

(295) New and amended regulations for the following APCD were submitted on February 8, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Tehama County Air Pollution Control District.

(1) Rules 4:31 and 4:37 adopted on January 29, 2002.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000622191-2104-02; I.D. 041700D]

RIN 0648-AO35

Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Measures to Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery

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

ACTION: Final rule; seabird mitigation measures.

SUMMARY: NMFS issues a final rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) that requires owners and operators of all vessels registered for use under a Hawaii longline limited access permit and operating with longline gear north of 23° N. lat. to employ a line-setting machine with weighted branch lines or use basket-style longline gear, and to use thawed blue-dyed bait and strategic offal discards during setting and hauling of longlines. This final rule also requires that the owners and operators of these vessels follow certain seabird handling techniques and annually complete a protected species educational workshop conducted by NMFS. This final rule follows an emergency interim rule published on June 12, 2001, and is being implemented to permanently codify the terms and conditions contained in a biological opinion (BiOp) issued on November 28, 2000, by the U.S. Fish and Wildlife Service (USFWS) and intended to afford protection to the endangered short-tailed albatross. This final rule also implements management measures that were recommended by the Western Pacific Fishery

Management Council (Council) and published in a proposed rule on July 5, 2000. These measures were designed to minimize interactions between seabirds and the Hawaii-based longline fishery.

DATES: This final rule is effective June 13, 2002, except for amendments to §§ 660.35(b)(4)(i), 660.35(b)(6), and 660.35(b)(8), which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval is received, the effective date will be announced in the **Federal Register**.

ADDRESSES: Copies of a final environmental impact statement for the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FEIS) are available from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Copies of an environmental assessment (EA), regulatory impact review and final regulatory flexibility analysis (FRFA) prepared for this action may be obtained from Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Suite 1400, 1164 Bishop Street, Honolulu, HI 96813. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this rule to NMFS, PIAO and to OMB at the Office of Information and Regulatory Affairs, OMB, 725 17th St., NW, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, 808-973-2937.

SUPPLEMENTARY INFORMATION: As discussed in the proposed rule, published at 65 FR 41424, July 5, 2000, Hawaii-based pelagic longline vessels are known to interact in a sometimes fatal manner with black-footed (*Phoebastria nigripes*) and Laysan (*P. immutabilis*) albatrosses. These seabirds follow the longline vessels, dive on the baited longline hooks, and may become hooked and subsequently drown. Although no fishery interactions with the endangered short-tailed albatrosses (*P. albatrus*) have been recorded to date, following the publication of the proposed rule, the USFWS prepared a BiOp for the fishery under section 7 of the Endangered Species Act (ESA) for this species. That BiOp concluded that the Hawaii-based longline fishery was not likely to jeopardize the continued existence of the short-tailed albatross. However, it estimated that the fishery would take 15 short-tailed albatrosses during the 7-year period addressed in the consultation. (For the purposes of this BiOp, the USFWS considered a "take" to include not only injury or

mortality to a short-tailed albatross caused by longline gear, but also any short-tailed albatross striking at baited hooks or mainline gear during longline setting or haulback.)

Based on this assessment, the USFWS BiOp requires NMFS to implement several measures applicable to the owners and operators of vessels registered for use under Hawaii limited access longline permits (Hawaii-based vessels). When making deep sets north of 23° N. lat., these vessels must employ a line-setting machine with at least 45 grams of weight attached within 1 meter of each hook. In addition, all Hawaii-based vessels operating north of 23° N. lat. must use thawed blue-dyed bait and strategic offal discards to distract birds during the setting and hauling of longline gear. Regardless of the area fished, all Hawaii-based vessel operators must follow certain handling techniques to ensure that any short-tailed albatross brought onboard alive is handled and released in a manner that maximizes the probability of its long-term survival (dead short-tailed albatrosses are to be frozen and their carcasses submitted to NMFS upon return to port). Finally, the USFWS BiOp requires that Hawaii-based vessel operators annually complete a protected species educational workshop conducted by NMFS. Although shallow "swordfish-style" setting is currently prohibited by an emergency rule implemented to protect sea turtles (see below), the USFWS BiOp requires that vessel operators making shallow sets north of 23° N. lat. begin setting the longline at least 1 hour after local sunset and complete the setting process by local sunrise, using only the minimum vessel lights necessary. This requirement is not included in this final rule because the prohibition on "swordfish style" shallow set fishing is being undertaken under separate rulemaking to make this measure permanent in compliance with a March 29, 2001, biological opinion issued by NMFS regarding sea turtles. On October 18, 2001, the USFWS amended the USFWS BiOp to allow basket-style longline gear to be set without a line-setting machine or weighted branch lines as data show that this gear has a rapid sink rate that results in few, if any, seabird interactions.

