

Issued in Washington, DC, on May 18, 2009, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E9-12000 Filed 5-21-09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2007-1134; FRL-8908-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Michigan; Consumer Products Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a request submitted by the Michigan Department of Environmental Quality (MDEQ) on October 26, 2007, to revise the Michigan State Implementation Plan (SIP). The State has requested revisions to two rules in Part 6, "Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound (VOC) Emissions." The State has revised R 336.1660 by adopting by reference, with some modifications, the amended Ozone Transport Commission Model Rule published on September 13, 2006. The State has amended the definition of VOC in R 336.1661 by adopting the Federal definition from 40 CFR 51.100.

**DATES:** Comments must be received on or before June 22, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1134, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [mooney.john@epa.gov](mailto:mooney.john@epa.gov).

3. *Fax*: (312) 692-2551.

4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Final Rules section of this **Federal Register** for detailed instructions on how to submit comments.

#### FOR FURTHER INFORMATION CONTACT:

Andy Chang, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, [chang.andy@epa.gov](mailto:chang.andy@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period; therefore, any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Final Rules section of this **Federal Register**.

Dated: May 6, 2009.

**Walter W. Kovalick, Jr.,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9-11913 Filed 5-21-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 070717350-7391-01]

RIN 0648-AV63

#### International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Initial Implementation of the Western and Central Pacific Fisheries Convention

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement, in part, the Western and Central Pacific Fisheries Convention Implementation Act (Act), which authorizes the Secretary of Commerce to promulgate regulations needed to carry out the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), including implementing the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). NMFS has determined that this action is necessary for the United States to satisfy its international obligations under the Convention, to which it is a Contracting Party. It would have the effect of requiring that all relevant U.S. fishing vessels are operated in conformance with the provisions of the Convention.

**DATES:** Comments must be submitted in writing by June 22, 2009.

**ADDRESSES:** You may submit comments on this proposed rule, identified by 0648-AV63, and the draft environmental assessment (EA) and the regulatory impact review (RIR) prepared for the proposed rule by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal e-Rulemaking portal, at <http://www.regulations.gov>.

- Mail: William L. Robinson, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Include the identifier "0648-AV63" in the comments.

Instructions: All comments received are part of the public record and

generally will be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

An initial regulatory flexibility analysis (IRFA) prepared under the authority of the Regulatory Flexibility Act (RFA) is included in the **CLASSIFICATION** section of the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

Copies of the draft EA and RIR prepared for this proposed rule are available at [http://www.fpir.noaa.gov/IFD/ifd\\_documents\\_data.html](http://www.fpir.noaa.gov/IFD/ifd_documents_data.html) or may be obtained from William L. Robinson (see **ADDRESSES**).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to William L. Robinson, Regional Administrator, NMFS PIRO (see address above) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Tom Graham, NMFS PIRO, 808-944-2219.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access**

This proposed rule is also accessible at <http://www.gpoaccess.gov/fr>.

##### **Background on the Convention**

The Convention was opened for signature in Honolulu on September 5, 2000, and entered into force in June 2004. The full text of the Convention can be obtained from the WCPFC website at: <http://www.wcpfc.int/convention.htm>. The area of application of the Convention, or the Convention Area, comprises the majority of the western and central Pacific Ocean. A map showing the exact boundaries of the Convention Area can be found on the WCPFC website at: <http://www.wcpfc.int/pdf/Map.pdf>. The Convention is focused on highly migratory species (HMS) and stocks of HMS. Under the Western and Central Pacific Fisheries Convention Implementation Act (Public Law 109-479, Sec 501, *et seq.*, and codified at 16

U.S.C. 6901 *et seq.*), HMS fish stocks are defined to mean all fish stocks of the species listed in Annex I of the United Nations Convention on the Law of the Sea of 10 December 1982, except sauries, occurring in the Convention Area, and such other species of fish as the WCPFC may determine. The Convention also provides for the conservation and management of non-target, associated and dependent species.

