation and management measures that implement fishery management plans shall, to the extent practicable, promote the safety of human life at sea. Thus, allowing the deployment of a single rather than paired streamer lines in winds exceeding 30 knots is consistent with National Standard 10 and the overall objective of reducing seabird bycatch.

Comment 29: Two commenters urge that performance standards should be required for seabird avoidance measures

used on vessels between 26 ft (7.9m) LOA and 55 ft (16.8m) LOA. The proposed regulations weaken seabird protections by exempting these vessels from critical performance standards. Performance standards are only being suggested for these smaller vessels. The extremely slow pace that NMFS moves in adopting regulatory changes may thwart efforts for years to come to assure that seabird mortality is eliminated or greatly reduced from these vessels unless these vessels are covered by performance standards.

Response: See NMFS's response to Comment 19. The performance standards required for seabird gear for vessels over 55 ft (16.8m) LOA are based on a WSGP scientific study conducted on vessels over 55 ft (16.8m) LOA. The ''small boat'' longline fleet off Alaska is comprised of over 1,000 vessels and is extremely diverse. Vessels range from skiffs, trollers, bowpickers, and schooners and are often used in other fisheries. A WSGP study was initiated in 2002 to study seabird avoidance gear requirements on smaller longline vessels. Once new information becomes available suggesting revised standards for smaller vessels, then these revised standards could be considered as regulatory requirements.

Comment 30: NMFS regulations should include a specified line-weighting regime for longline vessels. Adding weights to the groundline is known internationally to be the most effective way of getting hooks to sink and the most effective seabird deterrent when combined with a streamer line. The WSGP study did not rigorously investigate the combined use of weighted groundline with streamer lines. At minimum, the NMFS regulations should include a requirement that when weights are applied to the groundline, they should be spread out along the line. This would at least provide a temporary measure until more safe methods are developed for adding weights to the groundline.

Response: See NMFS's response to comments 23 and 25. Because of limitations with the application of weights at the time of gear deployment, researchers are exploring the feasibility and effectiveness of using groundlines with an integrated weight to achieve rapid sinking of baited hooks. IW lines are being tested in Alaska, New Zealand, and Australia. NMFS will consider new information about IW lines and results from these international studies prior to considering regulatory requirements for weighted groundlines.

Comment 31: NMFS should not allow exceptions from the use of paired or single streamer lines due to high knot winds. There is a higher activity level of seabirds in Alaska during the winter months, when the winds are normally highest, and during a time when the proposed seabird mitigation measures will be minimal. Also, in high winds the hooks tend to stay at the surface longer due to turbulence, increasing the exposure time of hooks to seabirds. Combined with a high activity of stressed breeding albatross during the winter months, this regulation could possibly increase seabird bycatch and especially albatross bycatch.

Response: NMFS has no data either to support or refute the presumptions that the activity level of seabirds is higher in Alaska during winter months, or that high wind conditions tend to keep hooks at the surface longer. We suspect that seabird activity may actually be lower in Alaska during winter months as opposed to other seasons, such as the breeding season, when reproductive activities (egg-laying, incubation, chick rearing) are underway. NMFS will maintain the gear and performance requirements relative to wind conditions as provided in the proposed rule. This exception is necessary to protect the crew. Deploying gear consistent with these measures from the open deck typically found on longline vessels that operate in these conditions would unnecessarily put crewmen at risk. NMFS is concerned about the issue, however, and additional research into integrated weight groundlines may best resolve this issue. NMFS will continue to evaluate and report on these issues.

Comment 32: The NMFS Observer Program should collect sufficient information to identify causes of seabird bycatch, including weather conditions. Because these data are not currently collected, the extent of seabird bycatch in Alaska during adverse weather condition remains unknown. NMFS should also be monitoring the life expectancy of the streamer lines and other measures, as this is important in developing design improvements.

Response: NMFS agrees that collecting information that identifies causes of seabird bycatch is important. NMFS has recently dedicated additional staff resources to work on seabird/fishery interaction issues, and expects to coordinate these investigations within NMFS and with collaborators. Some activities may be best conducted by observers. NMFS will work on this issue through a variety of means, including dockside visits, participation in skipper meetings, reviewing data already collected, and possibly deploying agency staff and observers aboard vessels at sea. However, just as it becomes a safety factor for crew to deploy seabird avoidance measures in high wind conditions, it also becomes unsafe for observers in some situations to conduct longline sampling. Observers are directed to stop sampling when heavy weather makes it unsafe to monitor longline gear retrieval.

NMFS does not plan to directly monitor the life expectancy of the streamer lines. Due to the required performance standards, the crew must maintain the gear in working order. It is the responsibility of the vessel operator to replace seabird avoidance gear that is no longer functioning properly. We expect that industry will notify NMFS and the manufacturer if it perceives a problem with longevity of the streamer lines.

Comment 33: NMFS should provide an annually updated detailed analysis of NMFS observer seabird bycatch data, including information by species, month, statistical area, gear, target fishery, vessel type and time of set, as well as seabird deterrent in use. NMFS should coordinate with USFWS to provide the Council and the public with these annual reports.

Response: NMFS currently collaborates with USFWS to provide annual reports on seabird incidental take to the Council as part of the annual SAFE report (see response to comment 9). These reports are available to the public. Currently, these reports are not at the level of detail noted by the commenter. NMFS has dedicated additional staff resources to work on seabird/fishery interaction issues and one goal is to improve bycatch reporting to the public. Annual summary reports will continue, and more detailed reports will be available periodically.

Comment 34: Whenever a management measure is introduced, the observer program should collect pertinent data to monitor the efficacy of the measure. Night setting was implemented in 1997 as a seabird avoidance measure option, even though no supporting data existed from the observer program. It wasn't until 2000 that observers began collecting data on time of set. The WSGP study revealed that night setting might actually increase bycatch of some species. Night setting may very well be detrimental to seabirds but we will not know until these data are released.

Response: It is probably not feasible for the Observer Program to collect pertinent data on every management measure implemented, given the critical importance of other core duties that observers carry out in support of fisheries management activities. See the

response to Comment 13 for a discussion on some of the limitations of using observer data to evaluate the effectiveness of mitigation measures. The initial 1997 regulations were based on the model of seabird avoidance requirements for vessels fishing in southern ocean areas regulated by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). CCAMLR measures require night-setting as a method to avoid hooking birds. Based on the WSGP study which demonstrated an increased bycatch of fulmars during night sets, the regulation has been revised and no longer allows night-setting as an alternative method of reducing seabird incidental take.

