

result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30 day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: October 29, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 03043016-3258-02; I.D. 040103C]

RIN 0648-AQ58

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Vessel Monitoring Systems and Incidental Catch Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to require vessels registered to Pacific Coast groundfish fishery limited entry permits to carry and use mobile vessel monitoring system (VMS) transceiver units while fishing in state or Federal waters off the coasts of Washington, Oregon and California. This action is necessary to monitor compliance with large-scale depth-based conservation areas that restrict fishing across much of the continental shelf.

This final rule also requires the operators of any vessel registered to a limited entry permit and any open access or tribal vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber, to declare their intent to fish within a conservation area specific to their gear type, in a manner that is consistent with the conservation area requirements. This action is intended to further the conservation goals and objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by allowing fishing to continue in

areas and with gears that can harvest healthy stocks while reducing the incidental catch of low abundance species.

DATES: Effective January 1, 2004.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) and the finding of no significant impact prepared for this action may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503-820-2280, or may be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070. Copies of the small business compliance guide are available from D. Robert Lohn, Administrator, Northwest Region, NOAA Fisheries, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98112-0070. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS at the address above and by e-mail to David_Rostker@omb.eop.gov, or faxed to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT:

Becky Renko or Yvonne deReynier at the Northwest Region, NMFS, phone 206-526-6140; fax: 206-526-6736; and e-mail becky.renko@noaa.gov or yvonne.dereynier@noaa.gov; or Svein Fougner (Southwest Region, NMFS), phone: 562-980-4000; fax: 562-980-4047; and e-mail: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register's Web site at <http://www.access.gpo.gov/su-docs/aces/aces140.htm>. Background information and documents are available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm> and at the Council's Web site at <http://www.pcouncil.org>.

Background

A proposed rule for this action was published on May 22, 2003 (FR 86 27972). NMFS requested public comment on the proposed rule through July 21, 2003. During the comment period on the proposed rule, NMFS received 4 letters, including those received from the Council and from the public at the Council's June 2003 meeting. These comments are addressed later in the preamble to this final rule.

See the preamble to the proposed rule for additional background information on the fishery and on this final rule.

Under this final rule, any vessel registered to a limited entry permit for the Pacific Coast groundfish fishery will be required to have an operating NMFS type-approved VMS transceiver unit on board while fishing in state or Federal waters off the states of Washington, Oregon and California. This regulatory amendment will require that the vessel owner or operator of a vessel registered to a limited entry groundfish permit carry and use a NMFS type-approved VMS transceiver at all times when engaged in any and all fisheries off the U.S. West Coast. A vessel owner required to continuously operate a VMS transceiver may choose to send an exemption report. This report will allow the owner to disconnect the power to the transceiver unit and discontinue transmissions during a period when the vessel will be continuously out of the water for more than 7 consecutive days, or will allow the owner to reduce or discontinue the VMS transmissions if the vessel is continuously operating seaward of the exclusive economic zone (EEZ) off Washington, Oregon, or California for more than 7 consecutive days.

Before the vessel is used to fish in any trawl Rockfish Conservation Area (RCA) or the Cowcod Conservation Areas (CCA) in a manner that is consistent with the requirements of the conservation areas, a declaration report will be required from (1) any vessel registered to a limited entry permit with a trawl endorsement; (2) any vessel using trawl gear, including exempted gear used to take pink shrimp, spot, and ridgeback prawns, California halibut and sea cucumbers; and (3) any tribal vessel using trawl gear. In addition declaration reports are required from vessels registered to limited entry permits with longline and pot endorsements, before these vessels can be used to fish in any non-trawl RCA or the CCA. The declaration report must be submitted before the vessel leaves port on the trip to fish in an RCA or a CCA. Each declaration report will be valid until cancelled or revised by the vessel operator. The declaration report must state the type of fishing in which the vessel will be engaged. If the type of fishing changes, a new declaration report must be submitted. For further information regarding declaration reports, see the preamble for the proposed rule for this action (68 FR 227972, May 23, 2003).

VMS is a tool that allows vessel activity to be monitored in relation to geographically defined management

areas. VMS transceiver units installed aboard vessels automatically determine the vessel's position using Global Positioning System (GPS) satellites and transmit that position to a land based processing center via a communication satellite. At the processing center, the information is validated and analyzed before being disseminated for various purposes, which may include fisheries management, surveillance and enforcement.

VMS transceiver units are designed to be tamper resistant. In most cases, the vessel owner is not aware of exactly when the unit is transmitting and is unable to alter the signal or the time of transmission. On September 23, 1993 (58 FR 49285) and March 31, 1994 (59 FR 151180), NMFS published VMS standards for transceiver units and service providers used for Federal fisheries management.

Time and area closures have long been used in the Pacific Coast groundfish fishery to restrict fishing activity in order to keep harvests within sector allocations and at sustainable levels and to prohibit the catch of certain species. RCAs are depth-based management areas based on bottom depth ranges where overfished rockfish species commonly occur. The RCAs are large, irregularly-shaped geographical areas that are defined by a series of latitudinal and longitudinal coordinates which generally follow depth (fathom) contours. The RCAs differ from previously closed areas because they extend far offshore, making air and surface craft enforcement difficult.

The depth-based management strategy associated with the RCAs is designed to allow fishing for healthy stocks to continue, while protecting overfished species. However, it presents new enforcement challenges, and requires new tools such as VMS to supplement existing enforcement mechanisms. NMFS and cooperating enforcement agencies (such as the U.S. Coast Guard and state marine law enforcement agencies) will continue to use traditional enforcement methods such as aerial surveillance and marine patrols that have proved effective in the past. Adding requirements for VMS and declaration reports will allow the enforcement agencies to continuously monitor vessels fishing in, and transiting through, the RCAs.

Because of the critical need to monitor the integrity of conservation areas that protect overfished stocks, while allowing for the harvest of healthy stocks, NMFS believes it is necessary to proceed with this rulemaking with the requirement for fishery participants to bear the cost of purchasing, installing,

and maintaining VMS transceiver units, VMS data transmissions, and reporting costs associated with declaration requirements. If state or Federal funding becomes available, fishery participants may be reimbursed for all or a portion of their VMS expenses.

NMFS may publish, and as necessary amend, a list of NMFS type-approved mobile transceiver units and communication service providers for the Pacific Coast groundfish fishery in the **Federal Register** or notify the public through other appropriate media or mailings to the permit owner's address of record. NMFS will also distribute installation and activation instructions for the affected vessel owners.

The installation of the VMS transceiver is expected to take less than 4 hours and will be the responsibility of the vessel owners. Prior to fishing, the vessel owner will be required to fax an activation report to NMFS to verify that the unit was installed correctly and has been activated.

Comments and Responses

Comment 1: Because the rule requires vessels with limited entry permits to have VMS transceiver units on at all times, there is no need to require declaration reports for vessels fishing in non-groundfish fisheries in the RCAs.

Response: Unless a vessel meets the specified exemption criteria and has submitted an exemption report, this rule requires all vessels registered to limited entry permits to continuously operate a VMS mobile transceiver regardless of the fishery. Owners/operators of vessels registered to limited entry permits must also submit a declaration report before leaving port on a trip in which (1) a vessel registered to a limited entry permit with a trawl endorsement is used to fish in any trawl RCA or the CCA, or (2) before a vessel registered to a limited entry permit with a pot or longline endorsement is used to fish in any non-trawl RCA or the CCA. Declaration reports are required whether the vessel is fishing for groundfish or non-groundfish species. Declaration reports are not required for vessels fishing seaward or shoreward of the conservation area.