The WCPFC, established under the Convention, is comprised of the Contracting Parties to the Convention and fishing entities that have agreed to be bound by the regime established by the Convention. Other entities that participate in the WCPFC include Participating Territories and Cooperating Non-Members. Participating Territories participate with the authorization of their respective Contracting Parties. Cooperating Non-Members are admitted by the WCPFC on a year-to-year basis.

The current Contracting Parties to the Convention are: Australia, Canada, China, Cook Islands, European Community, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Tonga, Tuvalu, United States of America and Vanuatu. Chinese Taipei (Taiwan), as a fishing entity, has agreed to be bound by the regime established by the Convention. The current Participating Territories are: French Polynesia, New Caledonia and Wallis and Futuna (affiliated with France); Tokelau (affiliated with New Zealand); and the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands and the Territory of Guam (affiliated with the United States of America). The Cooperating Non-Members for 2009 are Belize, El Salvador, Indonesia, Mexico and Senegal.

The Convention was ratified by, and came into force for, the United States in 2007. The United States thereby became a full Member of the WCPFC after having been a Cooperating Non-Member since the WCPFC's establishment in 2004.

##### **International Obligations of the United States under the Convention**

The United States will, in general, implement the provisions of the Convention under authority of the Act, and, as appropriate, under authority of the High Seas Fishing Compliance Act of 1995 (HSFCA; 16 U.S.C. 5501 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act

(MSA; 16 U.S.C. 1801 *et seq.*), the South Pacific Tuna Act of 1988 (SPTA; 16 U.S.C. 973-973r), and other applicable law.

The HSFCA implements the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993, and establishes a system of permitting, reporting, and regulation for U.S. vessels fishing on the high seas. The MSA governs the conduct of U.S. fisheries, primarily through fishery management plans developed by the Regional Fishery Management Councils and approved by the Secretary of Commerce. The SPTA implements the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty), and includes licensing and other requirements and restrictions for U.S. purse seine vessels fishing in the area of application of the South Pacific Tuna Treaty.

Authority to administer and enforce the Act, including the authority to promulgate regulations, is given to the Secretary of Commerce (Secretary). In promulgating regulations, the Secretary is directed to consult with the Secretary of State and the Secretary of the Department in which the United States Coast Guard (USCG) is operating.

This proposed rule would implement only those provisions of the Convention that are fully specified; that is, provisions for which no further action is required by the WCPFC prior to implementation. For example, the WCPFC has adopted procedures for boarding and inspection of fishing vessels on the high seas in the Convention Area, as called for in Article 26 of the Convention. Consequently, the Convention's provisions on high seas boarding and inspection, including the procedures adopted by the WCPFC, would be implemented via this proposed rule. Certain Convention provisions will require further elaboration by the WCPFC before they can be implemented. As an example, Article 29 of the Convention calls for the WCPFC to develop procedures to monitor transshipments in the Convention Area. Those procedures have not yet been adopted by the WCPFC; therefore regulations to implement them are not included in this proposed rule.

## Description of the Proposed Action

The proposed rule is described below in terms of its 10 main elements.

### 1. Authorization to fish

Owners or operators of U.S. vessels used for commercial fishing for HMS on the high seas in the Convention Area would be required to obtain a new NMFS-issued fishing authorization, called a "WCPFC Area Endorsement." Fishing would be defined, consistent with its definition under the Act, to specifically include receiving fish from another fishing vessel and bunkering or otherwise supplying or supporting a vessel that engages in fishing. Thus, carriers that receive HMS from another vessel, vessels that bunker vessels used to fish for HMS, and vessels that engage in operations at sea directly in support of, or in preparation for, fishing or transshipping by other vessels would be subject to this and other requirements of the proposed rule. This new authorization would be issued by the Regional Administrator of NMFS, Pacific Islands Region, supplemental to, and as an endorsement on, the permits issued under the authority of the HSFCA (high seas fishing permits; see 50 CFR 300.13). The prerequisites to obtaining a WCPFC Area Endorsement would be: having a valid high seas fishing permit (or simultaneously applying for one), submitting a complete application (see the next item, "vessel information"), and paying the required administrative fee. The application form would be designed as a supplement to the application for a high seas fishing permit. The WCPFC Area Endorsement would become void upon expiration, suspension, or revocation of the underlying high seas fishing permit. The WCPFC Area Endorsement is also subject to suspension or revocation independent to the high seas fishing permit. Holding a WCPFC Area Endorsement would trigger a number of other requirements, as described in the elements that follow.

