

## Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

### § 64.1200 [Amended]

■ 2. Amend § 64.1200 by removing and reserving paragraph (q).

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 231010-0243]

RIN 0648-BL34

### Pacific Island Fisheries; Modification of Seabird Interaction Mitigation Measures in the Hawaii Deep-Set Longline Fishery

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, NMFS modifies its seabird interaction mitigation measures to require federally permitted Hawaii deep-set longline vessels that set fishing gear from the stern to use a tori line (*i.e.*, bird scaring streamer) in place of the currently required thawed, blue-dyed bait and strategic offal (*i.e.*, fish, fish parts, or spent bait) discharge when fishing above latitude (lat.) 23° N. This action is expected to improve the overall efficacy and operational practicality of required seabird mitigation measures by reducing seabird bycatch and creating operational and administrative efficiency for fishermen and NMFS.

**DATES:** The final rule is effective April 1, 2024.

**ADDRESSES:** Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific are available from the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, telephone 808-522-8220, fax 808-522-8226, or <https://www.wpcouncil.org>.

Copies of the environmental assessment and other supporting documents for this action are available at <https://www.regulations.gov>, or from the Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, 808-522-8220, or <https://www.wpcouncil.org>.

**FOR FURTHER INFORMATION CONTACT:** Lynn Rassel, Pacific Islands Regional Office (PIRO) Sustainable Fisheries, 808-725-5036.

**SUPPLEMENTARY INFORMATION:** NMFS and the Western Pacific Fishery Management Council (Council) manage the Hawaii deep-set longline fishery under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). The implementing Federal regulations for this fishery include a suite of conservation and management requirements. This fishery occasionally catches seabirds; therefore, NMFS implemented a suite of seabird mitigation requirements in 2001 that resulted in the reduction of seabird interactions by 70–90 percent. However, seabird interactions in the Hawaii longline fisheries gradually increased in the subsequent years, with significant increases in black-footed albatross interactions in the deep-set fishery since 2015.

Cooperative research by the Council, the Hawaii Longline Association, NMFS Pacific Islands Fisheries Science Center, and NMFS Pacific Islands Regional Office (PIRO) in 2019–2021 demonstrated that when tori lines are employed in lieu of blue-dyed bait and strategic offal discharge on deep-set longline vessels that set from the stern, albatross making attempts to eat the bait off hooks are 1.5 times less likely, contacts with the bait are 4 times less likely, and captures are 14 times less likely. Furthermore, there is inconclusive evidence that the existing strategic offal discharge requirements reduce seabird interaction risk, and the requirement is associated with heavy administrative burdens to the Pacific Islands Region Observer Program and NOAA Office of Law Enforcement. Similarly, use of blue-dyed bait is burdensome due to the amount of time required to thaw and dye the bait, thawed bait loss from hooks, vessel maintenance costs related to using vats of blue dye, and the administrative burden to monitor and enforce consistent application of blue dye.

To reduce seabird bycatch and improve operational and administrative efficiency, NMFS will require deep-set longline vessels that stern-set to employ a tori line system instead of using thawed, blue-dyed bait and strategic offal discharge when fishing north of lat. 23° N. These measures will modify the requirements implemented at 50 CFR 665.815. NMFS also will require that vessels deploy a tori line system that meets required material, length, and position specifications prior to the first hook being set. We note that this action

will only modify seabird mitigation requirements for the Hawaii deep-set fishery; however, research on mitigation measures is currently underway in the Hawaii shallow-set fishery.

All Hawaii longline vessels will continue to be required to follow other existing seabird handling and release requirements at 50 CFR 665.815(b) and (c) to maximize the chances of post-release survival of seabirds that are caught alive, and to be certified for the completion of an annual protected species workshop conducted by NMFS (50 CFR 665.814). All other measures applicable to longline fisheries under the FEP will remain unchanged. This rule and related tori line design guidelines are consistent with seabird mitigation requirements set forth by the Western and Central Pacific Fisheries Commission and the Inter-American Tropical Tuna Commission (see [https://www.iattc.org/PDFFiles/Resolutions/IATTC/English/C-11-02-Active\\_Seabirds.pdf](https://www.iattc.org/PDFFiles/Resolutions/IATTC/English/C-11-02-Active_Seabirds.pdf) and [www.wcpfc.int/doc/wcpfc15-2018-dp16/seabird-interaction-mitigation-amendment-cmm-2017-06](https://www.wcpfc.int/doc/wcpfc15-2018-dp16/seabird-interaction-mitigation-amendment-cmm-2017-06)).

The rule will also revise 50 CFR 665.802 to clarify prohibitions for vessels with Hawaii longline limited access permits. Specifically, the rule will improve descriptions of which vessels are subject to the prohibitions. The rule will also correct the omission of a prohibition for side-setting (*i.e.*, setting the mainline from the port or starboard side of the vessel at least one meter from the stern) without a bird curtain and weighted branch lines.

You may find additional background information on this action in the preamble to the proposed rule published on October 17, 2023 (88 FR 71523).