The USFWS BiOp's terms and conditions were implemented by NMFS on June 12, 2001, through an emergency interim rule, which also included sea turtle mitigation measures (FR 66 31561). Public comments were solicited at that time; however, none were received. On December 10, 2001, NMFS extended that emergency interim rule

for another 180 days, through June 8, 2002 (FR 66 63630).

Under the Council's recommended seabird mitigation measures (as described in the July 5, 2000, proposed rule), both vessel owners and vessel operators would have been required to attend annually a protected species workshop conducted by NMFS. In addition, the proposed rule would have required that all seabirds (not just short-tailed albatrosses) be handled and released in a manner that maximizes the probability of their long-term survival. As these two components of the Council's recommendation are more conservative than those in the USFWS BiOp, this final rule combines the terms and conditions of the USFWS BiOp (as previously implemented by the June 12, 2001, emergency interim rule), with the Council's recommendation on seabird handling and workshop attendance requirements. Additional background information on this fishery's interactions with seabirds may be found in the preamble to the proposed rule and is not presented here.

Comments and Responses

Comments on the Council's proposed rule were received from seven individuals.

Comment 1: The rule should not allow vessel operators to decide what mitigation techniques to use (pick list) but should mandate the use of specific techniques.

Response: This final rule does not allow vessel operators to choose mitigation techniques from a pick list. They are required to employ three non-discretionary techniques (blue dyed bait, strategic offal discards, and either basket-style longline gear or a line shooter with weighted branch lines) when fishing north of 23° N. lat. However, vessel operators may choose to use additional mitigation techniques.

Comment 2: NMFS should only require mitigation measures that are scientifically proven.

Response: The seabird mitigation methods in this final rule were studied for their effectiveness in reducing longline gear interactions with seabirds. Both NMFS and a private contractor tested the effectiveness of blue-dyed bait, strategic offal discards, and night setting. Data collected by NMFS observers between 1994–1998 were used to analyze the effectiveness of using a line-setting machine with weighted branch lines. These techniques were found to individually reduce seabird interactions from 40 to 97 percent, with their combined effectiveness anticipated to be at the high end of this range.

Comment 3: NMFS should require fishermen to attach weights of at least 60 grams one meter from each hook on the branch line, because NMFS scientists used 60 grams of weight to achieve a 92-percent reduction in seabird catch.

Response: Although NMFS scientists tested 60 grams of weight, other scientists investigating seabird mitigation techniques have demonstrated that there are diminishing returns to the sink rates of baited hooks with the addition of weights greater than 40 grams. There are safety concerns associated with heavily weighted hooks because they increase the tension on the line. During longline haulback operations the heavily weighted hooks on the tense line can ricochet back onto vessel crew members and cause serious injury or death. Considering that many vessel operators are currently able to safely weight their gear with 45 grams, and that the sink rate would not significantly increase with the addition of more weight, NMFS believes it is unnecessary and potentially dangerous to require fishermen to use 60 grams of weight.

Comment 4: Strategic offal discharge should not be included as a seabird mitigation method because it attracts birds to the vessels and is unenforceable. The rule should also prohibit the discharge of spent bait with hooks, including fish heads with embedded hooks.

Response: NMFS recognizes that there is not universal agreement on the effectiveness of strategically discarding offal to deter seabirds from interacting with longline gear. However, studies of Hawaii-based vessels targeting swordfish have demonstrated that discharging offal strategically decreases the number of seabird interactions by an average of 53 percent and reduces seabird mortalities by as much as 86 percent, when compared with holding all offal onboard during longline operations. NMFS agrees that offal containing hooks should not be discarded and this rule requires the removal of hooks from fish parts, offal, and spent bait prior to its discharge.

