

Actions	Compliance times	Procedures
(3) Do not install, on any sailplane, a P/N A 102 021N attachment fitting that has not passed the inspection requirements specified in paragraph (d)(1) of this AD.	As of November 27, 2000 (the effective date of this AD).	Inspect any attachment fitting in accordance with the previously referenced service bulletin.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

Note 1: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; facsimile: (816) 329-4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Aerotechnik CZ Service Bulletin SEH 13-005a, dated November 18, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Aerotechnik s.r.o., 686 04 Kunovic, Czech Republic; telephone: +420 632 537 111; facsimile: +420 632 537 900. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

(i) *When does this amendment become effective?* This amendment becomes effective on November 27, 2000.

Note 2: The subject of this AD is addressed in Czech Republic AD Number CAA-AD-T-112/1999, dated November 18, 1999.

Issued in Kansas City, Missouri, on September 28, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 000524152-0274-02; I.D. 030100C]

RIN 0648-AM34

Fisheries of the Exclusive Economic Zone Off Alaska; Vessel Monitoring System (VMS)

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

ACTION: Final rule; VMS component notice of approval.

SUMMARY: NMFS issues a final rule requiring vessels participating in the directed fishery for Atka mackerel in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands Area to carry and use a Vessel Monitoring System (VMS) transmitter, and revising regulations governing Atka mackerel harvest in the Community Development Quota (CDQ) fisheries. Additionally, NMFS issues notification of the approval of VMS components for use off Alaska. These actions are necessary to enhance monitoring of fishery activities within critical habitat areas. They are intended to further the conservation goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective November 11, 2000.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action may be obtained from Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O.

Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Regional Administrator at the same address. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503 (Attn: NOAA Desk Officer).

For ArgoNet Mar GE information, contact NACLS Inc., 9200 Basil Court, Suite 306, Largo, MD 20774; phone 301-341-1814.

To obtain copies of the list of approved VMS components, VMS installation instructions, or to apply to have a VMS component approved for use off Alaska, contact Guy Holt, Enforcement Division, Alaska Region, NMFS, P.O. Box 21767, Juneau, AK 99802-1668; phone (907)-586-9353.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS notes as an initial point that as a result of a U.S. District Court Order, NMFS has closed waters within critical habitat to all trawling. An interim rule implementing this closure was published on August 15, 2000 (65 FR 49766). While this closure is in effect, no trawling for Atka mackerel may occur inside critical habitat and no Atka mackerel catch should accrue against the inside critical habitat portion of the quota, unless it is harvested by non-trawl gear. This rule does not affect that closure.

In 1997, NMFS listed the western stock of Steller sea lions (*Eumetopias jubatus*) as an endangered species. A statutory requirement of the Endangered Species Act is that Federal actions taken within the critical habitat of a listed species must not jeopardize the continued existence of the populations of those species or adversely affect or modify their critical habitat. Because Atka mackerel are an important prey species for Steller sea lions, the Atka mackerel fishery must be managed to avoid potential jeopardy to Steller sea lions.

On January 22, 1999, NMFS published a final rule that reduced the percentage of Atka mackerel taken from Steller sea lion critical habitat over a 4-year period in the Western and Central Districts of the AI (64 FR 3446). The regulations implemented by that final rule prohibit all trawling for groundfish within areas designated as Steller sea lion critical habitat when NMFS determines that the harvest of Atka mackerel has reached the applicable limits specified in the regulations for the year and district. A critical habitat trawl closure remains in effect until NMFS closes the Atka mackerel fishery in that area.

When critical habitat areas are closed, continued Atka mackerel fishing takes place very close or adjacent to the closed critical habitat areas. The boundaries of these areas are complex, the areas are remote, and the weather is frequently poor. Ensuring that no fishing is taking place inside critical habitat using traditional methods of enforcement, such as aerial surveillance, is difficult and costly. Effective enforcement of these closures would be enhanced if vessels participating in the fishery use a VMS transmitter that automatically and frequently transmits vessel position to NMFS so that vessels fishing near critical habitat can be monitored closely.

This final rule requires vessels participating in a directed fishery for Atka mackerel in the AI to have an operating NMFS-approved VMS transmitter on board. These transmitters automatically determine the vessel's location several times per hour using Global Positioning System (GPS) satellites and send the position information to NMFS via a mobile communication service provider. The VMS transmitters are designed to be tamper-resistant and automatic. The vessel owner should be unaware of exactly when the unit is transmitting and will be unable to alter the signal or the time of transmission.