Limited groundfish fishing (*i.e.*, mid-water whiting during the primary season, widow and yellowtail when limits are provided, etc.) as well as non-groundfish fishing are permitted within the RCA. Declaration reports are intended to provide enforcement officers with information to make an initial determination about a vessel's activity in relation to the conservation area restrictions. Because a VMS transceiver unit only transmits the

vessel's position, a declaration report is needed to identify the intended target species and gear being deployed. Without a declaration report VMS would be less effective as an enforcement tool because costly visual observations would be required to determine if a limited entry vessel was fishing in a manner consistent with conservation area restrictions.

Comment 2: Three commenters stated that declaration reports alone would be adequate for monitoring limited entry vessels that are legally participating in non-groundfish fisheries within the conservation areas. Therefore, this rule should be amended to allow vessels to discontinue position transmissions when they are participating in non-groundfish fisheries.

Response: NMFS believes that requiring continuous operation of the VMS transceiver units is necessary to maintain the integrity of the monitoring program, and may produce a deterrent effect. Requiring the VMS mobile transceiver unit to be operated continuously will deter fishers from intentionally turning the units off to avoid detection or inadvertently forgetting to turn the units on when required. Requiring the transceiver units to be operated while the vessel is participating in non-groundfish fisheries will allow enforcement officers to easily identify vessels that are fishing in a manner consistent with the conservation area requirements during routine enforcement activities. This will allow traditional enforcement tools to be used more effectively.

Comment 3: One commenter stated that reliance on declaration reports alone for monitoring open access trawl and non-trawl vessels will not be adequate to ensure compliance with conservation area restrictions.

Response: Traditional enforcement methods will continue to be used to monitor fishing activities. Although not as effective as VMS, declaration reports will improve the information that is available for monitoring compliance with the depth-based restrictions and allow traditional enforcement tools to be used more efficiently.

During the initial phase of this program, the Council recommended that vessels registered to limited entry permits be required to carry and use VMS transceiver units while fishing off the West Coast. This is intended to be a pilot program that begins with the sector that is allocated the majority of the groundfish resources. NMFS believes that a VMS based monitoring program is an effective tool for monitoring compliance with time area restrictions and is therefore considering

extending the requirement for vessels that participate in the open access and recreational sectors of the fishery.

Comment 4: VMS transmissions should only be required when a vessel is operating outside of the "boundary line" for state territorial waters.

Response: NMFS believes that it is necessary to require the VMS transceiver unit be operated from 0–200 nautical miles offshore (in state marine and Federal waters). Though the term EEZ was used in the proposed rule, and is defined at 50 CFR 660.10 as "all waters from the seaward boundary of each of the coastal states to a line in which each point is 200 nautical miles (370.40 km) from the baseline from which the territorial sea of the U.S. is measured", the term was used in error. NMFS believes that requiring continuous operation of the VMS transceiver units is necessary to maintain the integrity of the monitoring program as it might have a deterrent effect. The intent was for the rule to apply to all waters 0–200 nautical miles offshore. Data presented in the EA/RIR/FRFA supports this area of coverage.

In some cases the RCAs, which were created to reduce the impacts on overfished species, cross between state and Federal waters. A major benefit of VMS is its deterrent effect. It has been demonstrated that if fishing vessel operators know that they are being monitored and that a credible enforcement action will result from illegal activity, then the likelihood of that illegal activity occurring is significantly diminished. Requiring the VMS mobile transceiver unit to be operated continuously will deter fishers from intentionally turning the units off to avoid detection or inadvertently forgetting to turn the units on when required.

Comment 5: A fixed gear fisherman expressed concern about regulatory provisions regarding the transiting of RCAs. The provision requires limited entry vessels with trawl endorsements to have all trawl gear stowed and to be under continuous transit when in a trawl conservation area, unless otherwise announced in the **Federal Register**. The commenter indicated that many fishing fixed gear grounds are in areas deeper than 100 fathoms and are surrounded by shallow waters, that asking the vessel to move to deeper waters to drift while the crew is sleeping is too much, and that there will be a greater chance of injury due to fatigue. The commenter also expressed concern about increased fuel consumption and wear on the engines.

Response: Navigational rules promulgated by 33 U.S.C. Sections

1601–1608, require vessels to maintain a proper look-out by sight as well as by hearing and all other available means appropriate to the circumstances and conditions. This requirement is intended to allow for a full appraisal of the navigational situation to avoid the risk of collision. At this time, the transiting requirement to which the commenter is referring applies only to vessels registered to a limited entry permits with a trawl endorsement. However, at its October 7, 2003, meeting (68 FR 54895, September 19, 2003), the Council's ad hoc VMS Committee considered expanding this requirement to the fixed gear vessels, but failed to reach consensus on the issue. The need for transiting requirements for fixed gear vessels will be brought before the Council at a future date.

Comment 6: While bringing up the trawl net, many small trawl vessels are at the mercy of the wind and currents and unable to change their location. Small vessels could drift into the trawl RCAs while retrieving their gear and be in violation of the transiting provision that requires a vessel to have all trawl gear stowed and to be under continuous transit when in a trawl conservation area, unless otherwise announced in the **Federal Register**.

Response: Position reports from vessels drifting with the currents can look similar to vessels that are fishing. Given limited enforcement resources, NMFS Enforcement believes that the integrity of the restricted areas must be maintained. Therefore NMFS recommends that each vessel operator provide an adequate buffer to allow for drift due to weather and currents.

Comment 7: It is not practical to require vessels to follow the depth contours while transiting an RCA rather than allowing the most direct route to be traveled.

Response: This rule does not specify where a vessel is required to transit an RCA. The transiting provision only requires a vessel to be under continuous transit and all groundfish trawl gear stowed in accordance with 660.322(b)(8) or as authorized or required in the annual groundfish management measures published in the **Federal Register**.

Comment 8: VMS transceiver units need to have a non-fishing mode and the ability to be used in different ways when sleeping or moving between areas.

Response: NMFS is testing several VMS transceiver models that have a function that detects lack of vessel movement and stops sending position reports (greatly reducing power consumption and transmittal costs) when the vessel is not moving. When

the vessel begins moving again, hourly position reports resume. NMFS believes that it is necessary to require that the VMS transceiver units be operable at all times, so the integrity of the monitoring program is maintained.

Comment 9: If a vessel were to shut down and drift to allow the crew to sleep, the vessel could drift into the trawl RCA and appear to be fishing.

Response: As also noted under comment 5, navigation rules promulgated by 33 U.S.C. Sections 1601–1608, require vessels to maintain a proper look-out by sight as well as by hearing and all other available means appropriate to the circumstances and conditions. Although this requirement is intended to allow for a full appraisal of the situation to avoid the risk of collision, having a crew member on watch may also be used to prevent drifting into restricted areas.

Comment 10: To prohibit only limited entry trawl vessels from any activity other than transiting a RCA, and to not have the same prohibition for fixed-gear vessels is discriminatory.