Comment 35: NMFS should require that vessel operators cooperate with the observer in providing freezer/ice hold space for the retention of seabird carcasses if the observed is required to collect such carcasses. Negotiation for use of freezer space to hold seabird carcasses should not fall on the observer but should be a requirement of vessels carrying observers.

Response: Current regulations found at § 679.50(g)(1)(v) require vessel operators to provide the observer with access to storage areas and freezer holds, and at § 679.50(g)(1)(viii) to ''provide * * * reasonable assistance to enable observers to carry out their duties * * *.'' The Observer Program is conducting one special project requiring observers to collect certain seabird carcasses. Vessel operators have complied with regulatory requirements and have cooperated with observers in providing sufficient freezer space for the storage of these special project specimens. If in the future NMFS requires additional collection of carcasses by observers, then appropriate steps will be taken to assure that adequate freezer storage space is made available on the vessel. The Observer Program has effectively used the pre-cruise briefing as one way of assuring appropriate vessel arrangements. Pre-cruise briefings allow for the identification of respective roles and responsibilities prior to departure. These vessel-specific arrangements between the observer and vessel skipper can also be made onboard. If an observer encounters non-compliance with vessel responsibility requirements, the observer can notify the Observer Program and document the incident. Given the decreasing numbers of seabirds taken, the retention of carcasses for a special project is not likely to be a burden on either the observer or the vessel operator.

Comment 36: Since the impetus for these regulations is the conservation of the short-tailed albatross, it is important to also consider the overall world population declines of both the Laysan and black-footed albatross. Because black-footed albatross have a relatively small world population, the declines are disturbing, especially in light of the high bycatch of black-footed albatross in the GOA where most of the fleet remains unmonitored.

Response: One objective of the regulations is conservation of an endangered species. Since NMFS and the Council first addressed these seabird avoidance requirements in 1996, it was acknowledged that conservation of other non-endangered species was also important. NMFS agrees that possible population declines of Laysan and black-footed albatross are important considerations. NMFS supports the albatross population status assessments currently being undertaken by the USFWS. Such assessments are consistent with the NPOA and necessary to determine the effects of longline mortality from the Alaska demersal groundfish and other longline fisheries throughout the North Pacific Ocean on these albatross populations. The amount of incidental take in the GOA seems unlikely to have contributed directly to a population decline of black-footed albatross. The average incidental take between 1993 and 2002 (176 birds) is only about 0.09 percent of the most recent population estimate of 200,000 albatross. Further, between 2000 and 2002 black-footed albatross incidental take declined by about 78 percent in the GOA. Many factors could contribute to the decline in incidental take (see comment 3), including both serious declines in the population itself and increased use of adequate seabird avoidance measures by vessel operators. NMFS remains concerned about potential declines of this species and continues to collaborate with partners to assess the direct and/or cumulative impacts of fishing mortality. While many of the vessels in the GOA are unobserved, the bycatch estimation procedures account for their fishing effort in determining an overall black-footed albatross incidental take estimate for that region. Because analysts assume that take rates are similar between observed and unobserved vessels, these estimates could be biased either upward or downward. The validity of this assumption is worth exploring.

Comment 37: We are pleased that NMFS is finally taking action to implement the improved regulations adopted by the Council. The Council took final action on these measures in December 2001. We were promised by NMFS staff that the regulations would be in place by August 2002. Why has it taken so long for the proposed rule to be published?

Response: Addressing seabird bycatch in longline fisheries is a NMFS priority. It is sometimes difficult to project staff workloads and allow for responsiveness to unscheduled activities and other priorities that require staff resources. NMFS proceeded as quickly as possible to promulgate final regulations.

Comment 38: Two commenters requested that more recent seabird bycatch data (from years 2000 to 2002) be used in the preamble to the rule and in the EA that accompanies the rule. The preamble to the proposed rule and the EA make repeated references to the seabird bycatch levels from 1993 to 1999 which do not reflect take levels since the implementation of seabird avoidance regulations. Since 1998, the first full year the regulations were in effect, the freezer-longliner fleet (which takes the bulk of the seabirds in the longline fisheries off Alaska) has reduced its incidental take by 85 percent. The 1993–1999 data may offer historical perspective, but it should be balanced by reference to recent performance under the seabird avoidance regulations. While we may expect interannual fluctuations in incidental take due to unpredictable biotic and abiotic factors, it is apparent that the regulations and industry efforts are having a highly positive effect, which should be reflected in the documentation.

Response: Since 2000, the seabird bycatch estimates have been incorporated into the seabird section of the Ecosystem Considerations chapter of the Council's SAFE reports. The seabird sections of the Ecosystem Considerations chapter are available at *http://www.fakr.noaa.gov/protectedresources/ seabirds/actionplans.htm.* See the preamble of this final rule for information on the 2000–2002 seabird bycatch estimates and take rates.

Comment 39: After extensive testimony from longline fishermen on the dangers inherent in deploying seabird avoidance gear under adverse conditions, at its December 2001 meeting the Council adopted a 'statement of intent' regarding the implementation and enforcement of the proposed seabird avoidance regulations and the specific performance standards. The Council's statement highlighted that NMFS needs to account for the context and setting of fishing operations on the vessel when considering the enforcement of performance standards required for streamer lines. Three commenters have requested that the

Council's statement of intent be included in the preamble to the final rule. One commenter additionally requested that the Council's statement of intent be inserted in observer handbooks and in materials used by enforcement agents. The commenter noted that the longline industry support for the revised regulations relied to a significant degree on this guarantee against unreasonable enforcement.

Response: The Statement of Council Intent on Seabird Avoidance Regulations and Performance Standards was included in the EA/RIR/IRFA (December 2002) prepared for the proposed rule and thus is not repeated here. The Council's statement was also summarized in its December 2001 newsletter. NMFS will provide this Statement of Intent to the Observer Program and the NOAA Office of Law Enforcement Alaska Region. NMFS agrees that it is very important to consider the context and setting of fishing operations in each and every alleged regulatory violation. On a case-by-case basis, NMFS considers the nature, circumstance, extent and gravity of any alleged violation when making enforcement decisions and the preparation of an appropriate enforcement response.