Comment 5: Until a study has been completed, NMFS should not advocate the use of blue-dyed bait in combination with strategic offal discharge.

Response: Although specific research on the interactive effects of blue-dyed bait used in combination with strategic offal discharge has not been conducted, there is no information to suggest that their combined use will be any less effective than the use of either method alone.

Comment 6: The rule should apply to Hawaii longline vessels fishing north of 23° N. lat., not only to those north of 25° N. lat.

Response: As required by the USFWS BiOp, as supported by the data on incidental catch of seabirds in the longline fishery, this final rule applies to all Hawaii-based longline vessels fishing north of 23° N. lat.

Comment 7: Longline fishing should be prohibited north of 23° N. lat. within 200 nautical miles (nm) off the NWHI during the first 3 months of the nesting season.

Response: Although not tested simultaneously, the mitigation techniques contained in this rule are each anticipated to reduce seabird interactions by a minimum of 40 to 97 percent, with their combined effectiveness anticipated to be at the high end of this range. Closure of the area suggested would not be expected to further decrease interactions significantly.

Comment 8: Educating owners and operators through the protected species workshops should be mandatory and NMFS should not have the option of waiving this requirement. The workshop requirement should also be extended to crew members and fisheries observers.

Response: Both vessel owners and operators are required to complete annual protected species workshops. However, NMFS needs the flexibility to waive the requirement for protected species workshop attendance in certain circumstances if the waiver is needed for good and justifiable reasons. For example, if the permit holder (longline vessel owner) is a corporation, NMFS should be able to waive the workshop requirement with respect to each of its shareholders with the exception of a representative or designee of the corporation. Although crew members are not required to take the workshop due to the numbers involved and scheduling difficulties, NMFS encourages their attendance on a voluntary basis. The NMFS observer training program ensures that all fishery observers receive adequate training in protected species issues.

Comment 9: NMFS should prohibit the use of lightsticks in the Hawaii longline fishery to protect seabirds.

Response: The emergency interim rule (June 12, 2001) prohibits the possession and use of lightsticks north of the equator, but for the conservation of sea turtles. NMFS observer data do not show that lightsticks are a significant factor in the incidental catch of seabirds in the Hawaii-based longline fishery. However, this prohibition is part of a

separate rulemaking to make this measure permanent in compliance with a March 29, 2001, biological opinion on sea turtles issued by NMFS.

Comment 10: The rule should differentiate between the swordfish and tuna longline sectors in adopting mandatory seabird mitigation methods.

Response: The USFWS BiOp contains different requirements for the two sectors (shallow, nighttime setting swordfish vessels vs. deep daytime setting tuna vessels); however, a June 12, 2001, emergency rule prohibited all shallow setting north of the equator in order to conserve sea turtles. That prohibition is expected to be made permanent because it is one of the mandatory terms and conditions of a March 29, 2001, biological opinion on sea turtles issued by NMFS. Since the shallow-set fishery for swordfish is no longer allowed to operate, there is no need to promulgate regulations to control that fishery.

Comment 11: Standards for maximum lighting brightness should be established for the night setting mitigation method, with all other types of lighting illegal while night setting.

Response: NMFS is not implementing a night setting requirement at this time because shallow, nighttime setting is not expected to resume north of the equator (see response to comment 10).

Comment 12: If longline operators miscalculate sunrise and sunset times, the night setting method would be ineffective.

Response: NMFS is not implementing a night setting requirement at this time (see response to comment 10).

Comment 13: The rule should specifically delineate how enforcement shall occur and include provisions for monitoring the effectiveness of the mitigation methods.

Response: The U.S. Coast Guard (USCG) has indicated that it will enforce the use of seabird mitigation methods by conducting dockside inspections and aerial surveillance of fishing vessels at sea. At dockside and at sea, longline vessels will be checked for required equipment and vessel operators will be asked how and when they intend to employ seabird mitigation methods. Aerial surveillance will be used to observe the fishing process and determine whether line setting machines are being used when making deep sets north of 23° N. lat. To monitor and enforce attendance at the protected species workshops, each workshop participant will be given a completion certificate with their name and photograph, and each vessel's operator and owner must both maintain valid certificates in order to continue fishing.

