


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver   
Executive Director

DATE: September 26, 2007

SUBJECT: Seabird Interactions

ESTIMATED TIME 1 HOUR
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**ACTION REQUIRED**

Receive Update on Seabird Avoidance Measures for IPHC Area 4E

**BACKGROUND**

At the February 2007 meeting, the Council approved a revision to seabird deterrence regulations in the hook and line fisheries in the Alaskan EEZ. The Council's motion stated that, for inside waters, which include southeast Alaska, Prince William Sound, and Cook Inlet, use of seabird deterrence will not be required. Waters not considered "inside" include the entire EEZ and three areas of southeast Alaska: outer Chatham Strait, Dixon Entrance, and outer Cross Sound. In these waters, the use of seabird deterrence devices by all hook and line vessels will continue to be required but performance standards for small vessels (>26 ≤55 ft LOA) will change, depending on vessel rigging and vessel length. The Council also approved eliminating the "other device" requirement and the seabird avoidance plan, and imposed a provision for discretionary use of seabird deterrence by small vessels in high wind conditions. The Council's motion is attached as Item D-1(e)(1). The Proposed Rule was published in the Federal Register on September 19, 2007 (see Item D-1(e)(2)).

As part of the motion, the Council requested an analysis of a trailing amendment to exempt small vessels from seabird deterrence regulations in IPHC Area 4E. This request was based on public comments that the small boat fishery in this area rarely encounters seabirds, and that use of deterrence devices is difficult given the type of boats used. Available data provided in the EA/RIR/IRFA suggested that exempting all or part of Area 4E might be appropriate, but an analysis of new short-tailed albatross satellite tagging data would be required to better inform such a decision. The Council requested that this analysis be conducted.

Staff have proceeded with that analysis, and have developed a preliminary draft set of alternatives for Council review and comment. A short discussion paper that outlines several possible alternatives is attached as Item D-1(e)(3). After Council review, staff will proceed; the Council is scheduled to receive the draft trailing amendment analysis for initial review at its February 2008 meeting.

**C-3: Seabird Interactions: Final Action**

Alternative 3: Revise seabird avoidance measure requirements as follows:

A.) 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 the following exceptions in the inside waters areas of SE Alaska where hook-and-line vessels would be subject to the same seabird avoidance gear requirements and standards as when fishing in the EEZ:

- 1.) Area in lower Chatham Strait south of a straight line between Point Harris (latitude 56.17.25 N) and Port Armstrong.
- 2.) Area in Dixon Entrance defined as ADF&G groundfish statistical areas 325431 and 325401.
- 3.) Area in Cross Sound west of a straight line from Point Wimbledon extending south through the Inian Islands to Point Lavinia (136.21.17 E).

B.) Require standards of hook-and-line vessels fishing in the EEZ as follows:

- 1.) Vessels >26 and <=55 LOA with masts, poles, or rigging using snap-on hook-and-line gear are required to deploy one streamer line while setting gear. Specifically, the streamer line must be at least 45 m long and must be maintained with a minimum aerial extent of 20 m.
- 2.) Vessel >26 and <=55 LOA with masts, poles, or rigging not using snap-on hook-and-line gear (conventional gear) are required to deploy one streamer line while setting gear. Specifically, the streamer line must be at minimum of 90 m long and must be maintained with a minimum aerial extent of 40 m.
- 3.) Vessels >26 and <=55 LOA without masts, poles, or rigging and not capable of adding poles or davits to accommodate a streamer line (including bowpickers) must tow a buoy in such a way to deter birds from the sinking groundline, without fouling on the gear, while setting hook-and-line gear.
- 4.) All vessels using hook-and-line gear in the EEZ formerly required to “*use one other device*” are no longer required to use a second seabird avoidance measure (adding weight, deploying a second streamer line or buoy or strategic offal discharge).
- 5.) Eliminate the Seabird Avoidance Plan (SAP) requirement for all vessels.

- 6.) Weather Safety Standard: Use of seabird avoidance devices would be discretionary for vessels >26' to <=55' LOA when winds exceed 30 knots.

**Statement of Council Intent on Performance Standards in Seabird Avoidance Regulations for Vessels <=55' LOA Using Hook-and-Line Gear**

The intent of the performance standards is to ensure correct use of the seabird avoidance devices. The Council recognizes that it is likely that variation from the objective performance standards will occur in the normal course of fishing operations. The Council also recognizes that many of the objective performance standards may be measured subjectively by enforcement personnel and observers.

The Council recommends that enforcement personnel and observers work cooperatively with vessel operators to ensure compliance with the performance standards by using education and warnings (to the extent practicable) prior to issuing a citation or an affidavit attesting to non-compliance of performance standards. The Council recommends that enforcement and observers take the following into consideration in evaluation of compliance with performance standards:

- Given the context and setting, it is likely that minor variations from the objective performance standards may not warrant an enforcement action.
- More blatant, intentional, and egregious violations could justify an enforcement action.

These considerations for vessels are to apply to the weather standard rule, the performance standards for airborne streamer distance, and distance off the groundline.

**Coordination with the State of Alaska:** The Council would request that the State of Alaska Board of Fisheries consider modifying the current state regulations on seabird avoidance requirements to be consistent with the revisions adopted by the Council in this action.

