

attack rate of Laysan albatrosses actually increased during night-time sets. Similarly, the use of a line shooter (hydraulic device designed to set lines at a speed slightly faster than the vessel's speed during setting) in the 1999 Pacific cod fishery was the only deterrent that significantly increased the rate of seabird incidental catch. Because lining tube performance was variable and limited by a number of factors, and because the device is costly and inappropriate for some vessels, the lining tube was not recommended to be used as a sole seabird avoidance measure. Therefore, under this proposed rule these three measures or methods (night-setting, line shooter, lining tube) would not be allowed for use as sole seabird avoidance measures and if used, must be accompanied by an additional required seabird avoidance measure.

#### **Applicability of Seabird Avoidance Regulations While Fishing for CDQ Halibut**

Paragraphs § 679.32(f)(2)(v) and § 679.42(b)(2) would require 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. At the time the seabird avoidance measures were required in the Pacific halibut fishery (63 FR 11161, March 6, 1998), the fixed gear halibut CDQ allocations were managed as part of the IFQ program and implementing regulations were codified at Part 679 Subpart D (§ 679.40). In 1999, regulations governing halibut CDQ fishing were revised to clarify which elements of the halibut IFQ regulations applied to the halibut CDQ fishery (64 FR 20210 April 26, 1999). These regulations are found at § 679.30 and inadvertently did not include reference to the seabird avoidance gear and methods requirements.

Paragraph § 679.32(f)(2)(v) would be amended by adding the phrase “and seabird avoidance requirements at § 679.42(b)(2)” so that it reads as follows: “The CDQ group, vessel owner or operator, and registered buyer must comply with all of the IFQ prohibitions at § 679.7(f) and seabird avoidance requirements at § 679.42(b)(2)”.

Paragraph § 679.42(b)(2) would be amended by adding the phrase “CDQ halibut” so that it reads as follows: “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).”

#### **Proposed Definitions at § 679.2**

Definitions are proposed at § 679.2 for two previously undefined terms: “snap gear” (as a type of “authorized fishing gear”) and “seabird.” These proposed definitions pertain specifically to seabirds incidentally taken during fishing operations using hook-and-line gear and are necessary for the clarity of the proposed regulations for seabird avoidance measures.

#### **Proposed Respecification of Paragraphs at § 679.24(e)**

Seabird avoidance requirements currently in § 679.24 (e)(2)(i), (ii), and (iii) would be redesignated as paragraphs (e)(2)(iv), (e)(2)(v)(A), and (e)(2)(vi). These requirements will be retained and call for operators of specified vessels to conduct fishing operations in the following manner: (i) use hooks that when baited, sink as soon as they are put in the water; and (ii) if offal is discharged while gear is being set or hauled, it must be discharged 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; and (iii) make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the birds.

#### **Classification**

At this time, NMFS has not determined that the regulatory amendment this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. Most catcher vessels and some catcher/processors harvesting groundfish and halibut off Alaska meet the definition of a small entity under the Regulatory Flexibility Act (RFA). In 2000, the total number of catcher vessels and catcher/processors using hook-and-line gear that caught groundfish off Alaska was 1,004 and 44, respectively. These numbers account for the vessels that operated in both the BSAI and GOA. Of these, approximately 1,006

would be subject to the revised seabird avoidance measures and would be considered to be small entities. In 2000, 1,694 vessels landed halibut from U.S. Convention waters off Alaska, and approximately 1,294 vessels landing halibut would be subject to the revised seabird measures (and assumed to be “small” under RFA criteria).

To the extent that any of these vessels are partners with CDQ groups, the proposed rule 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. To the degree that CDQ vessels can pass along costs to CDQ groups, this would reduce the direct impact on the vessels themselves, but only by redistributing these impacts among the broader universe of “small entities”.

Under the proposed rule, the measures required of all applicable vessels over 26 ft (7.9 m) LOA would 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 albatrosses could be exceeded during longline fishing operations. If the regulatory revisions under the proposed 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 albatrosses 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 albatrosses would depend upon the revised measures, which could range from measures proposed 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