Enforcement of many of the regulations for the Alaska groundfish and IFQ fisheries are addressed through summary settlement schedules. These schedules reflect a progressive enforcement response, dependent on the severity of the violation and considered on a case-by-case basis. Such schedules provide information to assist persons required to comply with the regulations. NMFS is preparing a summary settlement schedule for the seabird avoidance regulations and upon completion the schedule will be made available at *http:// www.fakr.noaa.gov/ regs/ summary.htm.*

Comment 40: NMFS has proposed a regulation at 50 CFR 679.50(f)(1)(viii)(F) that would require that all seabirds from the observer-sampled portions of hauls using hook-and-line gear would be kept until sampled by the observer or as requested by an observer during non-sampled portions of hauls. This requirement conflicts with the provision proposed at 50 CFR § 679.24(e)(1)(vi) which calls for the safe release of seabirds that are brought on board alive. Current information suggests that, particularly for the short-tailed albatross, a live bird should be released as soon as possible. Our vessel association distributed copies of the booklet ''Longline Fishing, Dollars and Sense'' that contained textual and graphic descriptions of methods to release living seabirds without jeopardizing their lives. Perhaps the noted regulation at § 679.50 should specify that the requirement for retention pertains to dead seabirds.

Response: Nothing in this regulation is intended to conflict with the safe release of birds that are brought on board alive. Information from observers, vessel skippers and crew, and research scientists has indicated that live birds are rarely, if ever, hooked at the time of gear retrieval in demersal longline operations but rather are hooked or entangled at the time the gear is deployed and are subsequently pulled underwater. Thus, the regulation should not cause concern or endanger the lives of birds. In addition to the industry initiative to distribute information on safe-release and safe-handling procedures for live birds, the procedures are trained to observers and are available on the NMFS Alaska Region seabird website.

Comment 41: Although § 679.24(e)(3) of the proposed rule includes the general components and requirements for the Seabird Avoidance Plan, it would be helpful to have a proposed sample form that illustrates what would satisfy the requirements of the regulation.

Response: NMFS has prepared the form, Seabird Avoidance Plan, and it has received approval from OMB. The form will be made available to Alaska longline fishermen via mail, NMFS Alaska Region's seabird website *http:// www.fakr.noaa.gov/ protectedresources/ seabirds.html*, industry associations, and NMFS Enforcement offices, plus other appropriate locations as identified.

Comment 42: One commenter suggested that several corrections be made to text and figures in the EA that accompanied the proposed rule. The corrections related to: 1) the average seabird bycatch rate of vessels setting hook-and-line gear from the side (Figure 12), 2) a vessel 25 ft (7.6 m) LOA or less fishing offshore in the Fairweather Grounds (Figure 1), and 3) a short-tailed albatross sighting in interior Canada (Figures 1–4).

Response: NMFS has determined that the changes are not substantive and do not alter conclusions from the analysis of environmental effects. The USFWS maintains the database for short-tailed albatross sightings and provided the sightings data for Figures 1–4. NMFS has relayed this comment to the USFWS.

Comment 43: Two commenters suggest that the regulations should establish the goal of eliminating seabird bycatch and that the take of short-tailed albatross could be eliminated with the proper deployment of paired streamer lines, weighted lines, and offal discharge control during line setting.

Response: Although the Magnuson-Stevens Act definition of 'bycatch' does not include seabirds, the incidental take of seabirds is addressed as an issue in NMFS's National Bycatch Strategy and the guidelines for National Standard 9. The National Bycatch Strategy addresses regional efforts to enhance compliance with the take prohibitions of the ESA and to reduce takes of migratory birds. National Standard 9 of the Magnuson-Stevens Act calls for NMFS to minimize 'bycatch' to the extent practicable and for fishery management councils to consider the impact of conservation and management measures on birds. Thus, neither of these directives call for the elimination of bycatch. Although elimination of seabird bycatch through the use of effective seabird avoidance measures is a laudable goal, it is not currently practicable to specify it as such in regulatory language. The final seabird gear requirements are designed to reduce seabird bycatch. Fishermen do not intend to catch birds, but some are likely to be taken. As noted in the response to comment 17, both anthropogenic and non-anthropogenic factors may affect seabirds becoming hooked or entangled in longline gear. The new seabird gear requirements, when used correctly, will greatly reduce seabird takes of both the endangered short-tailed albatross and other more common species in longline fisheries.

Comment 44: The USFWS, the federal trust resource agency for migratory birds, appreciates that NMFS' efforts and regulations are intended to reduce the incidental take of all seabirds and not just those listed under the ESA.

Response: Since 1996 when NMFS and the Council first regulated seabird bycatch in longline fisheries, it was important that efforts address both endangered and non-endangered species. The vast majority of seabirds incidentally taken in the Alaska groundfish fisheries are northern fulmars, a very common species with a world population of 2 to 3 million. As an element of the Bering Sea and Gulf of Alaska ecosystem, it is important that the take of fulmars and other bird species is reduced.

Comment 45: The Council's SSC and representatives from the longline industry identified the need for education and outreach to fishermen and for further research on methods and performance standards, particularly for small [less than 55 ft (16.8m) LOA] vessels. The proposed rule notes that this would improve the effectiveness of

seabird avoidance measures and guide future regulatory changes to the standards guidelines for small vessels, which currently are voluntary. Additionally, the regulations for small vessels in certain inside waters may be revised, pending development of more information on the interactions between seabirds and fishing gear in those sectors of the fishery. The USFWS believes this is a prudent approach and highlights the needs for NMFS and USFWS to continue to promote and assist the research necessary to address these issues in the coming years.

