

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What Is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

2. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental

health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

3. Is This Rule Subject to Executive Order 13211?

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 4, 2007.

Susan Parker Bodine,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070705262-7266-01]

RIN 0648-AV38

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska, Seabird Avoidance Measures Revisions

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would revise the seabird avoidance measures for the Alaska hook-and-line groundfish and halibut fisheries. The proposed rule would strengthen gear standards for small vessels and eliminate certain seabird avoidance requirements that are not needed or not effective. This action is necessary to revise seabird avoidance measures based on the latest scientific information and to reduce unnecessary regulatory burdens and associated costs.

DATES: Written comments must be received by October 19, 2007.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907-586-7557.
- E-mail: 0648-AV38-SeabirdPR@noaa.gov. Include in the subject line the following document identifier: "Seabird Avoidance PR." E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the addresses stated above or from the Alaska Region NMFS website at <http://www.fakr.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Alaska Region NMFS and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT:

Melanie Brown, 907-586-7228 or email at melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement between Canada and the United States. This agreement, entitled the "Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea Convention," was signed at Ottawa, Canada, on March 2, 1953, and was amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act). The directed commercial Pacific halibut fishery in Alaska is managed under an individual fishing quota (IFQ) program, as is the fixed gear sablefish fishery. The IFQ Program is a limited access management system. This program is codified at 50 CFR part 679.

Background

The purpose of the proposed action is to revise the seabird avoidance measures based on the best available information regarding seabird occurrence and efficient application of the avoidance measures. Seabird avoidance measures reduce the

incidental mortality of seabirds in the hook-and-line fisheries off Alaska. Since 1997, NMFS has implemented and revised seabird avoidance measures to mitigate interactions between the Federal hook-and-line fisheries and seabirds (62 FR 23176, April 29, 1997; 63 FR 11161, March 6, 1998; and 69 FR 1930, January 13, 2004).

Based largely on Washington Sea Grant (WSG) research on seabird avoidance by larger vessels, the seabird avoidance measures include requiring streamer lines on hook-and-line vessels greater than 55 ft (16.8 m) in length overall (LOA) (§ 679.24(e)(4)). These measures mitigate potential adverse effects of hook-and-line fisheries on Endangered Species Act (ESA)-listed seabirds and other seabird species. However, the Council's Scientific and Statistical Committee identified the need for additional study of methods for reducing incidental take of seabirds on small vessels (greater than 26 ft (7.9 m) to less than or equal to 55 ft (16.8 m) LOA), especially those fishing the inside waters of the Gulf of Alaska (GOA). The Council and NMFS have promoted research to improve the efficiency and success of the seabird avoidance measures and to ensure that no unnecessary burdens on fishermen are imposed.

Recent research by the WSG and the Alaska Sea Grant Marine Advisory Program (ASGMAP) has indicated ways of further refining seabird avoidance measures to improve the efficacy of seabird avoidance gear. The WSG and ASGMAP recently completed several research projects including (1) the performance of seabird avoidance gear on small vessels using hook-and-line gear (greater than 26 ft (7.9 m) to less than or equal to 55 ft (16.8 m) LOA); (2) the frequency of observations of seabirds in inside waters of Southeast Alaska, Prince William Sound, and Cook Inlet; and (3) the efficacy of various types of seabird avoidance gear on small vessels. These research projects indicate that seabird avoidance measures may not be needed in Prince William Sound (NMFS Area 649), State of Alaska (State) waters of Cook Inlet, and Eastern GOA Regulatory Area Southeast Inside District (NMFS Area 659) because of the scarcity of seabirds of concern in these areas, particularly albatross and other Procellariiform seabirds. These studies further indicate that smaller vessels fishing in the EEZ should comply with specified standards for seabird avoidance, given both the improved efficacy of measures employing certain standards and the potential overlap of fishing locations with foraging seabirds.