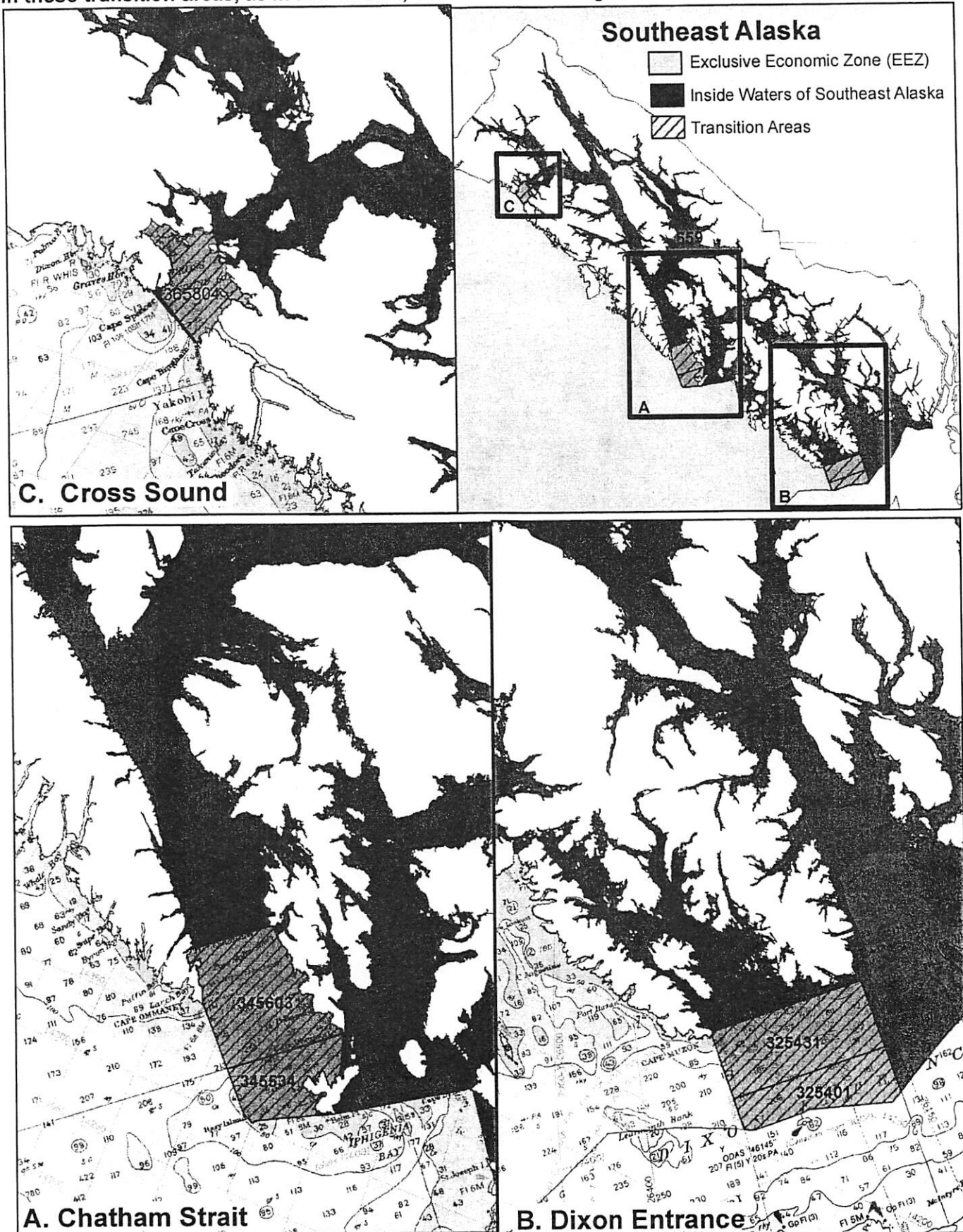
**Area 4E:** Move the AP motion language

AP motion:

Additionally, the AP recommends the Council identify the removal of seabird avoidance measures in 4E and potential subareas within as a trailing amendment to be reviewed upon staff's spatial analysis (i.e. krieging of satellite telemetry data and incorporation of other pertinent data) for its consideration for use of mitigation measures within 4E to both protect endangered seabirds and reduce restrictions imposed on fishermen where they may not be applicable.

Figure 2. NPFMC Motion (February 2007)

In these transition areas, as in EEZ waters, seabird avoidance gear and standards are required.



In Chatham Strait, the transition area is defined as all waters inside ADF&G groundfish statistical areas 345603 and 345534 south of straight line between Point Harris (latitude 56.17.25 N) and Port Armstrong.

In Cross Sound, the transition area is defined as all waters inside ADF&G groundfish statistical areas 365804 west of a straight line from Point Wimbledon extending south through the Inian Islands to Point Lavinia (136.21.17 E).

**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.  
[FR Doc. E7-18154 Filed 9-18-07; 8:45 am]  
BILLING CODE 6560-60-P

**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](mailto: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](mailto: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. 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](mailto: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.

