October 15, 2019

Re: Proposed Rule, Pacific Coast Groundfish Fishery; Seabird Bycatch Avoidance Measures (Federal Register Vol. 84, No 177, September 12, 2019, pp 48094-48100)

Barry A. Thom
Regional Administrator, West Coast Region
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115-0070

Via electronic portal

Dear Mr. Thom,

On behalf of our organizations, we thank the National Marine Fisheries Service ("NMFS") for publishing its Proposed Rule for Seabird Bycatch Avoidance Measures ("Proposed Rule"). We also thank the Pacific Fishery Management Council ("Council") and the Groundfish Management Team ("GMT"), for participation in a collaborative effort to ensure that effective regulations are put in place by the May, 2020 deadline for NMFS's compliance with the Incidental Take Statement for the federally endangered short-tailed albatross described in the May, 2017 Biological Opinion (under the U.S. Endangered Species Act) for the continued operation of the west coast groundfish fleet.[1]

[1] U.S. FWS. 2017. Biological Opinion Regarding the Effects of the Continued Operation of the Pacific Coast Groundfish Fishery as Governed by the Pacific Coast Groundfish Fishery Management Plan and Implementing Regulations at 50 CFR Part 660 by the National Marine Fisheries Service on California Least Tern (*Sterna*

Our organizations support the Proposed Rule pending two modifications to better reflect the language and intent of the Council's motion. Specifically, we urge NMFS to a) modify the Proposed Rule to reflect Council direction in regard to floated mainline gear; and b) modify the Proposed Rule to acknowledge the Council's Motion directing the Groundfish Endangered Species Workgroup – comprised in large part of NMFS staff- to review and report back to the Council on short-tailed albatross telemetry or observer data south of 36 N. latitude. We provide details on these recommendations below.

North Pacific Albatrosses and incidental bycatch in west coast groundfish fisheries

Our organizations care deeply about the three species of North Pacific albatrosses – Laysan, black-footed and short-tailed. The National Audubon Society works to protect the forage fish food base for albatrosses, and prevent incidental bycatch in longline fisheries. American Bird Conservancy has been a leader in raising awareness about unsustainable levels of albatross bycatch and helping fisheries implement bycatch reduction in the Pacific. The Center for Biological Diversity focuses on protecting albatross from lead and plastic pollution in the Northwestern Hawaiian Islands and preventing catch in the Hawaii longline fishery. The Pacific Seabird Group retains a North Pacific Albatross Working Group that meets regularly, and the organization includes many scientific experts on these species from agencies and academic institutions. Portland Audubon has worked for years on seabird protection in Oregon state waters as well as federal West Coast waters.

Globally, albatrosses are the group of seabirds most impacted from incidental bycatch in longline and mortality in trawl fisheries.[2] These birds are key biodiversity components of the marine ecosystem in their role as top marine predators and in long-distance cycling of nutrients. Our members are inspired by these magnificent birds and respond with enthusiasm to stories about these birds such as Wisdom, the 65+ year-old Laysan Albatross still rearing chicks on Midway Atoll, Hawaii.

While the Proposed Rule aims to put in place regulations to protect short-tailed albatrosses from incidental bycatch, black-footed and Laysan albatrosses benefit. There is international conservation concern for black-footed albatross (e.g., IUCN red list as Vulnerable); its recovery from historic persecution has stalled and is likely being constrained by adult mortality due to longline bycatch throughout its range.[3,4,5,6] The total breeding population of black-footed

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antillaruin browni), Southern Sea Otter (*Enhydra lutris nereis*), Bull trout (*Salvelinus cojifluentus*), Marbled Murrelet (*Brachyramphus marmoratus*), and Short-tailed Albatross (*Phoebastria albatrus*), and Accompanying Incidental Take Statement. May.

[2] Croxall, J.P., Butchart, S.H.M., Lascelles, B., Stattersfield, A.J., Sullivan, B., Symes, A.,Taylor, P., 2012. Seabird conservation status, threats and priority actions: a global assessment. Bird Conserv. Int. 22.

[3] Guy, T. et al. 2013. Overlap of North Pacific albatrosses with the U.S. West Coast groundfish and shrimp fisheries. Fisheries Research 147 (2013) 222-234.