Response: NMFS does not agree that prohibiting only limited entry trawl vessels from any activity other than transiting an RCA is discriminatory. NMFS believes that it is necessary to have a provision that prohibits limited entry trawl vessels (except for those conducting allowed activities) from any activity other than transiting the RCA. Trawl lines from drifting vessels can look similar to track lines from a vessel that is fishing. Therefore, drifting vessels would cause unnecessary expenditure of enforcement resources to check to see if drifting vessels were actually engaged in illegal fishing in the conservation areas. However, at its October 7, 2003, meeting (68 FR 54895, September 19, 2003), the Council's ad hoc VMS Committee considered expanding this requirement to the fixed gear vessels, but failed to reach consensus on the issue. The need for transiting requirements for fixed gear vessels will be brought before the Council at a future date.

Comment 11: The rule should specifically address RCA transiting requirements for trawl vessels that are legally allowed to fish for groundfish within the trawl RCA (*i.e.*, mid-water whiting during the primary season or non-groundfish fishing). Currently it does not allow for legal fishing with trawl gear by vessels registered to limited entry permits.

Response: Language has been added to the prohibition at § 660.306 (bb) that clarifies that limited entry vessels with trawl endorsements will be allowed to conduct fishing activities that are

permitted in the trawl RCA as specified in the groundfish harvest specifications and management measures published in the **Federal Register**.

Comment 12: Two commenters indicated that there are no provisions for transferring VMS transceiver units from one owner to another or one boat to another. The commenter suggests the addition of a simple notification system where a unit owner can notify NMFS that he or she no longer owns or controls the unit. The same notification system would be used in the event of a catastrophic vessel loss where a unit cannot be recovered.

Response: In response to the comments, NMFS has added a field to the activation report that can be used to recognize that a transceiver VMS unit has been previously used on another vessel. Regulatory language has been added that will prohibit transceiver units from being registered to more than one vessel and that requires proof of ownership of the VMS unit or documentation of service termination from the communication service provider before the transceiver unit can be registered to a new vessel.

Comment 13: Two commenters expressed concern that the VMS program will continue indefinitely, even though the need for VMS may disappear if the existing area closures are discontinued. The commenters recommended that a termination clause be written into the final rule.

Response: NMFS does not agree that there is a need to include a termination clause at this time. At any point in the future, the Council may choose to recommend changes and NMFS may choose to revise or eliminate the groundfish regulations pertaining to VMS.

Comment 14: One commenter indicated that VMS transceiver units should also be required for the open access vessels that target rockfish on the shelf or slope.

Response: During the initial phase of this program, the Council recommended that vessels registered to limited entry permits be required to carry and use VMS transceiver units while fishing off the West Coast. This is intended to be a pilot program that begins with the sector that is allocated the majority of the groundfish resources. NMFS believes that a VMS-based monitoring program is an effective tool for monitoring compliance with time area restrictions. At its October 7, 2003, meeting (68 FR 54895, September 19, 2003), the Council's ad hoc VMS Committee considered expanding the VMS requirements to other sectors of

the fishery, including the open access groundfish fisheries.

Comment 15: The proposed rule requires that a VMS unit be installed according to procedures established by NMFS. Discussions with NMFS indicate that these procedures will include installation by a NMFS-certified installer. The commenter believes that the installation requirements should be limited to installation pursuant to manufacturer instructions. Certified installers are often not available in smaller ports, and this requirement can be both time consuming and costly.

Response: The rule does not require that a certified person perform the installation. Most of the systems being considered for type-approval are do-it-yourself installations. Vessels that already have VMS transceiver units installed for other fisheries or personal purposes may continue to use their current transceiver unit provided it is a model that has been type-approved for the Pacific Coast groundfish fishery and the software has been upgraded to meet the defined requirements.

Given that the VMS hardware and satellite communications services are provided by third party businesses, as approved by NMFS, there is a need for NMFS to collect information regarding the individual vessel's installation in order to ensure that automated position reports will be received without error. This would require that an activation report which contains a certification checklist be completed by the individual who installed the unit and that it be returned to NMFS prior to using the VMS transceiver to meet regulatory requirements. An activation report would be submitted to NMFS by the VMS installer who would certify the information about the installation by signing the checklist and returning it to NMFS. The checklist indicates the procedures to be followed by the installers and, upon certification and return to NMFS, provides the Office of Law Enforcement with information about the hardware installed and the communication service provider that will be used by the vessel operator.

Comment 16: The proposed rule does not include a provision for a vessel owner to purchase a backup transceiver unit that can be used if the primary transceiver fails during an extended fishing trip. One commenter suggests that a provision be added that will allow a back-up unit to be brought on-line during the course of a fishing trip through simple declaration procedures. This would prevent trips from being interrupted and would continue to meet the information need identified by NMFS.

Response: Nothing in this rule prohibits a vessel owner/operator from submitting an activation report for a back-up VMS transceiver unit. A separate activation report will need to be submitted for each VMS transceiver unit. For clarification, NMFS will ask that the owner/operator specify in the activation report if the unit is the primary or a back-up unit.

Comment 17: The action that NMFS intends to take if the VMS transceiver fails during a fishing trip is unclear. The rule should specifically state that if the VMS transceiver fails during a fishing trip, the vessel will be allowed to complete the current fishing trip provided the vessel operator notifies NMFS of the malfunction.

Response: As stated at § 660.359(d)(5), it is the vessel operator's responsibility to notify NMFS when he or she becomes aware that transmission of automatic position reports have been interrupted. Upon contact with NMFS, the vessel operator will be given specific instructions that may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's position or returning to port until the VMS is operable. Because each incident must be considered on a case-by-case basis, NMFS believes that the regulations adequately reflect the range of actions that may be taken. After a fishing trip during which interruption of automatic position reports has occurred, the vessel owner or operator must replace or repair the mobile VMS transceiver unit prior to the vessel's next fishing trip.

Comment 18: The proposed rule states that a vessel registered to limited entry permits must have the VMS transceiver on at all times whether the vessel is fishing or out of the water. The vessel should only be required to have the VMS unit on when it is fishing for groundfish outside the boundary line for state territorial waters. Requiring transmissions when the vessel is out of the water or when it is not participating in the groundfish fishery is an unnecessary cost to fishermen.

Response: A vessel owner/operator may choose to send an exemption report to discontinue transmissions during a period when the vessel will be continuously out of the water for more than 7 consecutive days. To reduce the reporting burden on vessels outside the EEZ, an optional exemption report was added to the rule to allow vessels to reduce or discontinue VMS hourly position reports when they are out of the EEZ for more than 7 consecutive days. In all other circumstances, NMFS believes that it is necessary to require continuous transmissions of vessel

positions to allow limited enforcement resources to be used efficiently and thereby maintain the integrity of the conservation areas.

Comment 19: Vessels that are registered to "small fleet" limited entry permits are placed on trailers and removed from the water each day. Requiring the vessel to keep the VMS transceiver unit on at all times would result in position transmissions from land and unnecessary transmission fees. The commenter recommends that NMFS establish a geo-fence that would trigger the VMS transceiver unit to stop and start position transmissions.

Response: NMFS recognizes there may be some unique circumstances where it is unnecessary for position reports to be sent while vessels are on land, and is therefore evaluating geofencing and other technologies to address the commenter's concern. Upon testing and evaluation, these technologies may provide options for modifying position reporting requirements in the future.