**Draft Discussion Paper on Seabird Protection Measures Alternatives in Area 4E**  
DRAFT 9/26/07

**Introduction**

In February 2007, the NPFMC approved changes to seabird avoidance requirements for certain vessels fishing in inside waters where the presence of Endangered Species Act (ESA) listed seabirds appears to be negligible. The Council's February 2007 action (see Table 1-1 and Figures 1 and 2 of the previous EA document) was based on an EA/RIR/IRFA which included new data from the USFWS on STAL distribution in the BSAI. The Council's action specified that, for inside waters, which include SE AK, PWS, and CI, use of seabird avoidance will not be required. Waters not considered "inside" include the entire EEZ and three areas of southeast Alaska: outer Chatham Strait, Dixon Entrance, and outer Cross Sound. In these waters, the use of seabird avoidance devices by all hook and line vessels will continue to be required but performance standards for small vessels (>26 ≤55 ft LOA) will change, depending on vessel rigging and vessel length. The Council also approved eliminating the "other device" requirement and the seabird avoidance plan.

As part of the February 2007 action, the Council asked for an analysis of relaxing seabird avoidance measures in 4E and potential subareas within as a trailing amendment. The Council requested staff to use spatial analysis of available STAL data (i.e. krieging of satellite telemetry data and incorporation of other pertinent data) to help define areas within Area 4E where STAL are not likely to occur and thus where requirements for seabird avoidance measures might be relaxed.

Local hook and line fishermen are interested in relaxing seabird deterrence requirements in the EEZ waters of Area 4E. The main fishery in these waters is a small boat halibut fishery. Vessels used are generally small and harvest small amounts of halibut at a slow rate. Gear is set manually, and the use of buoy bags or other deterrence devices likely would be unwieldy to deploy, and may be dangerous in harsh weather. Seabird attraction to this small boat fishery is minimal, and the probability of encounters with STAL in parts of Area 4E is small. Thus, the costs to deploy seabird deterrence measures in parts of Area 4E may be high and the protection afforded by such measures may be unnecessary.

This discussion paper reviews available data for looking at potential fishing interactions with STAL in IPHC Area 4E and provides a draft set of alternatives for an analysis that could provide relief from using seabird avoidance measures to vessels fishing where the likelihood of interaction with STAL is low.

**Draft Alternatives Set – Also see attached table**

**1. Status Quo for vessels greater than 26 ft LOA in Area 4E:**

- a. Vessels less than 55 ft LOA with masts, poles, or rigging using snap-on hook-and-line gear are required to deploy one streamer line while setting gear. Specifically, the streamer line must be at least 45 m long and must be maintained with a minimum aerial extent of 20 m.
- b. Vessels less than 55 ft LOA with masts, poles, or rigging not using snap-on hook-and-line gear (conventional gear) are required to deploy one streamer line while setting gear. Specifically, the streamer line must be at minimum of 90 m long and must be maintained with a minimum aerial extent of 40 m.
- c. Vessels less than 55 ft LOA without masts, poles, or rigging and not capable of adding poles or davits to accommodate a streamer line (including bowpickers) must tow a buoy in such a way to deter birds from the sinking groundline, without fouling on the gear, while setting hook-and- line gear.
- d. Vessels less than or equal to 32 ft LOA in IPHC area 4E shoreward of EEZ (inside 3 nm) are currently not required to use seabird avoidance measures.
- e. Vessels greater than 55 ft LOA with snap-on gear are required to use one streamer line that meets the standard. Vessels greater than 55 ft LOA with other than snap-on gear are required to use paired streamer lines with standard.

**2. EXEMPTION IN NON-STAL AREA FOR <32' VESSELS: Maintain status quo seabird protection measures except that vessels less than 32 ft LOA are not required to use seabird avoidance measures in area 4E. One of the following options would continue to require seabird avoidance measures in the STAL subarea of 4E:**

Option 1. Vessels fishing in the STAL subarea of 4E are required to use seabird avoidance regulations as detailed in alternative 1, above.

Option 2. EXCEPT: Vessels fishing in the STAL subarea of 4E are required to use only a buoy bag to deter seabirds.

**3. EXEMPTION IN NON-STAL AREA FOR 26-55' VESSELS: Maintain status quo seabird protection measures except that vessels greater than 26 and less than or equal to 55 ft LOA are not required to use seabird avoidance measures in area 4E. One of the following options would continue to require seabird avoidance measures in the STAL subarea of 4E:**

Option 1. EXCEPT: Vessels fishing in the STAL subarea of 4E are required to use seabird avoidance regulations as detailed in alternative 1, above.

Option 2. EXCEPT: Vessels fishing in the STAL subarea of 4E are required to use

a buoy bag to deter seabirds.

4. EXEMPTION IN NON-STAL AREA FOR ALL VESSELS OVER 26': Seabird avoidance measures are not required in area 4E, except as required by one of the following options:

Option 1. Vessels fishing in the STAL subarea of 4E are required to use seabird avoidance regulations as detailed in alternative 1, above.

Option 2. Vessels fishing in the STAL subarea of 4E are required to use only a buoy bag to deter seabirds.