Response: See the response to Comment 19. The Alaska longline fleet is very diverse. Seabird avoidance measures that successfully avoid birds on one type of vessel may not work the same way (or at all) on a different type of vessel. The WSGP study and the resulting performance and material standards for streamer lines focused on the larger vessel [greater than 55 ft (16.8m) LOA]. Vessels can differ not only in length but also area fished and proximity to shore, type of gear and bait used, number and experience of crew, vessel speed at gear deployment, number of days fished annually, hold capacity, and ability to process fish onboard (and thus amount of offal discharged). All of these elements affect the likelihood of encountering birds and the potential for interacting with them. In the summer of 2002, WSGP initiated several projects to explore the seabird bycatch issue on small vessels fishing in inside or nearshore waters. Workshops were conducted in Sitka, Petersburg, and Cordova port towns in Southeast Alaska. WSGP scientists shared outreach information with local fishermen and worked with skippers and crew onboard their vessels to deploy streamer lines and buoy bag lines. In addition to these port workshops, the WSGP, in collaboration with USFWS, has initiated a multi-year study to collect data on seabird abundance in proximity to fishing vessels, particularly in inside and nearshore waters. Bird distribution and abundance information from the WSGP study may provide a clearer picture of the probability of vessels interacting with birds while fishing in these nearshore and inside waters. Preliminary information from both of these efforts by WSGP, the port workshops and bird surveys, will be available in 2004. Results from these projects will contribute to efforts to best manage this seabird/fishery interaction for this portion of the fleet.

NMFS agrees that research efforts are important to provide the best available scientific information on which to base fishery management decisions. NMFS has collaborated with USFWS for the past 3 years on various research efforts to address management needs. USFWS has received a total of approximately $1.5 million in Congressional appropriations to address Alaska seabird bycatch initiatives. Many of the research projects mentioned have been funded by this initiative. Other funded projects include: testing of IW longline gear, seeking innovative solutions to seabird bycatch on small longline vessels, observer training materials, continued distribution of free streamer lines, and production of an educational video. USFWS collaborators include WSGP, NMFS, ADF&G, the Alaska Marine Advisory Program, and numerous industry associations.

Comment 46: The SSC suggested that less stringent regulations were needed for inside waters of Southeast Alaska, because short-tailed albatross do not frequent those waters. The USFWS comments that this is probably true today, but historical records suggest that this ''coastal'' albatross might have used these waters in the past. This may become an issue in the future as the population grows. The USFWS agrees with the SSC recommendation that additional study is needed on seabird abundance and interactions with fisheries in inside waters.

Response: The term ''coastal'' albatross was used at a time when the short-tailed albatross population may have numbered in the millions, prior to the time the population was decimated by feather hunters around the turn of the century. Pre-exploitation worldwide population estimates of short-tailed albatross are not known; the total number of birds harvested may provide some indication, since the harvest drove the species nearly to extinction. Between approximately 1885 and 1903, an estimated 5 million short-tailed albatross were harvested from the breeding colony on Torishima. The current worldwide population estimate is 1,800. It is probable that the total foraging range of the species has contracted during the post-exploitation period and the species may not be found in all of its former locations. As the USFWS notes in its Biological Opinion on the effects of the BSAI and GOA FMPs on the short-tailed albatross, some of the 'coastal' nature of the species' distribution could have been simply related to its more extensive marine range. Additionally, the historical middens were located in the Aleutian Islands, a habitat and area quite distinct from Southeast Alaska. Historical evidence does not provide information about the occurrence of short-tailed albatross in Southeast Alaska.

NMFS concurs that additional study is needed on seabird abundance and interactions with fisheries in inside waters. See the response to comment 19 for a description of work that was initiated in 2002 to address this. As the short-tailed albatross population grows and expands into its former range, we would expect that the potential for interactions with fishing vessels in those same areas would increase. NMFS and other agencies are collaborating with USFWS to promote the reporting of short-tailed albatross from existing platforms of opportunity such as commercial fishing vessels, agency survey vessels, and cruise and ferry ships. To date, the USFWS database includes 990 observation records of short-tailed albatross. Between 1975 and 1991, only 56 sightings of short-tailed albatross were reported, with the majority reported since 1991. These records do not necessarily represent 990 unique short-tailed albatross and may reflect vessel distribution rather than albatross abundance and distribution. The recent satellite telemetry collaboration project undertaken by the United States (USFWS) and Japan will greatly enhance our knowledge of the at-sea distribution of this endangered species.

Comment 47: The Council recommended studies to determine if performance standards should be modified or eliminated for vessels less than 55 ft (16.8 m) LOA when fishing at night from November to April. Given that the WSGP study found more gear interactions with Laysan albatross and northern fulmars during night sets, USFWS emphasizes that this issue of allowing night setting should be more fully addressed prior to making future regulatory changes.

Response: Prior to any modifications to these final seabird avoidance requirements and the issue of night-setting in particular as a method to avoid seabird take, an investigation would be necessary. Although some seabird avoidance methods are effective for most seabirds, some species exhibit characteristics (e.g. daily activity cycle, diving depth) which may make them more prone to interactions with fishing vessels and the deployment of gear.

Comment 48: In addition to the proposed requirement that all seabirds from observer-sampled hauls be kept by the fishing crew until the observer can process them, the USFWS also recommends that all seabird carcasses be retained for transport to laboratories for complete processing. This would allow for the collection of all possible

information on birds taken as bycatch in this fishery, as is done in some international fisheries. The more that is known about the demographics of the birds taken in fisheries, the better resource agencies can assess potential population effects and effectiveness of mitigation methods. The need for retaining and analyzing bird carcasses has been identified as an important issue by the North Pacific Albatross Working Group.

Response: Bird carcasses should be retained, returned with the observer to a field station, and then transported to laboratories for complete processing. This activity was done during the High Seas Driftnet Program, 1990–1992, where NMFS and the USFWS coordinated closely on seabird incidental take in those fisheries and shared duties to recover seabird carcasses. In that program, NMFS assigned observers to retain carcasses, provided the proper gear and forms to observers, and arranged for observers to return the carcasses to port. The USFWS trained observers on seabird topics and collection procedures, coordinated closely with NMFS to manage the transport of seabird and marine mammal specimens from these ports to Seattle, and established a recipient laboratory to handle and process the seabird specimens. Beginning in 1993, and several times since, NMFS staff have requested that the USFWS again collaborate together on a seabird carcass collection program for groundfish observers that paralleled that of the High Seas Driftnet Program. Unfortunately, the USFWS has, with one exception (see below), been unable to retain a laboratory to handle a comprehensive carcass collection program. With no end-user for carcasses, it was inappropriate to assign this task to observers and require fishermen to make freezer space available. The USFWS did select a vendor to receive some specimens beginning in 2001, and NMFS responded quickly by tasking specific observers to retain specimens in a special collection project. In 2002, NMFS staff participating in the North Pacific Albatross Working Group volunteered to take on a lead role in developing a carcass collection program. No funding source to support this project has as yet been identified, but a team that includes staff from federal (including the USFWS) and state agencies and other individuals are working on identifying agency funds, or preparing proposals to other funding sources, in the hopes of starting such a program.