Comment 14: The appropriate goal for seabird bycatch measures is the elimination of such bycatch entirely.

Response: At this time there is no single seabird interaction mitigation measure, or combination of measures, that would eliminate all seabird interactions with this fishery. However, NMFS intends to continue to research and develop seabird mitigation measures to reduce interactions with seabirds to the maximum extent practicable, as called for in the United Nations Food and Agricultural Organization's International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries.

Comment 15: The rule should include incentives for longline fishermen to participate in research and development programs to evaluate the effectiveness of seabird mitigation measures. There should be a requirement for monitoring mitigation measures on board Hawaii-based longline vessels and there should be research of more effective measures.

Response: Hawaii longline fishery participants have already voluntarily participated in seabird mitigation studies such as the testing of blue-dyed bait, strategic offal discards, and an underwater line-setting chute. In addition, nothing in this final rule prevents vessel operators from experimenting with new methods to reduce interactions with seabirds. The effectiveness of the mitigation measures required by this final rule will be evaluated primarily using data collected by NMFS observers, supplemented with data from the fishery logbooks.

Comment 16: NMFS should require automated, computer-monitored, NMFS-approved vessel monitoring systems (VMS) to be installed on all longline vessels.

Response: Existing NMFS regulations at 50 CFR 660.25 require all Hawaii-based longline fishing vessels to carry automated, computer-monitored VMS.

Comment 17: NMFS should expand the Hawaii longline fishery observer program to reduce the uncertainty regarding the rate of interactions with seabirds and the effectiveness of seabird mitigation methods. Observer coverage should be increased to at least 20 or 25 percent throughout the fishery. Observers should be trained in seabird identification and be required to record all seabird mortality data, mitigation measures employed, and the effectiveness of such measures.

Response: Over the past 15 months, NMFS has increased observer coverage in the Hawaii-based longline fishery to over 20 percent. Observers are currently trained in seabird identification, record seabird mitigation methods employed

on each observed vessel, and note bird abundance while the vessel is setting or hauling its gear.

Comment 18: Operators of longline vessels not carrying observers should record accurate information on the number of birds caught on each set, along with information on the numbers of hooks set, locality of set, time, and date of set. Any dead seabird should be brought aboard the vessel, frozen, and brought to port for identification and study.

Response: As longline vessel operators are already required to record seabird interaction information on NMFS daily longline logbooks, no change is required to meet this request. The collection and further study of dead seabird specimens would contribute to the understanding of how longline fishing operations impact seabird populations. However, because the Migratory Bird Treaty Act limits the importation and transportation of live or dead birds or bird parts without a permit or an exemption from the Act, Hawaii-based fishermen will not be required to bring back to port all dead seabirds brought aboard their vessels. This final rule does require that fishermen retain and bring back any dead short-tailed albatross, an endangered species, brought aboard the vessel. This action is authorized under the Endangered Species Act.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866. On March 30, 2001, NMFS issued an FEIS that analyzes the environmental impacts of U.S. pelagic fisheries in the western Pacific region. That analysis includes the Hawaii-based pelagic longline fishery and was filed with the Environmental Protection Agency; a notice of availability was published on April 6, 2001 (66 FR 18243). In February 2002, the Council prepared an EA on the specific seabird mitigation measures in this rule. That analysis is available from the Council (see **ADDRESSES**).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall a 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 contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act. This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is

estimated at 60 minutes for at-sea notification by a longline vessel operator of a take of a short-tailed albatross, 60 minutes to complete a short-tailed albatross recovery data form, and 30 minutes to complete a specimen tag for a short-tailed albatross. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule to NMFS and OMB (see **ADDRESSES**).

An FRFA that describes the impact this final rule is likely to have on small entities was prepared and is also available from the Council (see **ADDRESSES**). A summary of the FRFA follows.

The need for and objectives of this final rule are stated in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this document and are not repeated here. No comments on the initial regulatory flexibility analysis or the economic effects of this action were received. This final rule will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 660.