### **Datasets Available for Analysis**

There are several datasets to explore in this analysis. The research conducted by Ed Melvin (Washington Sea Grant), described in the previous seabird avoidance measures EA, reports locations of STAL during their systematic surveys. They report STAL on the continental shelf break in the Bering Sea. The IPHC 2006 summer survey reported no observations of STAL in area 4E, and fewer seabirds in general in 4E. Similarly, the North Pacific Pelagic Seabird Database shows no opportunistic sightings of STAL in area 4E. A more cumulative dataset of opportunistic sightings maintained by the USFWS reports several STAL sightings near the southern portion of IPHC area 4E, and 2 near St. Lawrence Island. Research from Oregon State University (Suryan et al), discussed in the previous EA document, shows satellite tag locations of STAL throughout Alaskan waters; tag locations inside or very near area 4E are reported for 3 birds.

Data on amount of hook and line (HAL) effort inside IPHC area 4E, by target species, by vessel size, by season, by ADF&G groundfish statistical area is available in NMFS regional datasets. This will explain the spatial and temporal distribution of the HAL effort in this area in order to see what overlap with STAL habitat usage may occur. See Figure 1 for DRAFT example.

### **Fishing Harvest and Seabird Avoidance Measures Required in IPHC Area 4E**

Currently, vessels less than 32 ft LOA fishing with HAL gear in waters shoreward of the EEZ of IPHC Area 4E (i.e. 0 to 3 nm) are exempt from the use of seabird avoidance measures. When fishing in the EEZ of IPHC Area 4E, however, vessels 26-32 ft with masts, poles, or rigging will be required (under the newly revised seabird avoidance measures) to use a streamer line with performance standards. If vessels without masts, pole, or rigging are not capable of adding poles or davits to accommodate a streamer line, then they would be allowed to use a buoy bag line for seabird avoidance.

HAL effort in IPHC Area 4E comes primarily from vessels fishing for CDQ halibut. In 2005, 45 vessels from 26-30 ft LOA and 21 vessels from greater than 30 ft to 35 ft LOA

landed halibut (NMFS data query, RAM Division). The vessels between 26 and 32 ft LOA have a low total effort and deploy gear at low setting speeds. In the most recent two years, total effort in IPHC Area 4E has been less than one percent of the total halibut harvested in all areas, Table 1.

**Table 1: Halibut Catch in 4E compared to Total Catch for 2005 and 2006.**

<b>Halibut Landed Catch (pounds)</b>	<b>2005</b>	<b>2006</b>
Total catch in Area 4E	363, 842	354,314
All CDQ Catch – all areas	2,043,262	1,908,673
All IFQ Catch – all areas	55,192,929	52,217,429
Total Halibut (CDQ + IFQ)	57,236,191	54,126,102
4E catch as a percent of CDQ halibut catch	17.81%	18.56%
4E catch as a percent of total halibut	0.635%	0.655%

In general, small vessels (less than 32 feet) discharge less offal, have fewer baited hooks, and generally attract fewer seabirds than larger vessels, so interactions are less common.

The Bristol Bay CDQ fleet of 33 registered halibut CDQ vessels has a 32 foot limit on all 4E halibut vessels to coincide with the length limits on Bristol Bay salmon drift vessel lengths. Most fishermen prosecute the halibut resource between spring herring fisheries and summer salmon fisheries. These vessels mainly use snap-on gear, and set it at maximum speeds near 4 knots (pers. com. Andy Ruby), so the gear sinks quickly and affords seabirds less chance to interact with fishing gear (as described in chapter 3). Vessels fishing in Togiak are mainly 26 to 28 foot bowpickers with outboard motors.

The Norton Sound CDQ fleet had fewer than 10 fishermen participating in 2006, with all but one using snap gear (pers. com. Simon Kinneen). They use a setting speed of 3-4 knots. Most vessels are 32 feet, with the largest vessel in the fleet being 42 ft LOA. These vessels fish outside of state waters, and those with masts, poles, or rigging fishing in the EEZ are currently required to use a streamer line. Those without masts, poles, or rigging, are currently required to use a buoy bag line.

The Coastal Villages Region Fund CDQ fleet is relatively new to commercial fishing. They use average setting speeds of 2-4 knots (pers. comm. Robert Williams). In 2006, 65% of their halibut CDQ landings were caught with jig gear, and only 35% (84,000 pounds) with hook-and-line gear. Most of their landings occur outside of state waters.

Based on a query of the NMFS-RAM database, at most 66 vessels (26-35 ft LOA) landed halibut in IPHC Area 4E in 2005. Thus, 66 vessels could be impacted by the new seabird regulations that will be in place in early 2008.

The small boat (26-32 ft LOA) IPHC Area 4E halibut fishery is still in its development stages. These small vessels have few crew members and any further restrictions,

requirements, or operational costs could make this fishery cost prohibitive and/or unsafe to prosecute (pers. Comm.. Andy Ruby and Robert Williams). Some minimal costs in materials, crew training, and maintenance would be associated with a new streamer line requirement and standard. Also, there is limited space on board these smaller vessels to safely store, deploy, and maintain gear. Deployment of seabird avoidance gear with small crews in harsh Bering Sea weather could also be considered a safety concern on small vessels. Disentangling streamer lines is very dangerous while setting gear in windy, volatile seas, and buoy bags in cross currents can drag small vessels in the direction of the bag (pers. com R. Williams).