This rule requires the owner of a vessel participating in the AI Atka mackerel fishery to obtain and install a NMFS-approved VMS transmitter. The rule also requires the use of the transmitter at all times when engaging in directed fishing for Atka mackerel. The rule prohibits trawl vessels not carrying properly installed and operating VMS units from retaining Atka mackerel at more than the maximum retainable amount of 20 percent established in regulations at § 679.20(e) and (f) while fishing in the AI subarea.

This rule also revises regulations governing Atka mackerel harvest in the

CDQ fisheries. Current regulations prohibit any trawling by a CDQ group inside critical habitat after the specified percent of the group's annual Atka mackerel CDQ has been reached. This action will change these requirements so that each CDQ group may harvest no more than the specified percentage of their Atka mackerel CDQ inside the critical habitat areas. This will provide more flexibility to the CDQ groups for management of their Atka mackerel CDQs.

Response to Comments

NMFS received two letters of comment on the proposed rule that was published June 12, 2000, for a 30-day comment period (65 FR 36810). Both letters indicated support for the action but expressed concerns or suggested clarifications; these comments are summarized below followed by NMFS' responses.

Comment 1. The proposed rule states that installation of a VMS transmitter would take less than 6 hours and estimates that 4 hours per year will be required to maintain the unit. Under most circumstances, the installation of the Argos MAR GE requires less than 2 hours. The unit has a lifetime of 5 years and should require no annual maintenance.

Response. Comment noted. However, NMFS attempts to estimate conservatively the burden that a regulation may impose on the public. In this case, NMFS believes that in some circumstances the installation of a VMS transmitter could take as much as 6 hours. Further, NMFS believes that annual maintenance could be required in some circumstances.

Comment 2. VMS transmitters should only be required in the Western and Central Districts of the AI. Because there is no separate apportionment of the Atka mackerel TAC to critical habitat areas in the Eastern District of the AI, there is no need to require VMS transmitters in that district. Requiring VMS transmitters in the Eastern AI would impose an unnecessary burden on vessels that fish for Atka mackerel in the Eastern AI, but do not fish for Atka mackerel in the Central or Western AI.

Response. NMFS disagrees. Though there is not a separate apportionment of TAC to critical habitat areas in the Eastern AI, there are critical habitat areas in the Eastern AI that are closed to directed fishing for Atka mackerel and preventing illegal fishing activity in those areas is just as difficult. Thus, NMFS believes that allowing some vessels to fish for Atka mackerel in the AI without VMS transmitters would unnecessarily complicate enforcement.

Second, NMFS believes that the number of vessels that target Atka mackerel in the Eastern AI that do not also target Atka mackerel in the Central or Western AI is not significant. Based on Weekly Production Report Data from 1998 and 1999, only one vessel reported landings from the Eastern AI in an Atka mackerel target that did not also report landings in an Atka mackerel target in the Western or Central AI. Based on 1999 observer data from vessels that did not retain Atka mackerel in excess of the maximum retainable bycatch (MRB) amount in the Central and Western AI, only two hauls were made in the Eastern AI where the amount of retained Atka mackerel exceeded the MRB amount. These data indicate that virtually no targeting of Atka mackerel in the Eastern AI by vessels that do not also target Atka mackerel occurs in the Central or Western AI.

Comment 3. Vessel personnel should have the ability to monitor the VMS unit's GPS reading.

Response. The type approval specifications for VMS units do not prevent the unit from displaying the location so long as the vessel operator cannot determine when the unit is transmitting a location. If sufficient market demand exists, transmitter providers could offer this feature. However, this feature should not be necessary for achieving NMFS' monitoring and enforcement goals. Until recently, the Department of Defense deliberately degraded the GPS signal so that it was only accurate to within +/- 100m. However, as of May 1, 2000, deliberate degrading of the GPS system has been stopped and different GPS units should agree with each other within +/- 20 meters.

Comment 4. NMFS needs to develop a waiver system to allow vessels with inoperative VMS transmitters to continue fishing.

Response. NMFS disagrees and believes that granting of waivers would unnecessarily complicate enforcement. In comparison to the size of the fishery and the gross revenues of the vessels that participate in it, the cost of a transmitter is quite low. Vessel owners must balance the approximate \$1,800 cost of a backup transmitter with the risk of lost fishing time in the event of transmitter failure.

After consideration of the comments received, NMFS approves this final rule. No changes in the regulatory text were made between the proposed and final rule.