Comment 49: The USFWS concurs with the Council's suggestion to develop an ''industry-generated seabird avoidance incident reporting form.'' This form would allow vessel operators to report on the effectiveness of methods or operational issues that occur during the deployment of seabird avoidance gear. This form would allow industry to directly contribute to a format that would be readily accessible and available for analysis by our agencies.

Response: The industry might benefit if it created an ''industry-generated seabird avoidance incident reporting form'' for vessel operators. Accordingly, NMFS asked those operators to maintain the forms on the vessel and forward copies to their home offices and/or fishery associations. Industry input and cooperation have been critical to developing seabird avoidance measures, and these forms may provide an excellent means of furthering the collaboration of government and industry. The effectiveness of streamer lines and other measures will vary among vessels, and each operator will likely need to adapt the seabird avoidance measures for their vessel. These forms could help identify operational difficulties and the actions that were taken to resolve those difficulties. If that information is shared between operators on a single vessel, and among operators within a fleet, it would support a best-practices approach for seabird avoidance measures.

Comment 50: Maintaining healthy seabird populations provides multiple human and ecological benefits. Due to their status as top predators in the food web, seabirds are particularly important in providing key information regarding the general health of the marine environment. The proposed enhancements to the current seabird measures will mitigate interactions with the endangered short-tailed albatross and other seabirds in hook-and-line fisheries off Alaska. The commenter supports the enhancements and congratulates the government for taking this important action to effect such regulatory revisions.

Response: NMFS agrees.

Classification

The Council recommended this action to the Secretary for adoption pursuant to its authority under the Magnuson-Stevens Act and other applicable laws. NMFS prepared an EA/RIR/IRFA for the proposed revisions to the seabird avoidance measures in the hook-and-line groundfish fisheries of the BSAI and GOA and in the Pacific halibut fishery in U.S. Convention waters off Alaska that describes the management background, the purpose and need for action, the management alternatives, and the socioeconomic impacts of the alternatives.

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA and the Pacific halibut fishery off Alaska. The Regional Administrator also has determined that this final rule is consistent with the Magnuson-Stevens Act, the Halibut Act, and other applicable laws. No relevant Federal rules exist that duplicate, overlap, or conflict with this action.

NMFS also prepared a FRFA describing the impact of this action on small entities. Copies of this FRFA are available from NMFS (see **ADDRESSES**). A description of the final action, the reason the action is being considered, and the legal basis for this action are contained at the beginning of this preamble. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and its findings. No comments on the IRFA were received during the public comment period on the proposed rule. Thus, no new data were incorporated into the analysis during the comment period that would result in findings that differ from those previously described. A description of the impacts of this action on small entities was summarized in the proposed rule (68 FR 6386, February 7, 2003). The entities that would be directly regulated by the final regulations are fishing operations using vessels longer than 26 ft (7.9 m) LOA, using hook-and-line gear while fishing for IFQ or CDQ halibut, IFQ sablefish, or groundfish in the EEZ off of Alaska, except for operations using vessels less than or equal to 32 ft (9.8 m) LOA using hook-and-line gear in IPHC area 4E in waters shoreward of the EEZ. In 2000, an estimated 962 small groundfish hook-and-line catcher vessels, 18 small groundfish catcher-processors, and 1,043 small halibut vessels would have been directly regulated by this action. There is believed to be overlap between the counts of groundfish vessels and halibut vessels, since some vessels would have been used in both fisheries. To the extent that any of these vessels are partners with CDQ groups, the alternatives addressed in this analysis could indirectly impact the six CDQ groups representing the 65 western Alaska communities that are eligible for the CDQ Program. The CDQ groups and the communities they represent all are small entities under the RFA.

Under the final rule, the measures required of all applicable vessels over

26 ft (7.9 m) LOA will be expected to be of minimal cost. A bird streamer line is estimated to cost $50 to $250 and line weights represent a variable cost depending upon the necessary amount of weights to sink the baited hooks. Procedural or operational changes may be required in fishing operations.

The incidental take limit for short-tailed albatross could be exceeded during longline fishing operations. If the regulatory revisions under the final rule improve and strengthen the current seabird avoidance measures, then the likelihood of encountering and taking a short-tailed albatross would be reduced. Therefore, the likelihood of a fishery closure and its ensuing economic impacts would be reduced. If the anticipated take of short-tailed albatross was exceeded in either the groundfish fishery or the halibut fishery, the actual economic impacts resulting from a modification of the reasonable and prudent measures established to minimize take of short-tailed albatross would depend upon the revised measures, which could range from measures required in this rule to closures. The economic impact of fishery closures would depend upon the length of time of the closed period and the extent of the closure. The 1999 exvessel value of the Pacific cod fishery for hook-and-line gear was estimated at approximately $72 million, approximately $71 million for the sablefish fishery, and totaled approximately $150 million for all groundfish species caught with hook-and-line gear. The 2000 exvessel value of the Pacific halibut fishery was estimated at $67 million. Such economic impacts on small entities could result in a substantial reduction in annual gross revenues and could, therefore, potentially have a significant adverse economic impact on a substantial number of small entities. Data are currently not available upon which to draw net revenue conclusions about these probable effects.

The Council considered recommending performance standards for seabird avoidance measures used on vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA. Until further information becomes available, performance standards for these smaller vessels are suggested only as guidelines.

Three alternatives to the required seabird avoidance measures in this final rule were also considered. The status quo alternative, while posing no additional burden on small entities, would not alter the operations of the hook-and-line fisheries in ways that would significantly reduce the potential for the incidental take of seabirds. It is associated with a heightened chance of fishery closure due to incidental harvest of the endangered short-tailed albatross. Premature fishery closure could be very burdensome for small entities. Although fishery closures were not an alternative to this action considered by the Council, closures could be considered under the Biological Opinion issued under ESA if the incidental take limit is exceeded. The second alternative considered, revisions to existing regulations based on the Council's final action in April 1999, did not specifically address performance and material standards for bird streamer lines. The correct design and deployment of bird scaring lines are known to improve the effectiveness of these seabird avoidance devices. The exemption for vessels under 35 ft (10.7 m) LOA may increase the likelihood of short-tailed albatross takes and consequent fishery closure. Closure could have a substantial adverse impact on small entities. The third alternative considered, revisions to existing regulations based on recommendations from a two-year scientific research study conducted by the WSGP on the effectiveness of seabird avoidance measures used in hook-and-line fisheries off Alaska, would have substantially reduced the likelihood of seabird takes, including takes of the endangered short-tailed albatross, and reduce the potential for fisheries closures. But, it does not mitigate the direct impacts of the regulations on small entities.