Of the 66 small vessels landing halibut in IPHC Area 4E in 2005, it is not known how many fish in the EEZ or how many do not have masts, poles, or rigging or the ability to accommodate a pole or davit from which to deploy a streamer line. Those that fish shoreward of the EEZ (i.e. 0-3 nm) are already exempt from seabird avoidance requirements (§679.24(e)(8)). Those vessels that do not have masts, poles, or rigging or the ability to accommodate a pole or davit from which to deploy a streamer line will only be required to deploy a buoy bag line, not a streamer line. Those vessels that do have masts, poles, or rigging will be required to use a streamer line of a specified standard according to the new seabird regulations in place in 2008. The alternative set in this analysis could provide relief from the use of seabird avoidance measures in IPHC area 4E.

#### **STAL in 4E and the Bering Sea**

The 2006 IPHC stock assessment survey documented any interactions with seabirds at all survey stations. In IPHC Area 4E, no birds of conservation concern (those listed under the ESA or on other international endangered or vulnerable lists) were observed. Northern fulmars, black-legged kittiwakes, and some unidentified shearwaters were observed in the survey in this area. In addition, fewer total seabirds were observed in this IPHC management area than any other area (Table 2) (pers.comm. Tracee Geernaert). Appendix II show observations of seabird species in available datasets. IPHC Area 4E fishermen report no sightings of albatross species or any problems with seabird interactions (pers. Comm., Andy Ruby).

**Table 2: Numbers of Seabirds Observed in IPHC 2006 Survey in Alaska.**

IPHC Area	Numbers of Observed Seabirds	Numbers of Counts
2C	1,140	122
3A	13,468	372
3B	20,946	229
4A	8,596	117
4B	7,038	89
4C	1,799	25
4D	9,253	92
4E	227	22
Closed Area	631	17

Satellite tracking studies by Suryan (Oregon State University) and colleagues document 2 short-tailed albatrosses observations in IPHC Area 4E: one in 2003, and one in 2006, both in August, in the Eastern Bering Sea between the Pribilof Islands and Kuskokwim Bay. See section 3.5.5 of the previous EA for details of the short-tailed albatross satellite tagging study. Halibut fishing has been very minimal in this area in August in recent years, and the majority of short-tailed albatross locations were in the southern portion of IPHC Area 4E and farther from shore than most of the hook-and-line vessels that operate in this large area. Satellite tags from 2007 show no occurrences in area 4E (Figure 3).

Piatt et al (2006) discuss oceanic areas of seabird concentrations; they explain that STAL hotspots are characterized by vertical mixing and upwelling caused by currents and bathymetric relief and which persist over time. The continual upwelling brings food to the surface and, thus, draws predators back for repeated foraging, especially Albatross species which forage at the surface due to their limited diving ability (Hyrenback et al, 2002). Similar findings in Byrd et al (2005) confirm the frequent presence of surface-feeding piscivores near the medium and large passes that create the bathymetric conditions for vertical mixing and upwelling. These STAL hotspots occur most frequently in shelf-edge habitats in the Gulf of Alaska and Bering Sea, and at passes in the Aleutian Islands.

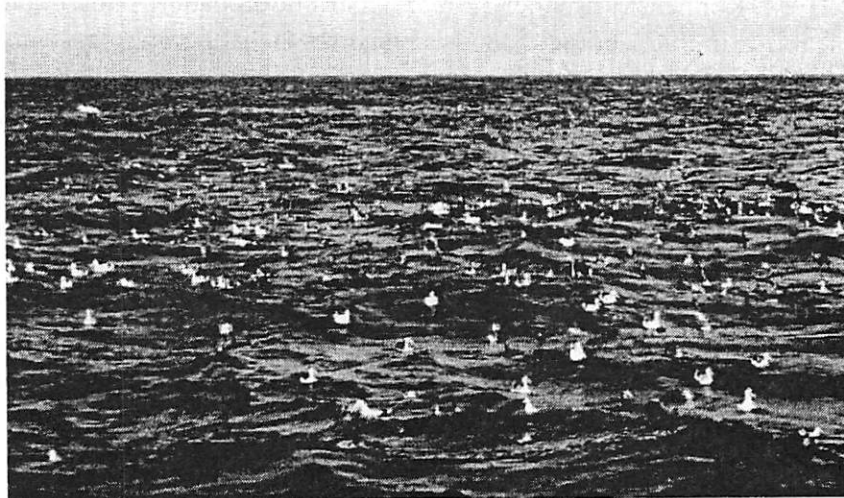
In the context of this analysis, the pertinent STAL hotspots in the Bering Sea are located along the Zhemchug, St Matthew, and Pervenets canyons along the continental shelf (Figure 2). Piatt et al report large groups (10-136 birds) of STAL concentrated along the Bering Sea canyons and call attention to a 2004 STAL flock sighting where approximately 10% of the world's population gathered at one hotspot near Pervenets canyon. Note that these canyons are well outside the boundary of IPHC area 4E (Figure 1).