Notice of VMS Component Approval

In the proposed rule to require VMS in the Atka mackerel fishery (65 FR

36810, June 12, 2000), NMFS set forth criteria for the approval of VMS components. These criteria were based on national standards published in the **Federal Register** on March 31, 1994 (59 FR 15180).

Based on the information reviewed to date, NMFS approves the ArgoNet Mar GE transmitter, for which North American Collection and Location by Satellite, Inc. (NACLS) is the sole communications service provider.

The MAR GE transmitter also has been approved for use in the Atlantic Highly Migratory Species Fisheries. Additional details concerning this transmitter may be found in the notice of approval published in the **Federal Register** on September 9, 1999 (64 FR 48988).

A vessel owner wishing to purchase this transmitter should contact the provider (see **ADDRESSES**).

At this time, NMFS believes that only one vendor produces VMS components that provide seamless and transparent communications from all areas off Alaska. However, other vendors that manufacture or distribute VMS components that meet the approval criteria set out in the proposed rule, are encouraged to contact NMFS. As additional components are approved, notification will be published in the **Federal Register**.

Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to compliance with this final rule by affected small entities.

What is a VMS? A VMS consists of a transmitter, installed on the vessel, and a communications service provider that relays the transmitter's signal to NMFS. The transmitter determines the vessel's position using GPS satellites and automatically transmits the position to the communications service provider.

Who must carry a VMS transmitter? A vessel that engages in directed fishing for Atka mackerel in the AI must carry an operating VMS transmitter. You must receive confirmation from NMFS that the transmitter is operating before you start directed fishing, and you must continue to use the VMS transmitter until the Atka mackerel season has ended unless your vessel is in port.

How do I obtain, install, and activate my VMS transmitter? For complete instructions on how to install and operate your VMS transmitter, contact Guy Holt, Enforcement Division, Alaska Region, NMFS, P.O. Box 21767, Juneau, AK 99802—1668; phone (907)—586-9353. At this time, the only VMS

transmitter approved for use off Alaska is the ArgoNet Mar GE. Vessel owners wishing to purchase the Mar GE transmitter may contact NACLS Inc., 9200 Basil Court, Suite 306, Largo, MD 20774; phone 301—341—1814. When purchasing a transmitter, the vessel owner should request a unit configured for use by vessels off Alaska. The vessel owner will also need to complete an ArgoNet contract with NACLS and establish credit with ArgoNet. The transmitter will automatically begin transmitting position reports when the power is connected. Vessel owners should confirm that the position reports are being received prior to directed fishing for Atka mackerel, by calling NMFS Enforcement Division.

When can I turn my transmitter off? Your transmitter will automatically reduce the frequency of transmission to once per week when your vessel is stationary. You may disconnect the transmitter when the Atka mackerel fishery in which you participated has closed.

What should I do if my transmitter stops working? The ArgoNet Mar GE is equipped with an alarm to alert you if it is unable to transmit. If the unit stops working, you must stop directed fishing for Atka mackerel until the unit is repaired or replaced. Though VMS transmitters have shown themselves to be reliable, we recommend that vessel owners consider carrying a backup transmitter.

Classification

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid OMB control number.

This final rule contains a new collection-of-information requirement that was approved by the OMB under the PRA and issued OMB control number 0648—0417. The new information requirements include the requirement to install, maintain, and use a NMFS-approved VMS unit. The public reporting burden for this collection of information is estimated to average 6 hours to install the unit, 4 hours per year to maintain the unit, and 5 seconds per response to transmit data. These estimates include 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 the collection of information to NMFS at the previously listed ADDRESS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) describing the impact of the action on small entities. A summary of the FRFA follows.

This action requires that factory trawlers participating in the Aleutian Islands Atka mackerel fishery carry and use a VMS unit. It is necessary to ensure that NMFS does not violate a statutory requirement of the ESA that federally managed fisheries not adversely affect designated critical habitat, and it is being promulgated under the authority of the Magnuson-Stevens Act. This action will have a small but negative impact on the approximately 13 factory trawlers that fish for Atka mackerel in the Aleutian Islands. Four of these vessels caught and processed only small amounts of Atka mackerel and it constituted less than 5 percent of their retained catch. The other 9 vessels caught and processed over 95 percent of the Atka mackerel that was harvested. During 1998, these 9 vessels caught and processed 137,790 mt of groundfish off Alaska. Based on 1997 ex-vessel price data, this catch had an approximate value of \$41 million prior to processing. The additional value added by at-sea processing is not known. None of the 9 vessels had gross revenues of less than \$3 million, the threshold established by the SBA for 'small' fish harvesting businesses. NMFS believes that none of the vessels that fish for Atka mackerel in the Aleutian Islands would qualify as small entities.