Based on the latest WSG and ASGMAP research, the Council recommended revisions to the seabird avoidance measures. These revisions would eliminate seabird avoidance measures in areas where most seabird species are not likely to occur; and therefore, are not likely to result in reduced seabird mortality. In addition, the revisions would increase seabird avoidance measures for vessels greater than 26 ft (7.9 m) to less than or equal to 55 ft (16.8 m) LOA fishing in the EEZ. Seabird avoidance measures would be increased for these vessels by requiring gear standards. These vessels may encounter seabirds in the EEZ, and the standards are necessary to reduce potential seabird mortality.

Seabird avoidance measures would be eliminated in all of Prince William Sound (NMFS Area 649), all State waters of Cook Inlet, and in most waters of the Eastern GOA Regulatory Area Southeast Inside District (NMFS Area 659). Pelagic seabirds (particularly the ESA-listed short-tailed albatross and other seabird species of concern) are rarely observed in these waters; and therefore, are not likely to interact with hook-and-line fisheries. Three areas adjacent to the EEZ in NMFS Area 659 have had observations of pelagic seabird species and would continue to have seabird avoidance requirements. These areas are further described below.

Eliminating certain unnecessary seabird avoidance measures is intended to remove associated economic burdens on affected vessels. Increased measures for certain small vessels in the EEZ would require specific deployment procedures intended to improve the effectiveness of avoidance devices in reducing seabird bycatch. These revisions are an example of adaptive management using the best available information to focus regulatory requirements where they are needed and to ensure requirements are effective and efficient. Research results and the environmental and economic considerations of the proposed action are in the EA/RIR/IRFA for this action (see **ADDRESSES**).

Regulatory Amendments

In February 2007, the Council unanimously recommended revisions to the seabird avoidance measures. These measures would continue to apply to operators of vessels fishing for (1) Pacific halibut in the IFQ and Community Development Quota (CDQ) management programs in waters from 0 to 200 nm; (2) IFQ sablefish in waters from 0 nm to 200 nm, except waters of Prince William Sound and areas in which sablefish fishing is managed

under a State limited entry program (Clarence Strait, Chatham Strait); and (3) groundfish with hook-and-line gear in the EEZ.

The Council recommended that NMFS request that the State of Alaska Board of Fisheries consider modifying the current State regulations on seabird avoidance for groundfish vessels operating in State waters to match the Federal requirements. This would ensure consistent requirements to avoid seabirds for groundfish vessels operating in State and Federal waters of Alaska.

The proposed rule would revise § 679.24(e) to eliminate redundant paragraphs, match subparagraph citations to the new section structure, and make the text more concise.

Gear Requirements

The proposed rule would revise § 679.24(e)(4)(i) and Table 20 to 50 CFR part 679 to require seabird avoidance gear standards for hook-and-line vessels greater than 26 ft (7.9 m) and less than or equal to 55 ft (16.8 m) LOA fishing in the EEZ as follows:

1. Vessels with masts, poles, or rigging using snap-on hook-and-line gear are required to use standards when deploying one streamer line. The streamer line must be at least 147.6 ft (45 m) in length and must 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. Vessels with masts, poles, or rigging using conventional hook-and-line gear (vessels not using snap-on gear) are required to use standards when deploying one streamer line. The streamer line must be a minimum of 300 ft (91.4 m) in length and must be in the air for a minimum of 131.2 ft (40 m) aft of the stern.

3. Vessels without masts, poles, or rigging and not capable of adding poles or davits to accommodate a streamer line (including bowpickers) must tow a buoy bag line.

The best available scientific information indicates that vessels greater than 26 ft (7.9 m) and less than or equal to 55 ft (16.8 m) LOA are capable of meeting the proposed standards, and that these standards are effective at reducing potential seabird incidental takes.