One of the last documented incidental takes of a short-tailed albatross occurred on a large freezer-longliner vessel that was using a buoy bag line as a seabird avoidance measure. The take occurred in September 1998 in the Bering Sea (57.30 N, 173.57W) and NMFS interviews of the fishery observer onboard indicated that the buoy bag line was set from the stern off to the side (10 to 20 ft) and extended back for only 50 to 75 ft. The groundline with baited hooks was seen to be resurfacing about 150 ft back from the stern. This suggests that the buoy bag line was not adequately protecting the vulnerable zone where baited hooks are accessible to seabirds prior to sinking to fishing depth, thus was ineffective and resulted in an endangered short-tailed albatross being accidentally caught. In 1998, the use of buoy bag lines by larger vessels was an allowable seabird avoidance measure under the regulations at that time (e.g. Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks). When regulations were revised in 2004, the use of a buoy bag line was no longer allowed as an acceptable seabird avoidance measure on large vessels over 55 ft LOA. The allowable use of a buoy bag line was restricted to smaller vessels (26-55 ft LOA) that did not have the masts, poles, or rigging necessary to deploy streamer lines. Further, the proposed rule for this action (68 FR 6386 February 7, 2003) suggested voluntary guidelines for small vessels using buoy bag lines: a buoy bag line (32.8 to 131.2 ft (10 to 40 m) length) is deployed so that it is within 6.6 ft (2 m) horizontally of the point where the main



groundline enters the water; the buoy bag line should extend beyond the point where the main groundline enters the water.

Proposed methods for analysis will be presented in December.



*September 2004 sighting of STAL flock off Pervenets Canyon in the Bering Sea.*

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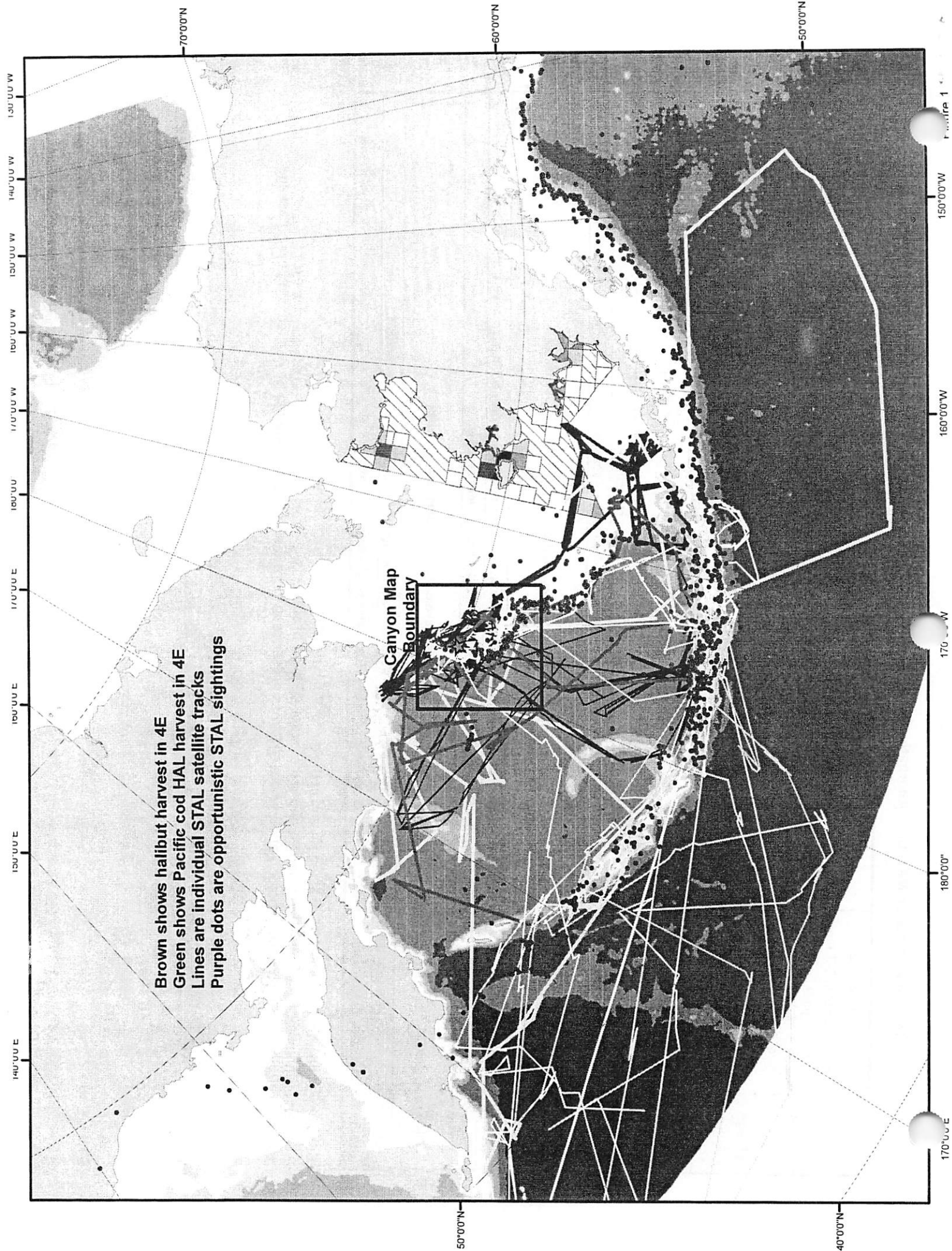
Seabird Avoidance Measures Alternatives for Hook and Line Gear in IPHC Area 4E for vessels > 26' LOA