### Comments and Responses

On October 17, 2023, NMFS published a proposed rule, an Environmental Assessment (EA), and Regulatory Impact Review (RIR) for public comment (88 FR 71523). The comment period ended on November 16, 2023. NMFS received a comment letter from one nonprofit organization, the American Bird Conservancy (ABC). In general, ABC supported the proposed rule. There were no comments directed at analyses presented in the EA or the RIR. We summarize and respond to ABC's comments here.

*Comment 1:* ABC expressed support for the proposed rule, specifically the use of tori lines in place of the currently required thawed, blue-dyed bait and strategic offal discharge when fishing above lat. 23° N, and the housekeeping correction to reinstate the prohibition for side setting without a bird curtain.

*Response:* NMFS agrees and will continue to sustainably manage and regulate Federal fisheries to minimize bycatch, bycatch mortality, and interactions with protected species, including seabirds, consistent with applicable law.

*Comment 2:* ABC expressed support of a requirement to prohibit offal discharge during setting operations and therefore a preference for Alternative 3 in the EA which includes a modification of, rather than the removal of, the offal discharge requirement to an offal management requirement.

*Response:* The main difference between Alternatives 2 and 3 is whether the updated offal management measure would be implemented through a non-regulatory best practices annual training (Alternative 2) or a regulatory requirement (Alternative 3). As described in detail in EA section 4.2.2, the Council recommended Alternative 2 because it determined that fishing operations in the deep-set longline fishery are already in line with best practices for offal management because offal is not generated during the set. Offal would typically be generated and discharged in the deep-set longline fishery during the haul, and would not be saved for discharge during the set in the absence of the existing strategic offal discharge requirement. Under Alternative 2, fishery participants are not likely to retain offal and spent bait from hauling operations, so there would be no offal or spent bait available during setting operations to discharge. Even without a requirement, offal discharge during setting operations would be an atypical occurrence, and it is not expected to appreciably increase seabird interactions.

Furthermore, regulating best practices under Alternative 3 is associated with an increased administrative burden to monitor and enforce the regulation. Under Alternative 2, best practices will be taught in the protected species workshop, which is required annually for all deep-set longline vessel owners and captains. NMFS will be able to update and adapt the best practices training in accordance with the best scientific information available, in a manner that is more efficient and responsive to evolving science than changing a regulatory requirement. In this way, NMFS will be able to disseminate best practices to the fisheries' participants with less administrative burden and in a timelier manner than through the regulatory process.

This rule as described in EA Alternative 2, achieves the objective by reducing seabird interactions with the

fishery while minimizing unnecessary regulation.

*Comment 3:* ABC recommended encouraging the use of tori lines in the deep-set longline fishery south of lat. 23° N for the sake of providing international leadership.

*Response:* Less than 14 percent of observed seabird interactions have occurred in the deep-set longline fishery south of lat. 23° N and NMFS has determined the risk to seabirds south of lat. 23° N to be low. However, the rule does not prohibit fishers from also using tori lines when they are fishing south of lat. 23° N. NMFS can encourage fishers to use tori lines whenever seabirds are present, regardless of latitude, as a best practice in the protected species workshop training required annually for fishers.

*Comment 4:* ABC encouraged NMFS to request more appropriations for the fisheries observer program to increase coverage to beyond 20 percent in order to better monitor compliance of seabird mitigation requirements.

*Response:* On October 1, 2023, NMFS changed observer coverage in the Hawaii deep-set longline fishery from 20 to 15 percent due to increased program costs and is evaluating options to manage observer efforts moving forward, including assessing alternative long-term options—like electronic technologies—to supplement monitoring and collecting fishery data.

*Comment 5:* ABC provided two more recommendations, which are related to seabirds and the rulemaking process but are not directly related to the subject rule. These recommendations include hastening the rulemaking process to implement new seabird mitigation methods more expeditiously in the shallow set longline fishery and advocating for NMFS's continued support for the Agreement for the Conservation of Albatrosses and Petrels (ACAP).

*Response:* NMFS strives for expeditious rulemaking, and adheres to statutory deadlines specified in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law. Tori line research is currently being conducted in the shallow set longline fishery under an experimental fishing permit issued by NMFS. The results of this research will be presented to the Council and NMFS after the conclusion of the project. NMFS believes that time spent on the research and development of new measures will improve the overall quality and outcome of such measures. We continue to support ACAP.

## Changes From the Proposed Rule

The final rule contains no changes from the proposed rule.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

## Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

This final rule does not contain a collection-of-information requirement and thus requires no review under the Paperwork Reduction Act.

## List of Subjects in 50 CFR Part 665

Fisheries, Fishing, Hawaii, Longline, Seabird mitigation, Pacific Islands, Western Pacific.

Dated: February 26, 2024.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

## PART 665—FISHERIES IN THE WESTERN PACIFIC

- 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

- 2. Amend § 665.802 by revising paragraph (z), adding paragraph (ll), and revising paragraphs (mm) through (qq) to read as follows:

### § 665.802 Prohibitions.

\* \* \* \* \*

(z) Fail to fish in accordance with the seabird take mitigation techniques set forth at § 665.815(a) when operating a

vessel registered for use under a Hawaii longline limited access permit.