The proposed rule also would revise § 679.24(e)(4)(i) and Table 20 to 50 CFR part 679 to eliminate seabird avoidance gear requirements for all hook-and-line vessels fishing in Prince William Sound (NMFS Area 649), the State waters of Cook Inlet, and Southeast Alaska

(NMFS Area 659) with certain area exceptions in the inside waters of Southeast Alaska. Three exception areas exist:

1. Lower Chatham Strait south of a straight line between Point Harris (latitude 56°17.25 N.) and Port Armstrong,

2. Dixon Entrance defined as the State groundfish statistical areas 325431 and 325401, and

3. Cross Sound west of a straight line from Point Wimbledon extending south through the Inian Islands to Point Lavinia (longitude 136°21.17 E.).

Maps of these exception areas are in the EA/RIR/IRFA for this action (see **ADDRESSES**) and are available from the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

To prevent potential seabird mortality in the exception areas, hook-and-line vessels would be subject to the same seabird avoidance gear requirements and standards in these exception areas as when fishing in the EEZ. The best available scientific information regarding seabird observations in the State waters of Prince William Sound, Cook Inlet, and Southeast Alaska indicate that ESA-listed seabirds and other seabird species of concern are not likely to occur in these waters, except for the areas listed above in NMFS Area 659. Therefore, the proposed rule would eliminate seabird avoidance measures where seabird mortality is not likely to occur and ensure that they are used in waters where ESA-listed seabirds and seabird species of concern are likely to occur.

Seabird Avoidance Plan

The proposed rule would remove § 679.24(e)(3) and the Seabird Avoidance Plan (SAP) requirement for all vessels. The Council recommended eliminating the SAP requirement based on recommendations from the NOAA Office of Law Enforcement and the NMFS Alaska Region Protected Resources Division. A number of vessels omitted technical SAP violations but were in compliance with the seabird avoidance substantive gear requirements. Because the requirement for a SAP does not seem to impact the use of seabird avoidance gear, removing this requirement should have no effect on seabird mortality.

Other Seabird Avoidance Device

The proposed rule would remove the requirement to use one “other device” (weighted groundline, buoy bag, streamer line, or strategic offal discharge) as described in § 679.24(e)(4)(ii), (e)(4)(iii), (e)(6), and Table 20 to 50 CFR part 679. NOAA

Office of Law Enforcement reports that the “other device” requirement is difficult to enforce, and reduced seabird mortality from the proposed gear standards for small vessels likely would offset any protection lost by removing this requirement.

Weather Exception

The proposed rule would revise § 679.24(e)(5) to allow discretion for vessels more than 26 ft (7.9 m) to less than or equal to 55 ft (16.8 m) LOA to use seabird avoidance devices when winds exceed 30 knots (near gale or Beaufort 7 conditions). The Council raised concerns that the use of seabird avoidance gear on these small vessels in winds exceeding 30 knots may be unsafe because most or all small vessel crew members need to be engaged fully in vessel operations during inclement weather, rather than deploying and retrieving seabird avoidance gear. Information in the EA/RIR/IRFA indicates that seabird foraging activity on hook-and-line gear is likely to decrease with increased wind speeds. Also, streamer lines and buoy bags pose a greater risk of fouling on the fishing gear during high winds. The weather exception would address potential small vessel safety issues related to deploying seabird avoidance gear during high winds and would ensure devices are used when seabirds are more likely to be interacting with hook-and-line gear.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The vessels that are directly regulated by the proposed action fish for groundfish or halibut with hook-and-line gear in the waters off Alaska. The seabird avoidance measures presently in

place, and the alternatives and options considered, apply directly to the operator of a vessel deploying hook-and-line gear in the waters off Alaska. These regulations apply to the operation of a vessel and not directly to the holder of an IFQ for halibut or sablefish unless the holder is also the owner/operator of a vessel. Multiple IFQs may be used on a single vessel. Thus, the IRFA analysis of large and small entities is conducted at the vessel level and not the IFQ level. This analysis is complicated by the fact that the halibut fishery is managed somewhat separately than the Federal groundfish fisheries. Thus, data from multiple sources and years have been used to estimate the numbers of large and small entities.