The preferred alternative, which is implemented by this final rule, should substantially reduce the likelihood of seabird takes, including takes of short-tailed albatross and reduce the potential for fisheries closures. It does substantially mitigate the direct impacts of the regulations on small entities. The FRFA describes several steps taken in the preferred alternative to minimize the impacts on small entities. As described in Table 2 of the FRFA, ''Several modifications reduce the requirements on some classes of small entities: (1) vessels under 26 feet are exempt, (2) performance and material standards are guidelines for vessels between 26 and 55 feet, (3) vessels 32 feet or less fishing halibut in IPHC area 4E are exempt. The improvements made to the seabird avoidance measures with this final rule are expected to be much greater than with any of the other alternatives that were considered and evaluated.

The Small Business Regulatory Enforcement Fairness Act requires agencies to publish one or more Small Entity Compliance Guides for each rule or group of related rules for which the agency prepares a FRFA. The Small Entity Compliance Guide is to be written in plain language and explain the actions a small entity must take to comply with the rule or group of rules. NMFS has prepared a Small Entity Compliance Guide for this action and it is available at *http://www.fakr.noaa.gov/protectedresources/seabirds/guide.htm.*

The Seabird Avoidance Plan will also serve to aid small entities in that it is written in plain language, contains illustrations of the required seabird avoidance measures, and describes most of the requirements that must be taken to comply with this rule.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0474. Public reporting burden for the Seabird Avoidance Plan is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 31, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons discussed in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

■ 2. In § 679.2 under ''Authorized fishing gear,'' a new paragraph for the definition

of ''snap gear'' is added in numerical order, and the definition for ''Seabird'' is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear * * *

* * * * *

(17) *Snap gear* means a type of hook-and-line gear where the hook and gangion are attached to the groundline using a mechanical fastener or snap.

* * * * *

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

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■ 3. In § 679.5, paragraph (c)(1)(xvii) is revised to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(1) * * *

(xvii) The bird avoidance gear code(s);

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■ 4. In § 679.24, paragraph (e) is revised to read as follows:

§ 679.24 Gear limitations.

* * * * *

(e) *Seabird avoidance program for vessels fishing with hook-and-line gear.*--(1) *Applicability.* The operator of a vessel that is longer than 26 ft (7.9 m) LOA fishing with hook-and-line gear must comply with the seabird avoidance requirements as specified in paragraphs (e)(2) through (e)(4) of this section while fishing for:

(i) IFQ halibut or CDQ halibut,

(ii) IFQ sablefish, and

(iii) Groundfish in the EEZ off Alaska.

(2) *Seabird Avoidance Requirements.* The operator of a vessel described in paragraph (e)(1) of this section must:

(i) *Gear onboard.* Have onboard the vessel the seabird avoidance gear as specified in paragraph (e)(4) 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 (e)(4) of this section that meets performance and material standards as specified in paragraph (e)(5) of this section, while hook-and-line gear is being deployed.

(iv) *Sink baited hooks.* Use hooks that when baited, sink as soon as they are put in the water.

(v) *Offal discharge.* (A) If offal is discharged while gear is being set or hauled, discharge offal in a manner that distracts seabirds from baited hooks, to the extent practicable. The discharge site on board a vessel must be either aft of the hauling station or on the opposite side of the vessel from the hauling station.

(B) Remove hooks from any offal that is discharged.

(C) Eliminate directed discharge through chutes or pipes of residual bait or offal from the stern of the vessel while setting gear. This does not include baits falling off the hook or offal discharges from other locations that parallel the gear and subsequently drift into the wake zone well aft of the vessel.

(D) For vessels not deploying gear from the stern, eliminate directed discharge of residual bait or offal over sinking hook-and-line gear while gear is being deployed.

(vi) *Safe release of seabirds.* Make every reasonable effort to ensure birds brought on board alive are released alive and that, wherever possible, hooks are removed without jeopardizing the life of the birds.

(3) *Seabird Avoidance Plan.* A Seabird Avoidance Plan must:

(i) Be written, current, and onboard the vessel.

(ii) Contain the following information:

(A) Vessel name.

(B) Master's name.

(C) Type of bird avoidance measures utilized.

(D) Positions and responsibilities of crew for deploying, adjusting, and monitoring performance of deployed gear.

(E) Instructions and/or diagrams outlining the sequence of actions required to deploy and retrieve the gear to meet specified performance standards.

(F) Procedures for strategic discharge of offal, if any.

(G) The NMFS ''Seabird Avoidance Plan'' form, completed and signed by vessel operator. Vessel operator's signature shall indicate the operator has read the plan, reviewed it with the vessel crew, made it available to the crew, and has instructed the vessel crew to read it.

(iii) Be made available for inspection upon request by an authorized officer or observer.

(4) *Seabird avoidance gear requirements.* (See also Table 20 to this part.) The operator of a vessel identified in paragraph (e)(1) of this section must comply with the following requirements:

(i) While fishing with hook-and-line gear, including snap gear, in NMFS Reporting Area 649 (Prince William Sound), 659 (Eastern GOA Regulatory Area, Southeast Inside District), or state waters of Cook Inlet:

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 32 ft (9.8 m) LOA with masts, poles, or rigging.

(C) A minimum of a single streamer line as specified in paragraph (e)(5)(ii)(B) of this section must be used by vessels greater than 32 ft (9.8 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(D) A minimum of a single streamer line of a standard as specified in paragraph (e)(5)(ii) of this section must be used by vessels greater than 55 ft (16.8 m) LOA.

(ii) While fishing with hook-and-line gear other than snap gear in Federal waters (EEZ) not including NMFS Area 659, or in state waters not specified in paragraph (e)(4)(i):

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of a single streamer line as specified in paragraph (e)(5)(ii)(B) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(C) A minimum of paired streamer lines of a standard as specified in paragraph (e)(5)(iii) of this section must be used by vessels greater than 55 ft (16.8 m) LOA.