[4] Bakker, V., M. Finkelstein, D. Doak, L. Young, E. VanerWerf, and P.Sievert, 2015. The albatross of assessing and managing risk for wide-ranging long-lived species, In Prep.

[5] Veran, S., Gimenez, O., Flint, E., Kendall, W.L., Doherty, P.F., Jr., Lebreton, J.-D., 2007. Quantifying the impact of longline fisheries on adult survival in the black-footed albatross. Journal of Applied Ecology 44, 942-952.

[6] Lebreton, J.-D., Veran, S., 2013. Direct evidence of the impact of longline fishery on mortality in the Black-footed Albatross Phoebastria nigripes. Bird Conservation International 23, 25-35.

albatross numbers roughly 67,000 pairs, with 95 percent of the population nesting in the Northwestern Hawaiian Islands. Black-footed albatrosses are a target for substantial conservation efforts on the part of agencies and public funders, for example, a recent major push to eradicate invasive *Verbisina encelioides* (golden crownbeard) at Midway Atoll where most of these albatrosses nest.[7]

Gladics et al. (2017), a definitive study on seabird interactions in the west coast groundfish fleet, found that chronic mortality of black-footed albatross occurs in this fishery, with estimated annual takes between 51-215 birds for the 2010-2013 period.[8] This study notes that "low fishing mortality is of conservation concern because fishing mortality is often underestimated and albatrosses are far-ranging and can suffer mortality in many fisheries, resulting in cumulative negative population level impacts."[9]

This study also found a strong vessel effect, in that "incidental catch of albatrosses occurred across multiple hook-and-line sectors, but was concentrated in the limited-entry sablefish longline fishery. Notably, of the 259 unique vessels observed in the hook and line fisheries from 2002-2013, only 26 vessels accounted for 62% of the 204 albatross takes in the observer sample." The Biological Opinion's Incidental Take Statement requires NMFS to study and address vessel effects. Biological Opinion Term and Condition #1 (b) (iii) states that "NMFS shall conduct research that investigates vessel effect on seabird bycatch, and determine, if feasible, whether the use of additional minimization measures would further reduce bycatch for individual vessels."

In 2015, the Council's Groundfish Endangered Species Workgroup estimated that incidental take of short-tailed albatross in groundfish longline fisheries exceeded the incidental take level allowed in the 2012 Biological Opinion, of no more than one bird in two years, or an average estimated take of no more than five birds over two-year period as a result of this continuing action. In 2016, NMFS re-initated consultation with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act ("ESA").

Pacific Fishery Management Council ("PFMC") June, 2019 motion and our specific recommendations to support the motion

The Proposed Rule is based on recommendations within a motion made by the PFMC at its June, 2019 meeting. The Council's motion is attached to this letter verbatim. The motion was informed by NMFS' Final Review Draft[10], the Groundfish Endangered Species Workgroup Report[11],

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[7] U.S. Fish and Wildlife Service. 2014. Fighting Weeds to Save Seabirds. https://www.fws.gov/refuges/news/FightingWeedsToSaveSeabirds.html

[8] Gladics, A., E. Melvin, R. Suryan, T. Good, J. Jannot, and T. Guy. 2017. Fishery-specific solutions to seabird bycatch in the U.S. West Coast sablefish fishery. Fisheries Research 196: 85-95.

[9] Guy, T. et al. 2013. Overlap of North Pacific albatrosses with the U.S. West Coast groundfish and shrimp fisheries. Fisheries Research 147 (2013) 222-234.

[10] Agenda Item I.5 Attachment 1 June 2019. https://www.pcouncil.org/wp-content/uploads/2019/05/I5_Att1_STAL-RIR-IRFA_v2_JUN2019BB.pdf

[11] Agenda Item I.4.a Groundfish Endangered Species Workgroup Report June 2019. https://www.pcouncil.org/wp-content/uploads/2019/05/I4a_Groundfish_Endangered_Species_Workgroup_Report_JUNE2019BB.pdf

supplemental Groundfish Management Team and Groundfish Advisory Panel reports[12], and public comment from our organizations.