In 2004, approximately 1,523 vessels participated in the Pacific halibut fishery off Alaska, and 674 vessels participated in the Federal hook-and-line groundfish fisheries off Alaska. Logbook research indicates that 506 of the hook-and-line vessels that caught halibut also harvested groundfish in the waters off Alaska that year. Because of overlap between these two fishery groups, the total count of unique vessels is 1,691.

The IRFA uses actual revenue reported by fishing entities for the year 2005 as compiled and supplied in a comprehensive database by the Alaska Fish Information Network (AKFIN). Vessels were considered small, according to the Small Business Administration criteria, if they had estimated 2004 gross revenues less than or equal to \$4 million, and were not known to be affiliated with other firms whose combined receipts exceeded \$4 million. The analysis revealed that 141 eligible vessels had total gross revenue from all directed fishing sources that was greater than \$4 million in 2005. This implies that, ignoring affiliations, 1,550 vessels could be considered small entities. A review of American Fisheries Act (AFA) permit data revealed that none of the vessels with gross revenue less than \$4 million in 2004 are AFA-permitted vessels. Because AFA affiliations are relatively stable across years, very few of these vessels are large because of AFA affiliations.

The IRFA indicated that this proposed action is not likely to impose significant costs on directly regulated small entities. The action reduces the regulatory burden on some vessels by eliminating all seabird avoidance requirements for vessels operating in State waters of Prince William Sound, Cook Inlet and most of Southeast Alaska. In addition, vessels operating in the EEZ and State waters may benefit by elimination of the need for an other

seabird avoidance device. Vessel operational cost of production data are not presently collected, making it impossible to quantify the net effect on operational costs that might occur under each alternative and option. However, the alternatives and options to the status quo are expected to impose only a slight additional burden, if any. The increased requirement to meet the gear standards for smaller vessels is likely to result in minimal additional costs because these vessels are already using gear manufactured to meet the standards and vessel crew are experienced with using the gear. Any additional costs in training and labor to ensure gear deployment meets the standards would be offset by the reduced costs from no longer being required to deploy the "other device."

Since the initial adoption of seabird avoidance regulations, research has been conducted to more precisely identify the geographical distribution and range of seabirds of concern, and on the efficacy of required seabird avoidance devices. Recent research has addressed whether small vessels can properly deploy seabird avoidance devices, given a small vessel's inherent physical limitations, and whether those devices are effective and necessary. The proposed action, which is partly intended to reduce the economic, operational, and reporting burden placed on small entities operating in these fisheries, is a direct result of this research.

An IRFA must describe any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. Including status quo, this proposed action has three alternatives and three options. Alternative 2 reduces the regulatory burden on small entities by eliminating seabird avoidance measures in the inside waters of Prince William Sound, Cook Inlet, and Southeast Alaska. Alternative 3 reduces the seabird avoidance measures in the same locations except for three areas of the Southeast Alaska inside waters where seabirds of concern have been observed. Both Alternatives 2 and 3 increase the regulatory burden on small entities by requiring vessels more than 26 ft (7.9 m) to less than or equal to 55 ft (16.8 m) LOA to meet gear standards while operating in the EEZ and certain State waters. Options 1 and 2 to Alternatives 2 and 3 reduce the regulatory burden and improve safety by removing the Seabird Avoidance Plan requirement

and providing discretion for using seabird avoidance gear in high winds, respectively. Option 3 would reduce burden by reducing seabird avoidance gear requirements to only a buoy bag line for hook-and-line vessels more than 26 ft (7.9 m) to less than or equal to 32 ft (16.8 m) LOA operating in the EEZ waters of International Pacific Halibut Commission (IPHC) Area 4E. The suboption to Option 3 would further reduce the regulatory burden in IPHC Area 4E by eliminating the seabird avoidance measures for vessels between 26 ft (7.9 m) and 32 ft (16.8 m) LOA.