All Hawaii-based longline vessels affected by this final rule are considered to be small entities under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of \$3.5 million. Based on the information provided in the FRFA, this final rule will affect all 164 holders of Hawaii limited access longline permits. Most severely impacted will be the owners and operators of those vessels fishing north of 23° N. lat. During the time period which was the focus of the USFWS BiOp (1994–1998), an average of 96 vessels made at least one set north

of 23° N. lat. each year. The distribution of these vessels by set type (deep versus shallow) is difficult to determine, as the majority made at least one set of each type. On average there were approximately 830 deep sets, and 4,100 shallow sets made annually north of 23° N. lat. between 1994 and 1998. The costs associated with this final rule can be categorized as direct (increased fixed or variable costs) or indirect (revenue changes). Because mitigation techniques vary by target, economic impacts follow this same pattern. Compared to the historic baseline (1994–1999, the period examined in the USFWS BiOp), the revenue impact to those vessels utilizing shallow sets north of 23° N. lat. (swordfish and mixed target vessels), is expected to be a gain of \$335 per swordfish set (a 9 percent increase as compared to the 1998 fleet wide average of \$3,724 per set) due to increased catch rates, but a loss of \$598 per mixed target set (16 percent decrease) due to decreases in catch rates. The actual impact on these vessel owners and operators is uncertain, as the current emergency rule to protect sea turtles prohibits these vessels from utilizing shallow sets north of the equator. The anticipated revenue impact to vessels utilizing deep sets north of 23° N. lat. (vessels targeting tuna and the only fishery currently allowed in this area) is expected to be a gain of \$432 per set (12 percent increase). Direct costs for these vessels include \$2,700 annually for the amortized purchase price and maintenance of a line setting machine with weighted branch lines. In addition, this rule is anticipated to increase annual direct costs to operators of all vessels fishing north of 23° N. lat. by up to \$500 for blue dye, and \$400 for containers in which to store offal between sets. The actual net revenue increase/decrease in this fishery cannot be predicted, because of the added constraints to the fishery compared to the baseline period. The impacts of other aspects of this final rule (seabird handling procedures and annual attendance at a protected species workshop) have not been quantified but are expected to be minimal. Four alternatives to this final rule were considered and rejected. The first alternative would have required vessel operators to use at least two of six specified mitigation techniques (pick list) when fishing north of 25° N. lat. The second alternative would have also required the use of two techniques when fishing north of 25° N. lat., but would have left the decision of which two up to the Council. The third alternative would have prohibited

longline fishing north of 23° N. lat. within the waters of the exclusive economic zone around Hawaii, while the fourth alternative was the no-action alternative. Based on the non-discretionary nature of the terms and conditions of the USFWS BiOp, these alternatives were all rejected on the basis that they do not meet the legal requirements of the Endangered Species Act. The amendment of the USFWS BiOp to allow the use of basket-style longline gear is intended to provide mitigation from the negative economic impacts of this final rule as one or more vessels that currently utilize this gear to make deep sets will not be required to refit their vessels to accommodate line shooters.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which the agency is required to prepare an FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides”. The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As a part of this rule making process, a small entity compliance guide (compliance guide) was prepared. Copies of this final rule and the compliance guide will be sent to all holders of Hawaii limited access longline permits. The compliance guide will be available at the following web site: <http://swr.nmfs.noaa.gov/piao/index.htm>. Copies can also be obtained from the PIAO (see **ADDRESSES**).

As previously discussed, on November 28, 2000, the USFWS completed a formal Endangered Species Act section 7 consultation on this fishery. This consultation was amended on October 18, 2001, to allow the use of basket-style gear as an alternative to a line-setting machine with weighted branch lines. The formal consultation concluded that this fishery is not likely to jeopardize the continued existence of the short-tailed albatross. This final rule implements the mandatory terms and conditions of the USFWS BiOp that resulted from that consultation.

List of Subjects in 50 CFR Part 660

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

Dated: May 8, 2002.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

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

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

2. In § 660.12, the definition for “Basket-style longline gear” is added to read as follows:

§ 660.12 Definitions.