Comment 20: We note that the EA/RIR/IRFA prepared for the proposed rule grossly underestimates installation costs, because they do not include compensation for the travel time of a certified installer to remote ports.

Response: The use of certified installers is not required. The installation of the transceiver units was estimated at 4 hours per vessel, or \$120, at \$30 per hour for the do-it-yourself installation. The actual installation time for a VMS unit is estimated to be less than two hours, but a higher estimate of 4 hours/vessel is used, based on a worst case scenario where the power source (such as a 12-volt DC outlet) is not convenient to a location where the VMS unit can be installed. Most of the systems being considered for type-approval are do-it-yourself installations.

Given that the VMS hardware and satellite communications services are provided by third party businesses, as approved by NMFS, there is a need for NMFS to collect information regarding the individual vessel's installation in order to ensure that automated position reports will be received. This information collection would not increase the time burden for installation of VMS, but would require that an activation report, which includes a certification checklist, be returned to NMFS prior to using the VMS transceiver to meet regulatory requirements. The time and cost burden of preparing and submitting installation information to NMFS is minor. Submission of a checklist would be required only for the initial installation or when the hardware or

communications service provider changes. NMFS estimates a time burden of 5 minutes (\$2.50 at \$30 per hour) for completing the checklist and additional \$3 for mailing/faxing to NMFS, for a total of \$5.50 per occurrence.

Comment 21: Several commenters indicated that NMFS should pay for the costs of the VMS transceiver unit, while the vessel owner should only be responsible for installation and operation related costs of the VMS transceiver units.

Response: Although the Council recommended that NMFS fully fund a VMS monitoring program, it is not possible at this time because neither state nor Federal funding is available for purchasing, installing, or maintaining VMS transceiver units, nor is funding available for data transmission. Because of the critical need to monitor the integrity of conservation areas that protect overfished stocks, while allowing for the harvest of healthy stocks, NMFS believes it is necessary to proceed with this rulemaking. To move this rulemaking forward at this time, it is necessary to require fishery participants to bear the cost of purchasing, installing, and maintaining VMS transceiver units, VMS data transmissions, and reporting costs associated with declaration requirements. If state or Federal funding becomes available, fishery participants may be reimbursed for all or a portion of their VMS expenses.

Comment 22: The cost for the VMS transceiver units and installation presented in the preamble and the classification section under the Initial Regulatory Flexibility Analysis (IRFA) of the proposed rule are not consistent.

Response: The cost values for the VMS transceiver units and installation presented in the preamble and those values presented in the classification section under the IRFA of the proposed rule are consistent, but represent different groups of VMS transceiver units. The values presented in the preamble represent the current price range for all VMS units that are nationally type-approved for fishery monitoring in the various NMFS regions, this includes upgraded units with 2-way communications and other value added features. In contrast, the values presented in the IRFA are based on a price range for the units that are likely to be type-approved for the Pacific Coast groundfish fishery.

Comment 23: The estimated benefits of VMS presented in the classification section of the proposed rule under the EA/RIR/IRFA analysis misrepresent the benefits of VMS. Benefits associated with depth-based management should

be removed from the analysis since there is no revenue gain to the fishermen from the VMS requirements.

Response: The 2003 depth-based management regime has closed large areas to fishing, but has allowed more liberal trip limits for healthy stocks than would have been available without depth-based closures. To continue to allow this combination of depth closures and higher limits, it is necessary to establish a monitoring program to ensure the integrity of these large depth-based conservation areas. With the 2003 Annual Specifications and Management Measures, the Council recommended several measures, including implementation of VMS, to track movement of vessels through and within depth zones. Without a management strategy based on depth-based conservation areas, the fishery would most likely be managed under more seriously constrained limits on healthy stocks that co-occur with overfished species. Therefore, NMFS believes that the values accurately reflect the benefit to the fisheries from VMS.

Comment 24: Because the cost of the VMS unit and its maintenance will likely be the burden of the vessel owner/operator, the type-approved units must be cost effective and durable enough for vessels registered to "small fleet": 16–21 ft (4.8–6.4 m), limited entry permits.

Response: NMFS is testing VMS transceiver units that are appropriate for "small fleet" limited entry vessels with the intent of type-approving models that are cost effective and durable enough for vessels registered to "small fleet" limited entry permits.

Comment 25: Because the cost of the VMS unit and its maintenance will likely be the burden of the vessel owner/operator, the approved units must be cost effective and durable enough for vessels registered to "small fleet" limited entry permits.

Response: NMFS is testing VMS transceiver units with the intent of type-approving models that are cost effective and durable enough for vessels registered to "small fleet" limited entry permits.

Comment 26: To take enforcement action against a vessel, NMFS should require that an actual observation be made of the violation, so it will hold up in court.

Response: By law, enforcement proceedings are subject to standards of proof and rules of evidence that will determine what evidence is sufficient in particular cases.

Comment 27: The commenter recommends that VMS transceiver units

suitable for use on "small fleet" (16–21 ft) (4.8–6.4 m in length) limited entry vessels, *i.e.*, units that are small and durable, be type-approved for use under this rule.

Response: NMFS is in the process of testing and type-approving VMS transceiver units that are appropriate for "small fleet" limited entry vessels.

Comment 28: One commenter indicated that the final rule should not become effective before the congressionally-mandated capacity reduction program becomes effective because these same vessels would be affected by both actions. Another commenter stated that the final rule should not become effective before January 1, 2004. While yet another commenter stated that it is highly problematic because depth-based management measures are currently in place and need to be monitored. This commenter recommended immediate implementation of VMS.

Response: At its November 2002 meeting, the Council recommended that NMFS move forward with a proposed rule to implement a VMS program for the Pacific Coast groundfish fishery as soon as possible in 2003. NMFS recognizes the importance of VMS for monitoring depth-based management measures and intended to implement the program as soon as possible in 2003 while allowing adequate time for public review and for the affected public to purchase and install all of the necessary equipment and services.

At its June 2003 meeting, the Council reviewed the proposed rule and recommended that the effective date for the rulemaking be January 1, 2004. NMFS agrees with the Council's recommendation for the following reasons: (1) A substantial proportion of limited entry trawl vessels (20–40 percent) could be bought out of the fishery by January 2004, and requiring these vessels to purchase VMS units before then would be unnecessary; and (2) additional time is needed for NMFS to put the necessary VMS infrastructure in place. This is because defining and verifying coordinates for depth contour lines, creating a "geo-fence" for "small fleet" limited entry permits, and completing the type-approval process will require more time than had originally been estimated.

Comment 29: NMFS should require vessels to have VMS transceiver units with 2-way communications rather than the proposed requirement for 1-way communications. Having 2-way communications would allow NMFS to communicate directly with vessels to determine if they are engaged in illegal

fishing rather than having to conduct an at-sea observation.

Response: NMFS agrees that the benefits of a VMS monitoring program that includes 2-way communications are greater than a program with 1-way communications. This is because 2-way communications can be used for transmitting reports from the vessel, receiving operational messages, and for inquiring about use of distress signal. However, the cost to industry and the diversity of fishery participants were also considered. NMFS determined that the Council recommended alternative which included a 1-way communications system (ship-to-shore) satisfied the defined need for action, while being less costly than a 2-way communication system. This rule defines minimum requirements and will not preclude a vessel owner from procuring a VMS unit type-approved by NMFS for the Pacific Coast groundfish fishery that provides additional services such as 2-way communications and has capabilities used exclusively by the vessel owner and operator.