The preferred alternative would impose new reporting and recordkeeping requirements on these vessels of approximately 12.1 hours per year per vessel. It would not duplicate, overlap, or conflict with existing Federal rules. In addition to the preferred alternative, the analysis considered a "no action" alternative (status quo) that would not require the use of VMS units for vessels engaged in directed fishing for Atka mackerel in the Aleutian Islands. This alternative was rejected because it would fail to meet NMFS' need to facilitate monitoring and enforcement of Steller sea lion protective measures. Maintaining the status quo could have minimized impacts on small entities. However, that alternative would not have achieved the objectives of this action.

A copy of the RIR/FRFA can be obtained from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see **ADDRESSES**).

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

List of Subjects in 50 CFR Part 679

Alaska Fisheries, Reporting and recordkeeping requirements.

Dated: October 10, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 679 are amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648—)
* * *	*
50 CFR	*
679.28(f)(3)(i)	—0417
679.28(f)(3)(ii)	—0417
679.28(f)(3)(iii)	—0417
* * *	*

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.*, and 3631 *et seq.*

2. In § 679.7, paragraph (a)(2) is revised and a new paragraph (c)(3) is added to read as follows:

§ 679.7 Prohibitions.

(a) * * *

(2) Conduct any fishing contrary to notification of inseason action, closure, or adjustment issued under § 679.20, § 679.21, § 679.22, § 679.25.

* * *

(c) * * *

(3) Use a vessel to participate in a directed fishery for Atka mackerel in the Aleutian Islands subarea unless that vessel carries a NMFS-approved Vessel Monitoring System (VMS) transmitter and complies with the requirements described at § 679.28(f).

* * *

3. In § 679.22, paragraph (a)(8)(iii)(D) is revised to read as follows:

§ 679.22 Closures.

(a) * * *

(8) * * *

(iii) * * *

(D) CDQ fishing. A CDQ group is prohibited from exceeding the percentage of the annual Atka mackerel CDQ for Steller sea lion critical habitat in the Western and/or Central Districts of the AI specified at paragraph (a)(8)(iii)(B) of this section (see Table 1, Table 2, and Figure 4 to part 226 of this title).

* * *

4. In § 679.28, paragraph (a) is revised and a new paragraph (f) is added to read as follows:

§ 679.28 Equipment and operational requirements.

(a) *Applicability.* This section contains the requirements for scales, observer sampling stations, bins for volumetric estimates, and vessel monitoring system hardware. This section does not require any vessel or processor to provide this equipment. Such requirements appear elsewhere in this part.

* * *

(f) *Vessel Monitoring System (VMS) Requirements.*—(1) *What is a VMS?* A VMS consists of a NMFS-approved VMS transmitter that automatically determines the vessels position and transmits it to a NMFS-approved communications service provider. The

communications service provider receives the transmission and relays it to NMFS.

(2) *How are VMS transmitters and communications service providers approved by NMFS?* (i) NMFS publishes type approval specifications for VMS components in the **Federal Register**.

(ii) Transmitter manufacturers or communication service providers may submit products or services to NMFS for evaluation based on the published specifications.

(iii) NMFS will publish a list of NMFS-approved transmitters and communication service providers in the **Federal Register**. As necessary, NMFS will publish amendments to the list of approved components in the **Federal Register**.

(3) *What are the vessel owner's responsibilities?* If you are a vessel owner that must participate in a VMS, you or your crew must:

(i) Obtain a NMFS-approved VMS transmitter and have it installed onboard your vessel in accordance with the instructions provided by NMFS. You may get a copy of the VMS installation and operation instructions from the Regional Administrator upon request.

(ii) Activate the VMS transmitter and receive confirmation from NMFS that the VMS transmissions are being received before participating in a fishery requiring the VMS.

(iii) Continue the VMS transmissions until the fishery requiring VMS has closed or until notified by NMFS staff that you may stop transmissions.

(iv) Stop fishing immediately if informed by NMFS staff or an authorized officer that NMFS is not receiving position reports from the VMS transmitter.

(v) Make the VMS transmitter available for inspection by NMFS personnel, observers or an authorized officer.

(vi) Ensure that the VMS transmitter is not tampered with, disabled, destroyed or operated improperly.

(vii) Pay all charges levied by the communication service provider.

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