* * * * *

Basket-style longline gear means a type of longline gear that is divided into units called “baskets” each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

* * * * *

3. In § 660.22, paragraphs (z) through (dd) are revised and new paragraphs (ee) and (ii) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(z) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep sets north of 23° N. lat., in violation of § 660.35 (a)(1) and (a)(2).

(aa) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access permit north of 23° N. lat., in violation of § 660.35 (a)(3).

(bb) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35 (a)(4), (a)(5), and (a)(6).

(cc) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35 (a)(7) through (a)(9).

(dd) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35 (b).

(ee) Fail to handle seabirds other than short-tailed albatross that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35 (c).

(ff) Own a longline vessel registered for use under a Hawaii longline limited access permit that is engaged in longline fishing for Pacific pelagic management unit species, without a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.36 (a).

(gg) Fish for Pacific pelagic management unit species on a vessel registered for use under a Hawaii limited access longline permit without having onboard a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.36 (d).

(hh) Fail to carry line clippers meeting the minimum design standards as specified in § 660.32(a)(1), and a dip net as required under § 660.32(a)(2), on board a vessel registered for use under a Hawaii longline limited access permit.

(ii) Fail to comply with the sea turtle handling, resuscitation, and release requirements specified in § 660.32(b) through (d), when operating a vessel registered for use under a Hawaii longline limited access permit.

* * * * *

Figure 3 to Part 660 [Removed]

4. Figure 3 to Part 660 is removed.

5. Section 660.35 is added to read as follows:

§ 660.35 Pelagic longline seabird mitigation measures.

(a) *Seabird mitigation techniques.* Owners and operators of vessels registered for use under a Hawaii longline limited access permit must ensure that the following actions are taken when fishing north of 23° N. lat.:

(1) Employ a line setting machine or line shooter to set the main longline when making deep sets using monofilament main longline;

(2) Attach a weight of at least 45 g to each branch line within 1 m of the hook when making deep sets using monofilament main longline;

(3) When using basket-style longline gear, ensure that the main longline is deployed slack to maximize its sink rate;

(4) Use completely thawed bait that has been dyed blue to an intensity level

specified by a color quality control card issued by NMFS;

(5) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel;

(6) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled;

(7) Retain sufficient quantities of fish, fish parts, or spent bait, between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (a)(6) of this section;

(8) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (a)(6) of this section; and

(9) Remove the bill and liver of any swordfish that is caught, sever its head from the trunk and cut it in half vertically, and periodically discharge the butchered heads and livers in accordance with paragraph (a)(6) of this section.

(b) *Short-tailed albatross handling techniques.* If a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit, owners and operators must ensure that the following actions are taken:

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

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

(3) Remove any entangled lines from the bird;

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

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

(ii) If alive, handle the bird in accordance with paragraphs (b)(5) through (b)(10) of this section.

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

(6) Immediately contact NMFS, the Coast Guard, or the U.S. Fish and

Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

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

(8) Complete the short-tailed albatross recovery data form issued by NMFS.

(9) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(4) and (c)(5) of this section, and release the bird only if it meets the following criteria:

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

(ii) Able to breathe without noise;

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

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

(v) Feathers are dry.

(10) If released under paragraph (a)(8)

of this section or under the guidance of a veterinarian, all released birds must be placed on the sea surface.

(11) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water.

(12) Complete the short-tailed albatross recovery data form issued by NMFS.

(c) *Non-short-tailed albatross seabird handling techniques.* If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit owners and operators must ensure that the following actions are taken:

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

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

(3) Remove any entangled lines from the seabird;

(4) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(5) Cut the fishing line as close as possible to ingested or inaccessible hooks;

(6) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(7) After recovered, release seabirds by placing them on the sea surface.

5. Section 660.36 is added to read as follows:

§ 660.36 Protected species workshop.

(a) Each year both the owner and the operator of a vessel registered for use under a Hawaii longline limited access permit must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(c) An owner of a vessel registered for use under a Hawaii longline limited access permit must maintain and have on file a valid protected species workshop certificate issued by NMFS in order to maintain or renew their vessel registration.

(d) An operator of a vessel registered for use under a Hawaii longline limited access permit and engaged in longline fishing, must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

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