Changes From the Proposed Rule

This final rule includes the following changes from the proposed rule:

1. In § 660.306(z)(6) language has been added that will prohibit transceiver units from being registered to more than one vessel at a time.

2. In § 660.306(bb) language has been added to allow limited entry vessels with trawl endorsements to conduct fishing activities that are permitted in the trawl RCA.

3. In § 660.359(d)(2)(ii) language has been added to require that a proof of ownership of the VMS transceiver unit or service termination from the communication service provider be provided in order for the unit to be registered to a new vessel.

4. In § 660.306(Z)(1) and 660.359(b) references to EEZ have been changed to clearly state that the rule applies to state and Federal marine waters 0–200 nautical miles.

Classification

The Administrator, Northwest Region, NMFS, determined that the FMP regulatory amendment is necessary for the conservation and management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an IRFA which was summarized in the proposed rule published on May 22, 2003 (68 FR 27972). NMFS prepared a FRFA that describes the economic impact of this action on small entities. The following is the summary of the FRFA. The need

for and objectives of this final rule are contained in the **SUPPLEMENTARY INFORMATION** of the preamble and in the proposed rule.

This final rule does not duplicate, overlap, or conflict with other Federal rules. A range of five alternative actions were considered and analyzed. The alternative monitoring systems included: (1) The status quo, (2) a declaration system, (3) a basic VMS program with 1-way communications (the proposed action), (4) an upgraded VMS program with 2-way communications, and (5) the expanded use of fishery observers. Vessel plotters were recommended as a monitoring system by the industry. After consideration, it was determined that vessel plotters, which were designed as a navigational aid, would not be an adequate enforcement monitoring tool for depth-based management.

RCAs are large-scale, depth-related closed areas that are being used to restrict fishing across much of the continental shelf. The depth-based management strategy associated with the RCAs is designed to allow fishing for healthy stocks to continue, while protecting overfished species. However, it presents new enforcement challenges, and requires new tools such as VMS to supplement existing enforcement mechanisms.

Depth-based management measures would have remained in place under each of the alternatives, except that it is reasonable to believe that they would have been discontinued in 2004 under the status quo alternative. Declaration reports (Alternative 2) alone are not as effective as VMS in monitoring a vessel's location in relation to restricted areas. Observers (Alternative 5), the most expensive of the alternatives, provide detailed information, much of which goes beyond the identified need. VMS is an effective tool for monitoring vessel location. The two approaches to VMS considered during the rulemaking process were: A basic VMS system (Alternative 3—the preferred action) and an upgraded VMS system (Alternative 4). The primary difference between the two alternatives was that the upgraded system uses two-way communications between the vessel and shore such that full or compressed data messages can be transmitted and received by the vessel, while the basic system only transmits positions to a shore station. It was determined that the basic system was the minimum system that would maintain the integrity of the closed areas. However, this action will not preclude vessels from installing an upgraded VMS system.

The alternative coverage levels for declarations and VMS monitoring ranged substantially, from all limited entry vessels actively fishing off the West Coast to all limited entry, open access, and recreational charter vessels regardless of where fishing occurs. During the initial phase of this program, the Council recommended starting with vessels registered to limited entry permits fishing in state or Federal waters off the Washington, Oregon, and California coasts to be required to have VMS transceiver units. This is intended to be a pilot program that begins with the sector that is allocated the majority of the groundfish resources. In addition, alternative approaches for funding the purchasing, installation, and maintenance of VMS transceiver units, as well as the responsibilities for transmission of reports and data were considered and included the following alternatives: Vessel pays all costs, vessel pays only for the transceiver, NMFS pays for initial transceiver, and NMFS pays all costs. Although the Council recommended that NMFS fully fund a VMS monitoring program, it is not possible at this time because neither state nor Federal funding is available for purchasing, installing, or maintaining VMS transceiver units, nor is funding available for data transmission. Because of the critical need to monitor the integrity of conservation areas that protect overfished stocks, while allowing for the harvest of healthy stocks, NMFS believes it is necessary to proceed with this rulemaking.

Approximately 424 vessels that are registered to limited entry permits that operate in the waters off the states of Washington, Oregon or California would be required to carry and operate a NMFS type-approved VMS transceiver unit. All but 10 of the affected entities qualify as small businesses. Vessels required to carry VMS transceiver units will provide installation/activation reports, hourly position reports, and exemption reports.

The burden on fishery participants was considered and only the minimum data needed to monitor compliance with regulations are being required. In addition to VMS requirements, declaration report requirements would apply to vessels registered to limited entry permits with trawl endorsements (262 vessels); other vessels using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber (299 vessels); and tribal vessels using trawl gear, before these vessels are used to fish in any trawl RCA or the CCA. In addition, declaration reports would be required from vessels

registered to limited entry permits with longline and pot endorsements (167), before the vessel could be used to fish in any non-trawl RCA or the CCA.

The Council's VMS Committee initially considered declaration reports as "per trip" reports. Following consultation with fishery participants, it was determined that the needs of NMFS and the U.S. Coast Guard could be met with less frequently made declaration reports. Therefore, it was determined that a declaration report identifying the type of gear being used by a vessel would remain valid until cancelled or revised by the vessel operator. This results in a significant reduction in the number of reports.

Following consultation with fishery participants, it was determined that some vessels may prefer to reduce the costs of reporting when leaving the waters off the coasts of Washington, Oregon, and California. A substantial number of permitted vessels also fish in waters off Alaska and in areas seaward of the EEZ. In addition, vessels are commonly pulled out of the water for extended periods. To reduce the reporting burden on vessels seaward of the EEZ or out of the water, an optional exemption report was proposed to allow vessels to reduce or discontinue VMS hourly position reports when they are out of the EEZ for more than 7 consecutive days.

Public comment on the proposed rule identified that there are no provisions for transferring of VMS units from one owner to another or one boat to another. In response, NMFS added regulatory language that will prohibit transceiver units from being registered to more than one vessel at a time, while identifying how transceiver units can be transferred and registered to a new vessel.

The preferred alternative (alternative 3), which would require limited entry vessels to purchase and operate a VMS in waters off of Washington, Oregon, and California, is expected to result in increased profits to individual vessels because the depth-based strategy can continue to be used to manage the fishery. To determine profitability, the Council compared the costs of purchasing and operating a VMS unit to the increase in revenue that would be obtained from expanded fishing opportunities under the depth-based management program. Since revenue data for individual vessels were not readily available, the Council used average annual revenue per vessel as a proxy. In the absence of vessel operating cost data, the Council considered only the cost of purchasing and maintaining a VMS unit and assumed other costs to be constant. The VMS units that are

expected to be type-approved for this fishery range in costs and service features. This allows the vessel owner the flexibility in choosing the model that best fits the needs of his or her vessel.