One of the objectives of the action was to use new information to better protect seabirds of concern while reducing the burden on fishermen. The status quo does not meet the objectives of the action because it does not reflect new information on the range and geographic distribution of seabirds of concern nor does it reflect new research on the efficacy of seabird avoidance devices. The status quo alternative was rejected in part because it imposed a heavier burden on fishing operations. Alternative 2 was rejected because it did not provide for seabird avoidance measures in those State waters of Southeast Alaska with observed ESA-listed seabirds and other seabird species of concern and, thus, did not meet the objectives of the action. Option 3 and its suboption also were rejected because sufficient information was not available to support reducing or eliminating seabird avoidance measures for IPHC Area 4E; and therefore, did not meet the objectives of the action. The Council recommended Alternative 3 with options 1 and 2 because it would meet the objective to use the latest scientific information available regarding seabird occurrence and effective gear standards for small vessels and to reduce regulatory burden, where possible.

The proposed action alleviates the small entity compliance burden by eliminating seabird avoidance measures in certain State waters where seabirds of concern are absent or very rarely present and where many small entities operate. The action also adopts performance standards, rather than design standards in the EEZ and in State waters. The use of performance standards allows flexibility in the type of avoidance gear used while ensuring an acceptable level of avoidance is achieved. The action also bases requirements on vessel capability (e.g., superstructure configuration, vessel length). Basing the requirements on vessel capability ensures that vessel owners are able to meet the seabird avoidance gear requirements without making costly changes to the vessel structure. Further,

the action would eliminate preparation of a seabird avoidance plan, which eases the compliance and reporting requirements for all affected entities, including the large number of small entities that are potentially directly regulated by the proposed action.

No Federal rules duplicate, overlap, or conflict with the proposed action.

This proposed rule would remove a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by Office of Management and Budget (OMB) under Control Number 0648-474. 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 (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

An informal consultation under the Endangered Species Act was concluded for this proposed action on August 8, 2007. As a result of the informal consultation, NMFS determined that fishing activities under this rule are not likely to adversely affect endangered or threatened species or their critical habitat. By requiring gear performance standards for vessels more than 26 ft (7.9 m) and less than or equal to 55 ft (16.8 m) LOA, this proposed action should result in reduced potential for incidental takes of ESA-listed seabirds. Other provisions of this proposed rule would have no effect on ESA-listed species.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: September 13, 2007.

Samuel D. Rauch III

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

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; and Pub. L. 108-199, 118 Stat. 110.

2. Section 679.24 is amended by:

- a. Removing paragraphs (e)(3) and (e)(6).
- b. Redesignating paragraphs (e)(4) and (e)(5) as paragraphs (e)(3) and (e)(4), respectively.
- c. Redesignating paragraphs (e)(7) and (e)(8) as paragraphs (e)(5) and (e)(6), respectively.
- d. Revising paragraphs (e)(1), (e)(2)(i), (e)(2)(iii), and newly redesignated paragraphs (e)(3) and (e)(5).
- e. Adding paragraph (e)(4)(v).

The revisions and additions read as follows:

§ 679.24 Gear limitations.

* * * * *

(e) * * *

(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) and (e)(3) of this section while fishing for:

- (i) IFQ halibut or CDQ halibut,
 - (ii) IFQ sablefish, and
 - (iii) Groundfish in the EEZ off Alaska.
- (2) * * *

(i) *Gear onboard.* Have onboard the vessel the seabird avoidance gear as specified in paragraph (e)(3) of this section;

* * * * *

(iii) *Gear use.* Use seabird avoidance gear as specified in paragraph (e)(3) of this section that meets standards as specified in paragraph (e)(4) of this section, while hook-and-line gear is being deployed.