\* \* \* \* \*

(ll) Fail to use weighted branch lines or a bird curtain that meets the specifications at § 665.815(a)(1)(i) through (vii) when operating a side-setting vessel that is registered for use under a Hawaii longline limited access permit, when making deep-sets or shallow-sets north of lat. 23° N, or shallow-sets south of lat. 23° N in violation of § 665.815(a)(1).

(mm) Fail to use a line shooter with weighted branch lines to set the main longline, and fail to use a tori line system prior to the first hook being set that meets the specifications of § 665.815(a)(3)(i)(A) through (E) when operating a stern-setting 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 lat. 23° N in violation of § 665.815(a)(3).

(nn) 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 lat. 23° N, in violation of § 665.815(a)(4).

(oo) Fail to maintain and use blue dye to prepare thawed bait when operating a stern-setting vessel registered for use under a Hawaii longline limited access permit when making shallow-sets, in violation of § 665.815(a)(2)(vi) and (vii).

(pp) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a stern-setting vessel registered for use under a Hawaii longline limited access permit when making shallow-sets, in violation of § 665.815(a)(2)(i) through (iv).

(qq) Fail to begin the deployment of longline gear at least 1 hour after local sunset or fail to complete the setting process before local sunrise from a stern-setting vessel registered for use under a Hawaii longline limited access permit while shallow-setting, in violation of § 665.815(a)(2)(v).

\* \* \* \* \*

■ 3. Amend § 665.815 by revising paragraphs (a) introductory text, (a)(2) introductory text, (a)(2)(v) and (viii), and (a)(3) and (4) to read as follows:

**§ 665.815 Pelagic longline seabird mitigation measures.**

(a) *Seabird mitigation techniques.* When deep-setting or shallow-setting north of lat. 23° N or shallow-setting south of lat. 23° N, owners and operators of vessels registered for use under a Hawaii longline limited access permit, must either side-set according to paragraph (a)(1) of this section, or fish in accordance with paragraphs (a)(2) through (4) of this section, as applicable.

\* \* \* \* \*

(2) *Alternative to side-setting when shallow-setting.* Owners and operators of vessels engaged in shallow-setting that do not side-set must do the following:

\* \* \* \* \*

(v) Begin the deployment of longline gear at least 1 hour after local sunset and complete the deployment no later than local sunrise, using only the minimum vessel lights to conform with navigation rules and best safety practices;

\* \* \* \* \*

(viii) Follow the requirements in paragraph (a)(4) of this section, as applicable.

(3) *Alternative to side-setting when deep-setting.* Owners and operators of vessels engaged in deep-setting using a monofilament main longline north of lat. 23° N that do not side-set must do the following:

(i) Employ a tori line system, prior to the first hook being set, that meets the following specifications:

(A) *Length and material.* The tori line must have an aerial section with a minimum length of 50 m (164 ft) and be made of ultra-high molecular weight polyethylene, or other NMFS-approved material that is light-weight, water resistant, low stretch, and floats in water. The tori line must have a drag section made of a 6 millimeters or larger braided material that is water resistant and floats in water. Monofilament nylon is prohibited for use in the aerial or drag sections of the tori line. The tori line must have a minimum total length of 100 m (328 ft).

(B) *Streamer configuration.* The aerial section of the tori line must have light-weight material (hereafter referred to as streamers) that are attached to the aerial section at intervals less than 1 m (3.3 ft)

apart. Each streamer must have a length of at least 30 cm (11.8 in) from its attachment point to the tori line so that it hangs and moves freely/flutter in the wind. Where a single streamer is either threaded through or tied to the tori line, each length must measure at least 30 cm (11.8 in). Streamers are not required for the last 20 m (65.6 ft) of the aerial section to minimize entanglements with buoys and fishing gear.

(C) *Number.* Two tori lines meeting the specifications in paragraphs (a)(3)(i)(A) and (B) of this section must be present on the vessel at the start of every trip.

(D) *Attachment point and material.* The aerial section of the tori line must be attached to the vessel or a fixed structure on the vessel made of rigid material. A weak link must be placed between the tori line and the point of attachment so that the tori line will break away from the point of attachment if gear entanglement creates tension on the tori line. The attachment point must have a minimum height of 5 m (16.4 ft) above the water when the attachment point is located within 2 m (6.6 ft) of the vessel stern. When the attachment point is more than 2 m (6.6 ft) from the stern, the attachment point height must be increased by 0.5 m (1.6 ft) for every 5 m (16.4 ft) distance from the stern.

(E) *Attachment point height exemption.* If the structure used to attach the tori line breaks during a trip, the operator may use an alternative attachment point at the highest possible point on the vessel that is lower than the height specified in paragraph (a)(3)(i)(D) of this section to continue fishing north of lat. 23° N. The exemption is only valid during the trip in which the structure broke.

(ii) Employ a line shooter.

(iii) Attach a weight of at least 45 g (1.6 oz) to each branch line within 1 m (3.3 ft) of the hook.

(4) *Basket-style longline gear requirement.* When using basket-style longline gear north of lat. 23° N, owners and operators of vessels that do not side-set must ensure that the main longline is deployed slack to maximize its sink rate.

\* \* \* \* \*