NMFS will pay for all costs associated with polling (when the processing center queries the transceiver, outside of regular transmission, for a position report). The costs of installation are minimal because the transceivers can be installed by the vessel operator. Vessels that already have VMS transceiver units installed for other fisheries or personal purposes could use their current unit, providing it is a model that has been type-approved for the Pacific Coast groundfish fishery and the software has been upgraded to meet the defined requirements. The estimated costs of purchasing and installing the VMS transceiver unit would be between \$800 and \$3800 per individual vessel, and between \$548 and \$1698 per year to operate and maintain the unit. Revenues from expanded fishing opportunities were estimated to increase \$26,000 per year for limited entry trawl vessels and \$14,000 per year for limited entry longline and pot vessels, far exceeding the estimated start-up and maintenance costs of the VMS. While ex-vessel revenues appear higher on average for vessels likely to be required to use VMS under the depth-based management regime, it should be noted that fishing costs may also be higher, offsetting some of the apparent gain. Unfortunately, vessel cost data necessary to estimate this effect are currently not available. It is also important to keep in mind that using average revenues masks the variability of ex-vessel revenues in each vessel class. While on average, additional revenues appear greater than VMS-related costs, for some individual vessels in each class this will not be the case. Alternative 4, which would implement a two-way VMS, would produce higher costs per vessel (year 1 at \$3,878-\$7,607; subsequent years at \$1,063-\$2,342) and would yield less profit, than the proposed VMS alternative. Alternative 5, which would implement observer coverage, would be very costly at \$300 per day, or \$36,000 per year assuming 10 fishing days per month, and would most likely produce economic losses for the majority of limited entry vessels. Alternative 2, which would allow expanded fishing by use of declaration only, would be more profitable to limited entry vessels than the proposed VMS measure, since they would earn the same revenue at a minimal cost.

Mandatory VMS will allow for better enforcement of fishing regulations and

provide a more accurate database of fishing activity to better meet the conservation goals of the Pacific Groundfish FMP. The proposed measure to require all trawl vessels to declare their intentions to fish is expected to have only a minimal impact on individual trawlers since the cost of a declaration is minimal.

Most vessels affected by this action have gross annual receipts of under \$3.5 million and are defined as small entities under section 601 of the Regulatory Flexibility Act; however, there are approximately 10 vessels defined as large entities operating in the limited trawl fishery. There could be some disproportionate economic impacts on small entities versus large entities for the group of limited entry vessels that are less than 40 ft (12.192 m) in length and have relatively low gross annual receipts. These include 90 limited entry vessels, comprised of 5 trawl vessels and 85 longline and pot vessels. Depending upon the cost of the VMS, some of these smaller vessels would be forced to pay a relatively larger share of their annual expenditures for purchase of the VMS compared to the larger vessels.

All vessels that fish in conservation areas would increase their gross receipts by being able to fish in more productive areas, having the effect of increasing profitability and mitigating the cost of the VMS. This mitigation would be less for smaller vessels, due to their smaller catches and, therefore, income from groundfish.

Section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with this final rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) will be prepared. Copies of this final rule are available from the Northwest Regional Office, and the guide, *i.e.*, permit holder letter, will be sent to all holders of limited entry permits for the Pacific Coast groundfish fishery. The guide and this final rule will also be available upon request.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB, OMB Control

Number 0648–0478. Public reporting burden for this collection of information is estimated to average as follows: 4 minutes per response for each declaration report at an estimated time burden on the public of 578 hours annually for all 723 respondents; At 4 hours per response for installation of the VMS transceiver unit and 5 minutes per response to send the installation/activation report with an estimated time burden to the public from all 424 respondents of 1,696 hours for installation of the VMS transceiver units and 34 hours annually for sending the installation/activation report; At 5 seconds per response for each hourly position report, the expected time burden on the public from all 424 respondents would be 5,159 hours annually; and at 4 minutes per response for each exemption report the expected time burden on the public from 145 respondents would be 19 hours annually. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the address above and by e-mail to David_Rostker@omb.eop.gov, or faxed 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.

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

This final rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 29, 2003.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES AND IN THE WESTERN PACIFIC

Subpart G—West Coast Groundfish Fisheries

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.302, add "Address of record", "Groundfish Conservation Area or GCA", "Mobile transceiver unit", "Office for Law Enforcement", and "Vessel monitoring system or VMS", in alphabetical order to read as follows:

§ 660.302 Definitions.

Address of record. Address of Record means the business address of a person, partnership, or corporation used by NMFS to provide notice of actions.

* * * * *

Groundfish Conservation Area or GCA means a geographic area defined by coordinates expressed in degrees latitude and longitude, created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species. Specific GCAs are referred to or defined at 660.304(c).

* * * * *

Mobile transceiver unit means a vessel monitoring system or VMS device, as set forth at § 660.359, installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by this subpart.

Office for Law Enforcement (OLE) refers to the National Marine Fisheries Service, Office for Law Enforcement, Northwest Division.

* * * * *

Vessel monitoring system or VMS means a vessel monitoring system or mobile transceiver unit as set forth in § 660.359 and approved by NMFS for use on vessels that take (directly or incidentally) species managed under the Pacific Coast Groundfish FMP, as required by this subpart.

■ 3. Section 660.303 is revised to read as follows:

§ 660.303 Reporting and recordkeeping.

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing

state data collection requirements. Telephone surveys of the domestic industry may be conducted by NMFS to determine amounts of whiting that may be available for reallocation under 50 CFR 660.323(a)(4)(vi). No Federal reports are required of fishers or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law.

(c) Any person landing groundfish must retain on board the vessel from which groundfish is landed, and provide to an authorized officer upon request, copies of any and all reports of groundfish landings containing all data, and in the exact manner, required by the applicable state law throughout the cumulative limit period during which a landing occurred and for 15 days thereafter.

(d) *Reporting requirements for vessels fishing in conservation areas—(1)*

Declaration reports for trawl vessels intending to fish in a conservation area.

The operator of any vessel registered to a limited entry permit with a trawl endorsement; any vessel using trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber; or any tribal vessel using trawl gear must provide NMFS with a declaration report, as specified at paragraph 660.303(d)(5), of this section to identify the intent to fish within the CCA, as defined at § 660.304, or any trawl RCA, as defined in the groundfish annual management measures that are published in the **Federal Register**.

(2) *Declaration reports for non-trawl vessels intending to fish in a conservation area.* The operator of any vessel registered to a limited entry permit with a longline or pot endorsement must provide NMFS OLE with a declaration report, as specified at paragraph (d)(5) of this section, to identify the intent to fish within the CCA, as defined at § 660.304, or any non-trawl RCA, as defined in the groundfish annual management measures that are published in the **Federal Register**.

(3) *When a declaration report for fishing in a conservation area is required,* as specified in paragraphs (d)(1) and (d)(2) of this section, it must be submitted before the vessel leaves port:

(i) On a trip in which the vessel will be used to fish in a conservation area for the first time during the calendar year;

(ii) On a trip in which the vessel will be used to fish in a conservation area with a gear type that is different from the gear declaration provided on a valid declaration report as defined at paragraph 660.303(d)(6) of this section; or

(iii) On a trip in which the vessel will be used to fish in a conservation area for the first time after a declaration report to cancel fishing in a conservation area was received by NMFS.

(4) *Declaration report to cancel fishing in a conservation area.* The operator of any vessel that provided NMFS with a declaration report for fishing in a conservation area, as required at paragraphs (d)(1) or (d)(2) of this section, must submit a declaration report to NMFS OLE to cancel the current declaration report before the vessel leaves port on a trip in which the vessel is used to fish with a gear that is not in the same gear category set out in paragraph § 660.303(d)(5)(i) declared by the vessel in the current declaration.