(iii) While fishing with snap gear in the EEZ (not including Area 659) or state waters not specified in paragraph (e)(4)(i):

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(5)(i) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA without masts, poles, or rigging.

(B) A minimum of a single streamer line as specified in paragraph (e)(5)(iv)(B) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater than 26 ft (7.9 m) LOA and less than or equal to 55 ft (16.8 m) LOA with masts, poles, or rigging.

(C) A minimum of a single streamer line of a standard as specified in paragraph (e)(5)(iv) of this section and one other device as specified in paragraph (e)(6) of this section must be used by vessels greater 55 ft (16.8 m) LOA with masts, poles, or rigging.

(iv) While fishing with hook-and-line gear other than snap gear for IFQ halibut, CDQ halibut, or IFQ sablefish, in waters shoreward of the EEZ, requirements as specified in paragraphs (e)(4)(ii) and (e)(8) must be used.

(5) *Seabird avoidance gear performance and material standards:*

(i) *Buoy bag line weather exception.* In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a buoy bag line is discretionary.

(ii) *Single streamer standard.* (A) A single streamer line must:

(*1*) Be a minimum of 300 feet (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 streamers constructed of material that is brightly colored, UV-protected plastic tubing or 3/8 inch polyester line or material of an equivalent density.

(B) *Weather exception:* In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a single streamer line is discretionary.

(iii) *Paired streamer standard:* (A) At least one streamer line must be deployed before the first hook is set and two streamer lines must be fully deployed within 90 seconds.

(B) *Weather exceptions*: In conditions of wind speeds exceeding 30 knots (near gale or Beaufort 7 conditions), but less than or equal to 45 knots, a single streamer must be deployed from the windward side of the vessel. In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of streamer lines is discretionary.

(C) Streamer lines must:

(*1*) Be deployed in such a way that streamers are in the air for a minimum of 131.2 ft (40 m) aft of the stern for vessels under 100 ft (30.5 m) and 196.9 ft (60 m) aft of the stern for vessels 100 ft (30.5 m) or over;

(*2*) Be a minimum of 300 feet (91.4 m) in length;

(*3*) Have streamers spaced every 16.4 ft (5 m);

(*4*) For vessels deploying hook-and-line gear from the stern, the streamer lines must be deployed from the stern, one on each side of the main groundline.

(*5*) 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.

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

(*7*) 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.

(iv) *Snap gear streamer standard:* (A) For vessels using snap gear, a single streamer line must:

(*1*) Be deployed before the first hook is set in such a way that streamers are in the air for 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.

(*2*) Have a minimum length of 147.6 ft (45 m).

(B) *Weather exception:* In winds exceeding 45 knots (storm or Beaufort 9 conditions), the use of a single streamer line is discretionary.

(6) *Other seabird avoidance devices and methods.* As required at paragraphs (e)(4)(ii)(A) and (B) and (e)(4)(iii) of this section, include the following:

(i) Add weights to groundline.

(ii) Use a buoy bag line or single streamer line, of standards as appropriate and as specified in paragraph (e)(5) of this section.

(iii) To distract birds away from the setting of baited hooks, discharge fish, fish parts (i.e. offal) or spent bait.

(7) *Other methods.* The following measures or methods must be accompanied by the applicable seabird avoidance gear requirements as specified in paragraph (e)(4) of this section:

(i) Night-setting,

(ii) Line shooter, or

(iii) Lining tube.

(8) *Seabird avoidance exemption.*

Nothwithstanding any other paragraph in this part, operators of vessels 32 ft (9.8 m) LOA or less using hook-and-line gear in IPHC Area 4E in waters shoreward of the EEZ are exempt from seabird avoidance regulations.

■ 5. In § 679.32, new paragraph (f)(5) is added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(f) * * *

(5) *Seabird avoidance requirements.* The CDQ group, and vessel owner or operator must comply with all of the seabird avoidance requirements at § 679.42(b)(2).

■ 6. In § 679.42, paragraph (b)(2) is revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(b) * * *

(2) *Seabird avoidance gear and methods.* The operator of a vessel using gear authorized at § 679.2 while fishing for IFQ halibut, CDQ halibut, or hook-and-line gear while fishing for IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).

* * * * *

■ 7. In § 679.50, paragraph (g)(1)(viii)(F) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(g) * * *

(1) * * *

(viii) * * *

(F) Collecting all seabirds that are incidentally taken on the observer-sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls.

* * * * *

■ 8. In part 679, Table 19 is revised and Table 20 to part 679 is added to read as follows:

TABLE 19 TO PART 679. SEABIRD AVOIDANCE GEAR CODES

VESSEL LOGBOOK	
CODE	SEABIRD AVOIDANCE GEAR OR METHOD
1	*Paired Streamer Lines*: Used during deployment of hook-and-line gear to prevent birds from taking hooks. Two streamer lines used, one on each side of the main groundline. Each streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(iii).

TABLE 19 TO PART 679. SEABIRD AVOIDANCE GEAR CODES—Continued

VESSEL LOGBOOK	
CODE	SEABIRD AVOIDANCE GEAR OR METHOD
2	*Single Streamer Line*: Used during deployment of hook-and-line gear to prevent birds from taking hooks. The streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(ii).
3	*Single Streamer Line, used with Snap Gear*: Used during the deployment of snap gear to prevent birds from taking hooks. The streamer line consists of three components: a length of line, streamers attached along a portion of the length and one or more float devices at the terminal end. See performance and material standards at § 679.24(e)(5)(iv).

TABLE 19 TO PART 679. SEABIRD AVOIDANCE GEAR CODES—Continued

VESSEL LOGBOOK	
CODE	SEABIRD AVOIDANCE GEAR OR METHOD
4	*Buoy Bag Line*: Used during the deployment of hook-and-line gear to prevent birds from taking hooks. 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. See performance and material standards at § 679.24(e)(5)(i).
	Other Device used in conjunction with Single Streamer Line or Buoy Bag Line.
5	*Add weights to groundline*: Applying weights to the groundline for the purpose of sinking the hook-and-line gear more quickly and preventing seabirds from accessing the baited hooks.
6	*Additional Buoy Bag Line or Single Streamer Line*: Using a second buoy bag line or streamer line for the purpose of enhancing the effectiveness of these deterrent devices at preventing seabirds from accessing baited hooks.