### 2. Vessel information

Vessel owners and operators that apply for WCPFC Area Endorsements would be required to submit to NMFS, in their application forms for WCPFC Area Endorsements, specified information about the vessel and its operator (i.e., the master on board and in charge of the vessel) that is not already collected via the high seas fishing permit application. This information includes the name and nationality of the vessel operator (or operators); the communication types used on the vessel (e.g., single sideband

radio, voice Inmarsat, fax Inmarsat, e-mail Inmarsat, telex Inmarsat, or other type of satellite telephone), along with the communication service used and the identifying/contact number for each; the fishing methods used or intended to be used; the vessel's fish hold capacity, expressed in terms of either cubic meters or short tons; and the vessel's refrigeration and freezer capacity, including the types of refrigeration and freezer systems on board, the number of refrigeration and freezer units of each type, and the total refrigerating or freezing capacity of each type of system.

In addition, a bow-to-stern side-view photograph of the vessel in its current form and appearance, and in any case no older than five years, would have to be submitted to NMFS. The photograph could be in either paper or electronic format and must meet certain minimum specifications in terms of its size and resolution and the legibility of the vessel markings. Although the international radio call sign assigned to a given vessel is already collected in high seas fishing permit applications, an indication of whether or not an international radio call sign has been assigned to the vessel and what it is also would have to be submitted to NMFS by applicants for WCPFC Area Endorsements. This is because of the importance under the Convention of a vessel's international radio call sign (e.g., see paragraph below on "vessel identification") and NMFS' need to verify that the collected information is accurate. WCPFC Area Endorsement holders would have to submit to NMFS any subsequent changes to the submitted information within 15 days of the change.

In addition, owners or operators of any U.S. vessel used for fishing for HMS in the Convention Area in areas under the jurisdiction of any nation other than the United States (i.e., vessels for which a WCPFC Area Endorsement would not necessarily be required) would be required to submit to NMFS information about the vessel, its owners and operators and any fishing authorizations issued by such other nations. Specifically, all the information specified in the application for high seas fishing permits and in the application for WCPFC Area Endorsements would be required, as well as, for each fishing authorization issued by a nation or political entity other than the United States, the name of the nation or political entity, the name of the issuing authority, the authorization type, the period of validity, the specific activities authorized, the species for which fishing is authorized, the areas in which fishing is authorized, and any unique

identifiers assigned to the authorization. Copies of any such fishing authorizations also would have to be submitted to NMFS. This information would be collected via a new form (Foreign EEZ Form) designed for this purpose, and vessel owners/operators would be required to submit to NMFS any subsequent changes to the submitted information within 15 days of the change.

The collected information referred to above would be incorporated by NMFS into a record of U.S. fishing vessels authorized to be used for commercial fishing for HMS in the Convention Area beyond areas of U.S. jurisdiction. In accordance with the Convention, NMFS would keep this record updated and share it with the WCPFC, which would combine it with the records of its other Members and Cooperating Non-Members and make it publicly available via its website and other means.