(5) *Declaration reports will include:* the vessel name and/or identification number, and gear declaration (as defined in § 660.303(d)(5)(i)). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt. Retention of the confirmation code or receipt to verify that the declaration requirement was met is the responsibility of the vessel owner or operator.

(i) One of the following gear types must be declared:

- (A) Limited entry fixed gear,
- (B) Limited entry midwater trawl,
- (C) Limited entry bottom trawl,
- (D) Trawl gear including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber,
- (E) Tribal trawl,
- (F) Other gear including: gear used to take spot and ridgeback prawns, crab or lobster, Pacific halibut, salmon, California halibut, California sheephead, highly migratory species, species managed under the Coastal Pelagic Species Fishery Management Plan, and any species in the gillnet complex as managed by the State of California,
- (G) Non-trawl gear used to take groundfish.

(ii) Declaration reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Other methods may include email, facsimile, or telephone. NMFS OLE will provide, through appropriate media,

instructions to the public on submitting declaration reports. Instructions and other information needed to make declarations may be mailed to the limited entry permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the permit owner's actual address has changed without notification to NMFS, as required at § 660.335(a)(2). Owners of vessels that are not registered to limited entry permits and owners of vessels registered to limited entry permits that did not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the declaration is required to obtain information needed to make declaration reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Time).

(6) *A declaration report will be valid until a declaration report to revise the existing gear declaration or a declaration report to cancel fishing in a conservation area is received by NMFS OLE.* During the period that a vessel has a valid declaration report on file with NMFS, it cannot fish with a gear other than a gear type that is within the gear category (50 CFR 660.303(d)(5)) declared by the vessel. After a declaration report to cancel fishing in the RCA is received, that vessel must not fish in a conservation area until another declaration report for fishing by that vessel in a conservation area is received by NMFS.

■ 4. Section 660.304 is revised to read as follows:

§ 660.304 Management areas, including conservation areas, and commonly used geographic coordinates.

(a) *Management areas.* (1) *Vancouver.*

(i) The northeastern boundary is that part of a line connecting the light on Tatoosh Island, WA, with the light on Bonilla Point on Vancouver Island, British Columbia (at 48°35'75" N. lat., 124°43'00" W. long.) south of the International Boundary between the U.S. and Canada (at 48°29'37.19" N. lat., 124°43'33.19" W. long.), and north of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) The northern and northwestern boundary is a line connecting the following coordinates in the order listed, which is the provisional international boundary of the EEZ as shown on NOAA/NOS Charts #18480 and #18007:

Point	N. lat.	W. long.
1	48°29'37.19"	124°43'33.19"
2	48°30'11"	124°47'13"
3	48°30'22"	124°50'21"
4	48°30'14"	124°54'52"
5	48°29'57"	124°59'14"
6	48°29'44"	125°00'06"
7	48°28'09"	125°05'47"
8	48°27'10"	125°08'25"
9	48°26'47"	125°09'12"
10	48°20'16"	125°22'48"
11	48°18'22"	125°29'58"
12	48°11'05"	125°53'48"
13	47°49'15"	126°40'57"
14	47°36'47"	127°11'58"
15	47°22'00"	127°41'23"
16	46°42'05"	128°51'56"
17	46°31'47"	129°07'39"

(iii) The southern limit is 47°30' N. lat.

(2) *Columbia*. (i) The northern limit is 47°30' N. lat.

(ii) The southern limit is 43°00' N. lat.

(3) *Eureka*. (i) The northern limit is 43°00' N. lat.

(ii) The southern limit is 40°30' N. lat.

(4) *Monterey*. (i) The northern limit is 40°30' N. lat.

(ii) The southern limit is 36°00' N. lat.

(5) *Conception*. (i) The northern limit is 36°00' N. lat.

(ii) The southern limit is the U.S.-Mexico International Boundary, which is a line connecting the following coordinates in the order listed:

Point	N. lat.	W. long.
1	32°35'22"	117°27'49"
2	32°37'37"	117°49'31"
3	31°07'58"	118°36'18"
4	30°32'31"	121°51'58"

(b) *Commonly used geographic coordinates*.

(1) Cape Falcon, OR—45°46' N. lat.

(2) Cape Lookout, OR—45°20'15" N. lat.

(3) Cape Blanco, OR—42°50' N. lat.

(4) Cape Mendocino, CA—40°30' N. lat.

(5) North/South management line—40°10' N. lat.

(6) Point Arena, CA—38°57'30" N. lat.

(7) Point Conception, CA—34°27' N. lat.

(c) *Groundfish Conservation Areas (GCAs)*. In § 660.302, a GCA is defined as “a geographic area defined by coordinates expressed in latitude and longitude, created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species.” Specific GCAs may be defined here in this paragraph, or in the **Federal Register**, within the harvest specifications and management measures process. While some GCAs may be designed with the intent that

their shape be determined by ocean bottom depth contours, their shapes are defined in regulation by latitude/longitude coordinates and are enforced by those coordinates. Fishing activity that is prohibited or permitted within a particular GCA is detailed in **Federal Register** documents associated with the harvest specifications and management measures process.

(1) *Rockfish Conservation Areas (RCAs)*. RCAs are defined in the **Federal Register** through the harvest specifications and management measures process. RCAs may apply to a single gear type or to a group of gear types, such as “trawl RCAs” or “non-trawl RCAs”.

(2) *Cowcod Conservation Areas (CCAs)*. (i) The Western CCA is an area south of Point Conception that is bound by straight lines connecting all of the following points in the order listed:

33°50' N. lat., 119°30' W. long.;
33°50' N. lat., 118°50' W. long.;
32°20' N. lat., 118°50' W. long.;
32°20' N. lat., 119°37' W. long.;
33°00' N. lat., 119°37' W. long.;
33°00' N. lat., 119°53' W. long.;
33°33' N. lat., 119°53' W. long.;
33°33' N. lat., 119°30' W. long.; and
connecting back to 33°50' N. lat.,
119°30' W. long.

(2) The Eastern CCA is a smaller area west of San Diego that is bound by straight lines connecting all of the following points in the order listed:

32°42' N. lat., 118°02' W. long.;
32°42' N. lat., 117°50' W. long.;
32°36'42" N. lat., 117°50' W. long.;
32°30' N. lat., 117°53'30" W. long.;
32°30' N. lat., 118°02' W. long.; and
connecting back to 32°42' N. lat.,
118°02' W. long.

(d) *Yelloweye Rockfish Conservation Area (YRCA)*. The YRCA is a C-shaped area off the northern Washington coast that is bound by straight lines connecting all of the following points in the order listed:

48°18' N. lat., 125°18' W. long.;
48°18' N. lat., 124°59' W. long.;
48°11' N. lat., 124°59' W. long.;
48°11' N. lat., 125°11' W. long.;
48°04' N. lat., 125°11' W. long.;
48°04' N. lat., 124°59' W. long.;
48°00' N. lat., 124°59' W. long.;
48°00' N. lat., 125°18' W. long.; and
connecting back to 48°18' N. lat.,
125°18' W. long.

(e) *International boundaries*. (1) Any person fishing subject to this subpart is bound by the international boundaries described in this section, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding

their respective jurisdictions, until such time as new boundaries are established or recognized by the United States.