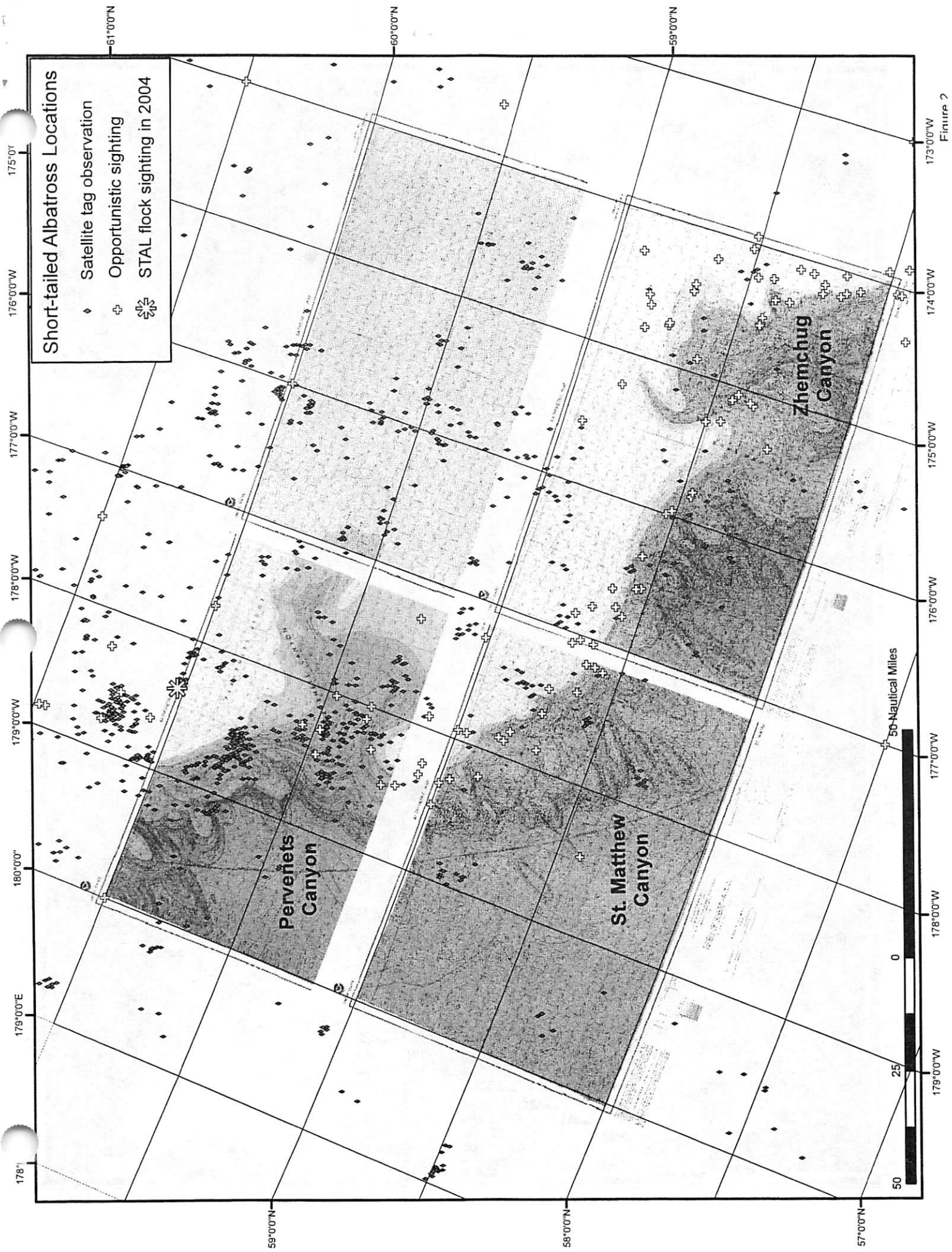
Location, Vessel Size & Config	≤ 55' in the EEZ >32' to ≤ 55' in 0-3 nm w/o masts, poles, or rigging	≤ 55' in the EEZ >32' to ≤ 55' in 0-3 nm with masts, poles, or rigging	>55' in the EEZ >55' in the EEZ in 0-3 nm
Alt 1 (Status Quo)	1 buoy bag line	1 streamer line with standard (snap-on gear)  1 streamer line with standard (other than snap-on gear) <sup>2</sup>	1 streamer line with standard (snap-on gear) <sup>1</sup>  Paired streamer lines with standard (other than snap-on gear) <sup>2</sup>
Alt 2	≤ 55' - no seabird avoidance measures required in 4E, >32' - status quo		
option 1	Vessels ≤ 55' LOA fishing in the STAL subarea <sup>3</sup> of 4E are required to use seabird avoidance regulations as detailed in alternative 1, above.		
option 2	Vessels ≤ 55' LOA fishing in the STAL subarea <sup>3</sup> of 4E are required to use only a buoy bag to deter seabirds.		
Alt 3	≤ 55' - no seabird avoidance measures required in 4E, > 55' - status quo		
option 1	Vessels ≤ 55' LOA fishing in the STAL subarea <sup>3</sup> of 4E are required to use seabird avoidance regulations as detailed in alternative 1, above.		
option 2	Vessels ≤ 55' LOA fishing in the STAL subarea <sup>3</sup> of 4E are required to use only a buoy bag to deter seabirds.		
Alt 4	all vessels - no seabird avoidance measures required in 4E		
option 1	All vessels fishing in the STAL subarea <sup>3</sup> of 4E are required to use seabird avoidance regulations as detailed in alternative 1, above.		
option 2	All vessels fishing in the STAL subarea <sup>3</sup> of 4E are required to use only a buoy bag to deter seabirds.		