With this Proposed Rule, NMFS is proposing to modify Seabird Avoidance Program regulations for the Pacific Coast Groundfish Fishery, to incorporate the Council's recommendations. The new regulations would affect an average of 199 smaller vessels, and 22 larger vessels, in Washington, Oregon and California. Because the Proposed Rule in general accurately reflects Council direction for NMFS, our organizations support the Proposed Rule pending several modifications to better reflect the language and intent of the Council's motion. We have the following specific comments on the Proposed Rule.

A. The Final Rule should reflect Council direction in regard to the development of enforceable floated mainline gear configurations

The Proposed Rule fails to reflect Council's clear direction in regard to enforceable floated mainline gear configurations. Specifically, the Council directed managers to develop "*enforceable* [emphasis added] floated mainline gear configurations that can sink within the streamer line zone to reduce seabird interactions." The Final Rule must reflect the Council's direction by including a commitment from NMFS to conduct research resulting in enforceable and effective approaches for reducing albatross bycatch with floated mainline gear.

Background

At its April, 2019 meeting, the Council rejected Option C, Alternative 1 (Preferred Alternative) in NMFS' Initial Review Draft[13] that would have required vessels of 26 feet or greater in length using floated gear to set gear at night, and not have the option of using a streamer line. The Council rejected Option C at the April Council meeting when fleet participants and the Groundfish Advisory Panel raised safety concerns in regard to the night setting requirement.

Consequently, the Council, concerned about higher rates of albatross attacks on floated vs. non-floated gear, as well as the reduced effectiveness of streamer lines with this gear type, directed managers to develop "enforceable floated mainline gear configurations that can sink within the streamer line zone to reduce seabird interactions." The Groundfish Management Team had also recommended the development of enforceable approaches.[14] Such approaches have been tested in New Zealand and were presented to the Council by one of our groups in public comment at its June meeting.[15]

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[12] Agenda Item I.4 Supplemental Groundfish Management Team and Groundfish Advisory Panel reports https://www.pcouncil.org/wp-content/uploads/2019/06/I5a_Sup_GMT_Rpt1_STAL_JUNE2019BB.pdf, https://www.pcouncil.org/wp-content/uploads/2019/06/I5a_Sup_GAP_Rpt1_JUNE2019BB.pdf

[13] NMFS. 2019. Initial Review Draft. Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Proposed Regulatory Amendment under the Pacific Coast Groundfish Fishery Management Plan https://www.pcouncil.org/wp-content/uploads/2019/03/G2_

[14] Groundfish Management Team Report. April 2019. https://www.pcouncil.org/wp-content/uploads/2019/06/I5a_Sup_GMT_Rpt1_STAL_JUNE2019BB.pdf,

[15] Weinstin, Anna. 2019. Public comment on agenda item G.4. https://www.pcouncil.org/wp-content/uploads/2019/06/I5b_Sup_Public_PPT1_Weinstein_6.22.2019_JUN2019BB.pdf April.

The primary basis for requiring vessels using floated mainline gear to set at night is Gladics et al (2017). The Initial Review Draft notes "an important finding reported in [Gladics et al 2017] is that current seabird avoidance measures are less effective in mitigating seabird bycatch when floats are attached to the mainline. With floated gear, that portion adjacent to the float, having the slowest sink rate, sank below the threshold depths at more than twice the distance astern compared to the slowest sinking portion of nonfloated gear. The estimated distance astern when the 2 m threshold (relevant to albatrosses) was reached was 157.7 m (+/- 44.8 m) for floated gear compared to 68.8 m (+/- 37.8 m) for non-floated gear. The distances are greater for the 5 m threshold. The slowest sinking portion of floated gear is thus exposed to seabird attacks beyond the extent of the streamer lines. Overall, attack rates were higher on floated longlines compared to non-floated lines. While the difference in attack rates under bird scaring lines was not statistically significant, the difference was significant for the area beyond the extent of the bird scaring line." Specifically, Gladics et al. (2017) reports "black-footed albatrosses attack baited hooks on floated longlines at significantly higher rates (mean 2.7 attacks/1000 hooks, 1.05-4.95% confidence interval) than non-floated longlines (mean=0.20 attacks/1000 hooks, 0.05-0.40 95% confidence interval, Welch's t-test, $p<0.001$)." This information is reiterated in the Analysis.

