

m) LOA should be exempted from the seabird avoidance measures when fishing at night from November 1 to April 1.

Summary of Council Recommendations

The Council's recommendations to NMFS for revised seabird avoidance measures are: (1) Seabird avoidance gear requirements would be based on area fished, vessel length, vessel type, and gear type, (2) Specified performance and material standards for the required avoidance measures would be required of larger vessels and suggested as guidelines for smaller vessels, (3) Specified gear would be required to be onboard the vessel, available for inspection upon the request of an authorized officer or observer, and used while hook-and-line gear is being deployed, (4) Measures would apply in specified areas to operators of specified vessels using hook-and-line gear to fish for groundfish or halibut, (5) Offal discharge methods designed to reduce interactions leading to seabird mortalities would be specified, and (6) A Seabird Avoidance Plan, a new reporting requirement, would be required to be onboard the vessel. The Seabird Avoidance Plan is described in more detail later in this preamble. In addition to the Council's recommendation for proposed regulatory revisions, the Council also made recommendations for suggested actions for a comprehensive seabird incidental take reduction program that addresses education, outreach, regulatory compliance, and enforcement. Such a program would improve the effectiveness of seabird avoidance measures at reducing the incidental take of endangered short-tailed albatrosses and other seabird species.

Weather Safety Factor

Council discussion and deliberation of alternative revisions to the seabird avoidance measures indicated support of WSGP recommendations for the larger vessels (greater than 55 ft (16.8m) LOA) and necessary modifications of these measures for smaller vessels (between 26 (7.9 m) and 55 ft (16.8m) LOA). The WSGP final report notes that weather conditions exist in which the vessel captain would not want crew on the buoy deck deploying or adjusting streamer lines, although fishing would still be possible. Included in the WSGP recommendation was a weather safety factor that in winds exceeding 45 knots (storm, or Beaufort 9, conditions), the deployment of streamer lines be discretionary. NMFS clarifies in this proposed rule that this weather safety

factor applies to the deployment of buoy bag lines, single streamer lines, and paired streamer lines. Adverse weather conditions could impact the deployment of gear on vessels regardless of the vessel's size, so, the weather safety factor would be important when considering the deployment of buoy bag lines and single streamer lines (on smaller vessels) just as it would be with the deployment of paired streamer lines (on larger vessels).

Seabird Data Collection by Observers

In addition to the regulatory requirements for seabird avoidance measures, an integral part of the comprehensive seabird avoidance program is collection of data on seabirds by onboard observers. The data currently collected by observers are detailed in the EA/RIR/IRFA prepared for this proposed rule and include a count of the number of seabirds by species that are encountered in the sampled portion of each observed haul. To clarify its intent that these encountered seabird specimens are to be made available by the vessel crew to the observer, NMFS includes an explicit requirement in this proposed rule that all seabirds from the observer-sampled portions of hauls using hook-and-line gear be kept until sampled by the observer or as requested by an observer during non-sampled portions of hauls.

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

In 2001, halibut accounted for the vast majority of fish harvested by these small vessels. It is not known if any of the sablefish harvested by vessels in the 30 to 35 ft (9.1 to 10.7 m) LOA category was harvested by vessels less than 32 ft (9.8m) LOA. Because of the difficulty of using surveillance aircraft to identify the species of fish harvested (e.g. halibut or groundfish), NMFS proposes in this rule to exempt any vessel less than 32 ft (9.8m) LOA fishing in state waters of IPHC Area 4E from using seabird avoidance measures, not just those vessels fishing halibut. NMFS has determined that if additional vessels are exempted by this language, it would not have a significant impact on the take of short-tailed albatrosses or other seabird species.

Vessels Required to Use Seabird Avoidance Measures

The factors potentially affecting seabird hooking and entanglement on hook-and-line gear are complex and 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, it is desirable to consider or account for any of these factors, to the extent possible and practicable. Based on information from the WSGP study, the Council's SSC, several USFWS marine bird surveys, and anecdotal information from the commercial longline fleet off Alaska, the proposed seabird avoidance measures required of vessel operators would vary according to area fished, vessel length, vessel type, and gear type.

The current seabird avoidance regulations apply to operators of federally permitted vessels fishing for groundfish with hook-and-line gear in the GOA and the BSAI, and federally permitted vessels fishing for groundfish with hook-and-line gear in waters of the State of Alaska that are shoreward of the GOA and the BSAI, and to operators of vessels fishing for Pacific halibut in U.S. Convention waters off Alaska. Since the inception of requirements for seabird avoidance measures off Alaska, NMFS has required all hook-and-line vessel operators at risk of incidentally taking short-tailed albatrosses and/or other seabird species to use these measures, regardless of geographic area fished (i.e. EEZ, state waters, inside waters) or target fishery (i.e. groundfish, halibut, IFQ, CDQ). As new information on the necessity of, and methods for, incidental take reduction on small vessels becomes available, the applicability of the requirements could be revised as appropriate.

At its March 2002 meeting, the Alaska Board of Fisheries (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.

Operators of vessels less than 26 ft (7.9m) LOA currently are not required to choose from the seabird avoidance options found at § 679.24(e)(3), i.e., towing a streamer line or buoy, underwater setting, and night setting. Operators of smaller vessels typically set many fewer hooks, set gear at slower speeds, fish closer to shore, and land many fewer fish (therefore, have less and more sporadic offal discharge). These characteristics contribute to attracting fewer birds to their vessels.