1 Streamer line standard that is 45 m in length and in the air for 20 m aft of stern.

2 Streamer line standard that is 90 m in length and in the air for 40 m aft of stern.

3 STAL subarea - yet to be defined portion of 4E where albatross presence is more likely to occur. Area to be defined in analysis package.

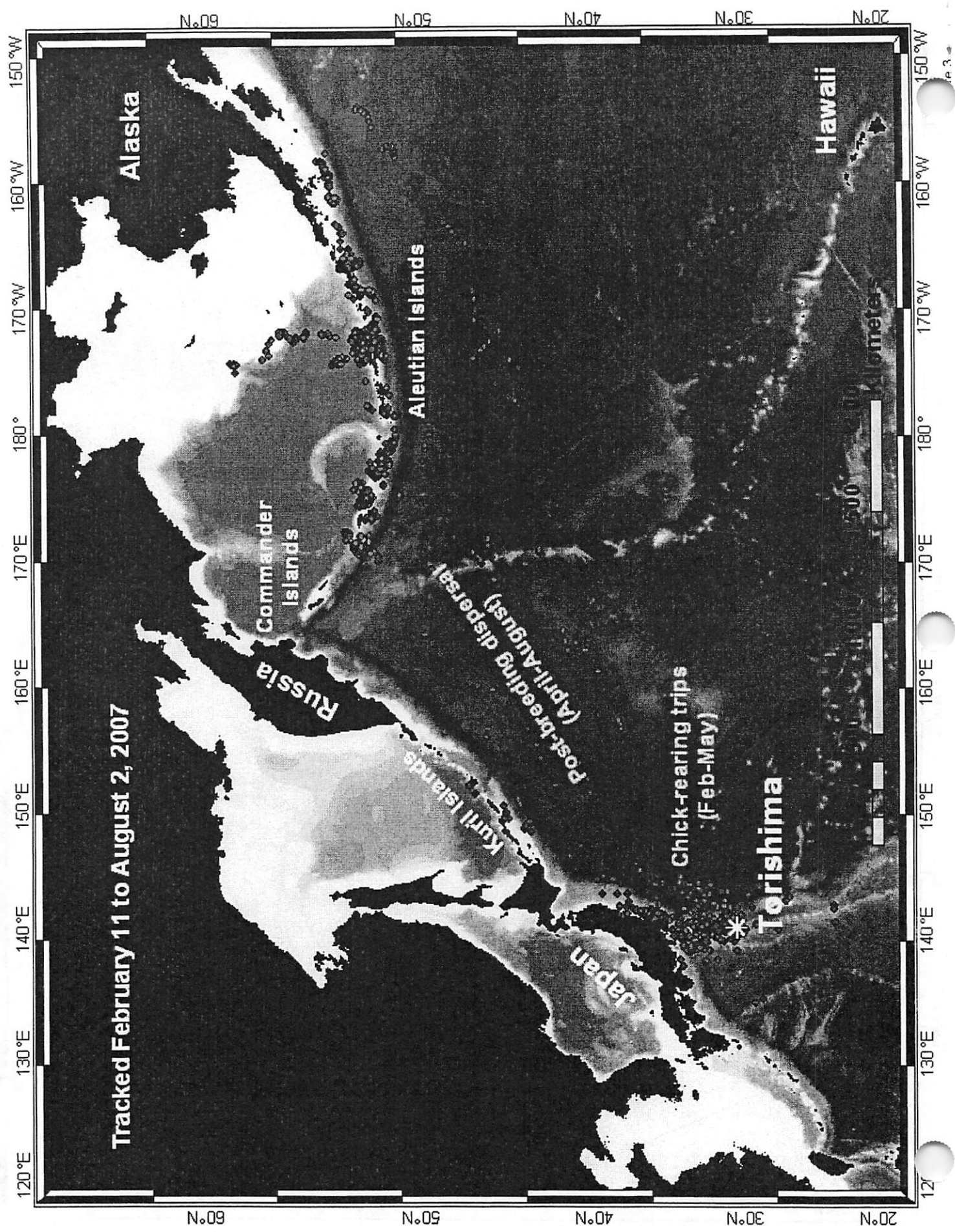




**Short-tailed Albatross Locations**

- ◆ Satellite tag observation
- ⊕ Opportunistic sighting
- ★ STAL flock sighting in 2004

Figure 2



Tracked February 11 to August 2, 2007

Alaska

Hawaii

Aleutian Islands

Commander Islands

Russia

Kuril Islands

Japan

Torishima

Post-breeding dispersal  
(April-August)

Chick-rearing trips  
(Feb-May)

0 500 1000 Kilometers

120°E 130°E 140°E 150°E 160°E 170°E 180° 170°W 160°W 150°W

20°N 30°N 40°N 50°N 60°N 20°N 30°N 40°N 50°N 60°N