The development of these enforceable approaches also serves to support non-discretionary Incidental Take Statement requirements of NMFS under the 2017 Biological Opinion for the continued operation of this fleet. Specifically, Term and Condition #1 (b) for Reasonable and Prudent Measure 1 states "NMFS shall conduct research that investigates:

i) new or improved methods of reducing bycatch of short-tailed albatross that are safe and effective within the longline fishery.
ii) the effect of floating gear on albatross bycatch and improved methods to minimize risk of bycatch."

B. The Final Rule should include tasks and timeline for NMFS to review and report back to the Council on short-tailed albatross telemetry or observer data south of 36º N. latitude.

The Proposed Rule fails to acknowledge the Council's motion to account for current uncertainties and future changes to the overlap of short-tailed albatrosses and fleet effort. In its Final Rule, NMFS must acknowledge the Council's motion, and include tasks and timeline for NMFS to review and report back to the Council on short-tailed albatross telemetry or observer data south of 36 N. latitude. This schedule and work product will be facilitated by the fact that five of the ten members of the Groundfish Endangered Species Work Group are NMFS staff. We suggest the Workgroup meet in April or June 2021 and report to the Council in September or November of 2021.

The Council, made aware by NMFS's Analysis as well as the Endangered Species Workgroup's June, 2019 report that as short-tailed albatross population size increases the species will likely continue to expand in larger numbers into its former range south of 36º North, sought to address the potential vulnerability of the groundfish fleet to incidental catch of short-tailed albatross through its motion:

> "Direct the [Groundfish] Endangered Species Work Group to locate and review any new short-tailed albatross telemetry or observer data South of 36º North latitude at a future meeting (anticipated in 2021), and provide this review in its report back to the Council, for purposes of possibly reconsidering the exemption from the streamer line requirement for longline vessels operating South of 36º North latitude."

This motion reflects both historic information, and new telemetry data on short-tailed albatrosses. In a tracking study of study of 51 short-tailed albatrosses for a time frame up to 5 years, Orben et al. 2018[16] found that:

> "Use of the western coast of North America was common, and coincided with previous tracking studies and at-sea observations (Suryan et al. 2006, Guy et al. 2013), except in the southern California Current as tracked juveniles ranged into the region near Point Conception. In addition, one bird entered the Mexican EEZ near Baja. Perhaps these southerly excursions are not surprising given that short-tailed albatrosses were regularly seen in Mexican waters prior to 1900, and in more recent years a few individuals have been seen (Grinnell 1928, Santaella & Sada 1991)."

The Proposed Rule notes that the Council recommended exempting vessels fishing south of 36º North latitude due to the rare presence of short-tailed albatross in this area, and as a result, decreased likelihood of interaction with fishing gear. The Proposed Rule notes this exemption would also create a new exemption for the vessels larger than 55 feet that have been subject to the streamer line requirements since 2015. While this exemption for larger vessels is of concern because Gladics et al. (2017) found that for 2002-2013, albatross bycatch for larger vessels was 6-7 times that of smaller vessels, from 2013-2017 only one large vessel operated out of a port south of 36º North,[17] making this exemption of lower concern at this time. The Analysis (pg 35) further notes that WCGOP data show that 19% of total fishing effort, measured by observed hauls, occurred south of 36º North during the baseline period.

In sum, we urge NMFS to ensure its Final Rule includes two modifications to reflect Council intent: Adding the word "enforceable" to the relevant sections regarding floated longlines, and to include tasks and timelines for reviewing the status of short-tailed albatross south of 36° N with regard to reconsidering the exemption from the streamer line requirement for longline vessels operating in the area. Thank you for considering our comments, and for your commitment to protecting our marine resources and wild fishing communities.

Sincerely,

[16] R. Orben, O'Connor, A., Suryan, R., Kiyoaki. O., Sato, F., Deguchi, T. 2018. Ontogenetic changes in at-sea distributions of immature short-tailed albatrosses *Phoebastria albatrus*. Engangered Species Research Vol. 35: 23–37, 2018 https://doi.org/10.3354/esr0086

[17] Analysis on pg 29, Table 10

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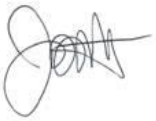

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