(2) The inner boundary of the fishery management area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the “3-mile limit”).

(3) The outer boundary of the fishery management area is a line drawn in such a manner that each point on it is 200 nm from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

■ 5. In § 660.306, new paragraphs (z), (aa) and (bb) are added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(z) *Vessel monitoring systems*. (1) Use any vessel registered to a limited entry permit to operate in State or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California, unless that vessel carries a NMFS OLE type-approved mobile transceiver unit and complies with the requirements described at § 660.359.

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified at § 660.359.

(3) Fail to operate and maintain a mobile transceiver unit on board the vessel at all times as specified at § 660.359.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified at § 660.359.

(5) Fail to contact NMFS OLE or follow NMFS OLE instructions when automatic position reporting has been interrupted as specified at § 660.359.

(6) Register a VMS transceiver unit registered to more than one vessel at the same time.

(aa) *Fishing in conservation areas*. Fish with any trawl gear, including exempted gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, CA, and sea cucumber; or with trawl gear from a tribal vessel or with any gear from a vessel registered to a groundfish limited entry permit in a conservation area unless the vessel owner or operator has a valid declaration confirmation code or receipt for fishing in conservation area as specified at § 660.303(d)(5).

(bb) Operate any vessel registered to a limited entry permit with a trawl endorsement in a Trawl Rockfish Conservation Area (as defined at

660.302), except for purposes of continuous transiting, with all groundfish trawl provided that all groundfish trawl gear is stowed in accordance with 660.322(b)(8), or except as authorized in the annual groundfish management measures published in the **Federal Register**.

■ 6. In § 660.322 new paragraph (b)(7) is added to read as follows:

§ 660.322 Gear restrictions.

* * * * *

(b) * * *
(7) Trawl vessels may transit through the trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either:

(i) Below deck; or
(ii) If the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or

(iii) Remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors.

* * * * *

■ 7. Section 660.359 is added to subpart G to read as follows:

§ 660.359 Vessel Monitoring System (VMS) Requirements.

(a) *What is a VMS?* A VMS consists of a NMFS OLE type-approved mobile transceiver unit that automatically determines the vessel's position and transmits it to a NMFS OLE type-approved communications service provider. The communications service provider receives the transmission and relays it to NMFS OLE.

(b) *Who is required to have VMS?* A vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes in state or Federal water seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California is required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for an NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE, prior to fishing.

(c) *How are mobile transceiver units and communications service providers approved by NMFS OLE?* (1) NMFS OLE will publish type-approval specifications for VMS components in the **Federal Register** or notify the public through other appropriate media.

(2) Mobile transceiver unit manufacturers or communication service providers will submit products or services to NMFS OLE for evaluation based on the published specifications.

(3) NMFS OLE may publish a list of NMFS OLE type-approved mobile transceiver units and communication service providers for the Pacific Coast groundfish fishery in the **Federal Register** or notify the public through other appropriate media. As necessary, NMFS OLE may publish amendments to the list of type-approved mobile transceiver units and communication service providers in the **Federal Register** or through other appropriate media. A list of VMS transceivers that have been type-approved by NMFS OLE may be mailed to the permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS, as required at 660.335(a)(2).

(d) *What are the vessel owner's responsibilities?* If you are a vessel owner that must participate in the VMS program, you or the vessel operator must:

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may get a copy of the VMS installation and operation instructions from the NMFS OLE Northwest, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115-6349, phone: (206) 526-6133.

(2) Activate the mobile transceiver unit, submit an activation report, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS OLE, Northwest VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115-6349, phone: (206) 526-6133. An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may participate in a fishery requiring the VMS.

(i) *Activation reports.* If you are a vessel owner who must use VMS and you are activating a VMS transceiver unit for the first time or reactivating a VMS transceiver unit following a reinstallation of a mobile transceiver unit or change in service provider, you must fax NMFS OLE an activation report that includes: Vessel name; vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; if applicable, the

groundfish permit number the vessel is registered to; VMS transceiver unit manufacturer; VMS communications service provider; VMS transceiver identification; identifying if the unit is the primary or backup; and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by NMFS OLE.

(ii) Ownership of the VMS transceiver unit may be transferred from one vessel to another vessel by submitting a new activation report, which identifies that the transceiver unit was previously registered to another vessel, and by providing proof of ownership of the VMS transceiver unit or proof of service termination from the communication service provider.

(3) Operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year, unless such vessel is exempted under paragraph (d)(4) of this section.

(4) *VMS exemptions.* A vessel that is required to operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year may be exempted from this requirement if a valid exemption report, as described at § 660.359(d)(4)(iii), is received by NMFS OLE and the vessel is in compliance with all conditions and requirements of the VMS exemption identified in this section.

(i) *Haul out exemption.* When it is anticipated that a vessel will be continuously out of the water for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, electrical power to the VMS mobile transceiver unit may be removed and transmissions may be discontinued. Under this exemption, VMS transmissions can be discontinued from the time the vessel is removed from the water until the time that the vessel is placed back in the water.

(ii) *Outside areas exemption.* When the vessel will be operating seaward of the EEZ off Washington, Oregon, or California continuously for more than 7 consecutive days and a valid exemption report has been received by NMFS OLE, the VMS mobile transceiver unit transmissions may be reduced or discontinued from the time the vessel leaves the EEZ off the coasts of Washington, Oregon or California until the time that the vessel re-enters the EEZ off the coasts of Washington, Oregon or California. Under this exemption, the vessel owner or operator can request that NMFS OLE reduce or discontinue the VMS transmissions after receipt of an exemption report, if the vessel is equipped with a VMS

transceiver unit that NMFS OLE has approved for this exemption.

(iii) Exemption reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Other methods may include email, facsimile, or telephone. NMFS OLE will provide, through appropriate media, instructions to the public on submitting exemption reports. Instructions and other information needed to make exemption reports may be mailed to the limited entry permit owner's address of record. NMFS will bear no responsibility if a notification is sent to the address of record and is not received because the permit owner's actual address has changed without notification to NMFS, as required at 660.335(a)(2). Owners of vessels registered to limited entry permits that did not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the exemption is required to obtain information needed to make exemption reports. NMFS OLE must be

contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Standard Time).

(iv) Exemption reports must be received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at § 660.359(d)(4)(i) and (ii) occur. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption or at least 2 hours before the vessel is placed back in the water following a haul out exemption.

(5) When aware that transmission of automatic position reports has been interrupted, or when notified by NMFS OLE that automatic position reports are not being received, contact NMFS OLE at 7600 Sand Point Way NE, Seattle, WA 98115-6349, phone: (206)526-6133 and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating to a location designated by NMFS OLE

the vessel's position or returning to port until the VMS is operable.

(6) After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the mobile transceiver unit prior to the vessel's next fishing trip. Repair or reinstallation of a mobile transceiver unit or installation of a replacement, including change of communications service provider shall be in accordance with the instructions provided by NMFS OLE and require the same certification.

(7) Make the mobile transceiver units available for inspection by NMFS OLE personnel, U.S. Coast Guard personnel, state enforcement personnel or any authorized officer.

(8) Ensure that the mobile transceiver unit is not tampered with, disabled, destroyed or operated improperly.

(9) Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS transceiver units.

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