TABLE 19 TO PART 679. SEABIRD AVOIDANCE GEAR CODES—Continued

VESSEL LOGBOOK	
CODE	SEABIRD AVOIDANCE GEAR OR METHOD
7	*Strategic Offal Discharge*: Discharging fish, fish parts (i.e. offal) or spent bait for the purpose of distracting seabirds away from the main groundline while setting gear.
	Additional Device Used
8	*Night Fishing*: Setting hook-and-line gear during dark hours. *Line Shooter*: A hydraulic device designed to deploy hook-and-line gear at a speed slightly faster than the vessel's speed during setting. *Lining Tube*: A device used to deploy hook-and-line gear through an underwater-setting device. *Other* (Describe)
9	No Deterrent Used Due to Weather. [See weather exceptions at § 679.24(e)(5)(i)(B), (e)(5)(ii)(B), (e)(5)(iii)(B), (e)(5)(iv)(B).]
0	No Deterrent Used.

TABLE 20 TO PART 679. SEABIRD AVOIDANCE GEAR REQUIREMENTS FOR VESSELS, BASED ON AREA, GEAR, AND VESSEL TYPE. (SEE § 679.24(E) FOR COMPLETE SEABIRD AVOIDANCE PROGRAM REQUIREMENTS; SEE 679.24(E)(1) FOR APPLICABLE FISHERIES)

If you operate a vessel deploying hook-and-line gear, including snap gear, in inside waters ["NMFS Reporting Area 649 (Prince William Sound), 659 (Eastern GOA Regulatory Area, Southeast Inside District) or in state waters of Cook Inlet"], and your vessel is...	Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...
>26 ft to 32 ft LOA	minimum of one buoy bag line
>32 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line
>32 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line
>55 ft LOA	minimum of a single streamer line of a standard specified at § 679.24(e)(5)(ii)

If you operate a vessel deploying hook-and-line gear, other than snap gear, in the EEZ, not including any inside waters listed above, and your vessel is...	Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...
>26 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line and one other device1
>26 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line and one other device1
>55 ft LOA	minimum of paired streamer lines of a standard specified at § 679.24(e)(5)(iii)

If you operate a vessel deploying hook-and-line gear, in the EEZ, not including any inside waters listed above, and it is snap gear, and your vessel is...	Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...
>26 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line and one other device1
>26 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line and one other device1
>55 ft LOA	minimum of a single streamer line of a standard specified at § 679.24(e)(5)(iv) and one other device[1]

If you operate a vessel deploying hook-and-line gear other than snap gear, in state waters of IPHC Area 4E, and your vessel is...	Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...
>32 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line and one other device1
>32 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line and one other device[1]

If you operate a vessel deploying hook-and-line gear other than snap gear, in state waters of IPHC Area 4E, and your vessel is...	Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...
>55 ft LOA	minimum of paired streamer lines of a standard specified at § 679.24(e)(5)(iii)

If you operate a vessel deploying hook-and-line gear, in state waters of IPHC Area 4E, and it is snap gear, and your vessel is...	Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...
>32 ft to 55 ft LOA and does not have masts, poles, or rigging	minimum of one buoy bag line and one other device[1]
>32 ft to 55 ft LOA and has masts, poles, or rigging	minimum of a single streamer line and one other device[1]
>55 ft LOA	minimum of a single streamer line of a standard specified at § 679.24(e)(5)(iv) and one other device[1]

[1]other device = weights added to groundline, another buoy bag line or single streamer line, or strategic offal discharge [see § 679.24(e)(6) for more details]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030818203–3328–02; I.D. 071503D]

RIN 0648–AR32

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend regulations governing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to provide added flexibility in the deployment of observers in the Exclusive Economic Zone (EEZ) off the coast of Alaska. This action is intended to ensure continued collection of high quality observer data. It is necessary to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) and to promote the goals and objectives contained in those FMPs.

DATES: Effective on February 12, 2004.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA) prepared for this regulatory action and the Environmental Assessment (EA) prepared for the Extension of the Interim North Pacific Groundfish Observer Program beyond 2002 may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228 or *jason.anderson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) in the EEZ under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted, and NMFS approved and implemented, the Interim Groundfish Observer Program (Interim Program) in 1996 (61 FR 56425, November 1, 1996), which superseded the North Pacific Fisheries Research Plan (Research Plan). The requirements of the Interim Program were extended through 1998 (62 FR 67755, December 30, 1997), again through 2000 (63 FR 69024, December 15, 1998), again through 2002 (65 FR 80381, December 21, 2000), and again through 2007 (67 FR 72595, December 6, 2002). The Interim Program provides the regulatory framework for the collection by observers of data necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Further, it authorizes mandatory observer coverage requirements for vessels and shoreside processors, and establishes vessel, processor, and observer provider responsibilities relating to the Observer Program.

A proposed rule to amend regulations governing housing requirements for observers deployed in the groundfish fisheries governed by the FMPs was published in the **Federal Register** on September 3, 2003 (68 FR 52378), for a 30–day public review and comment period which ended October 3, 2003. NMFS received one letter of comment on the proposed rule, which is summarized and responded to in Response to Comments, below.

A final rule to amend regulations governing observer coverage requirements for vessels and shoreside processors in the North Pacific Groundfish Fisheries was published in the **Federal Register** on January 7, 2003 (68 FR 715). The intent of the final rule was to address concerns about: (1) Shoreside processor observer coverage; (2) shoreside processor observer logistics; (3) observer coverage requirements for vessels fishing with groundfish pot gear; and (4) confidentiality of observer personal information. This final rule is intended to correct and clarify specific provisions of the January 7 rule.

Comments and Responses

One letter of comment was received on the proposed rule that contained four unique comments. Comments are summarized and responded to here.

Comment 1: The public should be able to comment on proposed rules through email.

Response: NMFS will begin accepting email comments on February 2, 2004.

Comment 2: Honest observers should be hired and not work in collusion with fishermen.

Response: NMFS has determined that reasonable housing for observers facilitates their ability to furnish unbiased data. Further, regulations at § 679.50(j)(2)(i) describe limitations on conflict of interest. These include requirements that observers must have no direct financial interest in a North Pacific fishery managed by an FMP and may not serve on a vessel owned or operated by someone who had previously employed the observer. Further, regulations at § 679.50(j)(2)(ii) require observers to accurately sample