* * * * *

(3) (See also Table 20 this part.) The operator of a vessel identified in paragraph (e)(1) of this section must comply with the following requirements while fishing with hook-and-line gear for groundfish, IFQ halibut, CDQ halibut, or IFQ sablefish in Federal waters (EEZ) and for IFQ halibut, CDQ halibut, or IFQ sablefish in the State of Alaska waters, excluding NMFS Reporting Area 649 (Prince William Sound), State waters of Cook Inlet, and NMFS Reporting Area 659 (Eastern GOA Regulatory Area, Southeast Inside District), but including waters in the areas south of a straight line at 56°17.25 N. lat. between Point Harris and Port Armstrong in Chatham Strait, State

statistical areas 325431 and 325401, and west of a straight line at 136°21.17 E. long. from Point Wimbledon extending south through the Inian Islands to Point Lavinia:

(i) Using other than snap gear,

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(4)(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 a single streamer line as specified in paragraph (e)(4)(ii) 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 paired streamer line of a standard as specified in paragraph (e)(4)(iii) of this section must be used by vessels greater than 55 ft (16.8 m) LOA.

(ii) Using snap gear,

(A) A minimum of 1 buoy bag line as specified in paragraph (e)(4)(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 a single streamer line as specified in paragraph (e)(4)(iv) 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 as specified in paragraph (e)(4)(iv) of this section must be used by vessels greater than 55 ft (16.8 m) LOA.

(4) * * *

(v) *Weather Safety Standard.* The use of seabird avoidance devices required by paragraph (e)(3) of this section is discretionary for vessels greater than 26 ft (7.9 m) and less than or equal to 55 ft (16.8 m) LOA in conditions of wind speeds exceeding 30 knots (near gale or Beaufort 7 conditions).

(5) *Other methods.* The following measures or methods must be accompanied by the applicable seabird avoidance gear requirements as specified in paragraph (e)(3) of this section:

(i) Night-setting,

(ii) Line shooter, or

(iii) Lining tube.

* * * * *

3. In 50 CFR part 679, Table 20 is revised to read as follows:

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, other than snap gear, in waters specified at § 679.24(e)(3), 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 without masts, poles, or rigging	minimum of one buoy bag line
>26 ft to 55 ft LOA and with masts, poles, or rigging	minimum of a single streamer line of a standard specified at § 679.24(e)(4)(ii)
>55 ft LOA	minimum of paired streamer lines of a standard specified at § 679.24(e)(4)(iii)

TABLE 20 TO PART 679—SEABIRD AVOIDANCE GEAR REQUIREMENTS FOR VESSELS, BASED ON AREA, GEAR, AND VESSEL TYPE—Continued

(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 and use snap gear in waters specified at § 679.24(e)(3), 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 without masts, poles, or rigging	minimum of one buoy bag line
>26 ft to 55 ft and with masts, poles, or rigging	minimum of a single streamer line of a standard specified at § 679.24(e)(4)(iv)
>55 ft LOA	minimum of a single streamer line of a standard specified at § 679.24(e)(4)(iv)

TABLE 20 TO PART 679—SEABIRD AVOIDANCE GEAR REQUIREMENTS FOR VESSELS, BASED ON AREA, GEAR, AND VESSEL TYPE—Continued

(See § 679.24(e) for complete seabird avoidance program requirements; see § 679.24(e)(1) for applicable fisheries)

If you operate a vessel < 32 ft in the State waters of IPHC Area 4E, or operate a vessel in NMFS Reporting Area 649 (Prince William Sound), State waters of Cook Inlet, and NMFS Reporting Area 659 (Eastern GOA Regulatory Area, Southeast Inside District), but not including waters in the areas south of a straight line at latitude 56 deg. 17.25 N between Point Harris and Port Armstrong in Chatham Strait, State statistical areas 325431 and 325401, and west of a straight line at longitude 136 deg. 21.17 E from Point Wimbledon extending south through the Inian Islands to Point Lavinia...	Then you are exempt from seabird avoidance regulations.
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