### 3. Vessel monitoring system

Owners and operators of vessels with WCPFC Area Endorsements would be required to have installed, activate, carry and operate vessel monitoring system (VMS) units (also known as "mobile transmitting units") that are type-approved by NMFS, and authorize the WCPFC and NMFS to receive and relay transmissions (also called "position reports") from the VMS unit to the WCPFC and to NMFS. The WCPFC and NMFS would use the position reports as part of their respective VMS. Activation of a VMS unit would be required any time the unit is installed or reinstalled, any time the mobile communications service provider has changed, and any time directed by NMFS. Activation would involve submitting to NMFS a report via mail, facsimile or email with information about the vessel, its owner or operator, and the VMS unit, as well as receiving confirmation from NMFS that the VMS unit is transmitting position reports properly. The VMS unit would have to be turned on and operating (i.e., transmitting automated position reports) at all times while the vessel is at sea, both inside and outside the Convention Area. The VMS unit may be turned off while the vessel is in port, but only if the vessel operator notifies NMFS via mail, facsimile or email prior to such shut-down. In such cases, NMFS must also be notified when the VMS unit is subsequently turned back on (these two types of notifications are called "on/off reports"), and the vessel operator must receive confirmation from NMFS that the VMS unit is functioning properly prior to leaving port. In the case of failure of the

VMS unit while at sea, the vessel operator would be required to contact NMFS and follow the instructions provided by NMFS, which could include, among other actions: submitting position reports at specified intervals by other means, ceasing fishing, stowing fishing gear, and/or returning to port; and repairing or replacing the VMS unit and ensuring it is operable before starting the next trip. To facilitate communication with management and enforcement authorities about the functioning of the VMS unit and other purposes, operators of vessels with WCPFC Area Endorsements would be required to carry on board and continuously monitor while at sea a two-way communication device capable of real-time communication with NMFS in Honolulu. For the purpose of submitting position reports that might be required in the case of VMS unit failure, vessel operators must also carry on board a communication device capable of transmitting, while the vessel is on the high seas in the Convention Area, communications by telephone, facsimile, email, or radio to the WCPFC in Pohnpei, Micronesia.

The vessel owner and operator would be responsible for all costs associated with the purchase, installation and maintenance of the VMS unit, and for all charges levied by the mobile communications service provider as necessary to ensure the transmission of automatic position reports to NMFS. However, if the VMS unit is being carried and operated in compliance with the requirements in 50 CFR part 300, 50 CFR part 660, or 50 CFR part 665 relating to the installation, carrying, and operation of VMS units, the vessel owner and operator would not be responsible for costs that are the responsibility of NMFS under those regulations. In addition, the vessel owner and operator would not be responsible for the costs of transmitting the automatic position reports to the WCPFC.

NMFS publishes separately type-approval lists of VMS units. The current type-approval lists can be obtained from NMFS, Office of Law Enforcement, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910; by telephone at 888-210-9288; or by fax at 301-427-0049.

The proposed rule is worded so as to avoid duplication with other VMS requirements, such as those established under the MSA and the SPTA.

Compliance with the existing VMS requirements at 50 CFR part 300, 50 CFR part 660, and 50 CFR part 665 would satisfy this new requirement, provided that the VMS unit is type-

approved by NMFS specifically for fisheries governed under the Act, the VMS unit is operated continuously at all times while the vessel is at sea, the vessel owner and operator have authorized the WCPFC and NMFS to receive and relay transmissions from the VMS unit, and the proposed requirements in case of VMS unit failure are followed.

#### *4. Vessel observer program*

When in the Convention Area, the operator of a vessel with a WCPFC Area Endorsement or a vessel used in areas under the jurisdiction of another Member of the WCPFC would be required to accept on board and accommodate observers deployed as part of the WCPFC "Regional Observer Programme" (WCPFC ROP). Such observers would include persons designated by the WCPFC Secretariat, by the United States or by other Members of the WCPFC. Persons would be designated as WCPFC observers by the United States or other WCPFC Members only if the national or sub-regional observer program that deploys such observers has been authorized by the WCPFC to be a part of the WCPFC ROP. Once an observer program of NMFS is determined by the WCPFC to meet specified minimum standards and incorporated into the WCPFC ROP, relevant data collected in the NMFS program would be submitted to the WCPFC and maintained and used by the WCPFC as data in its larger WCPFC ROP.

It is anticipated that the NMFS observer program operating out of Honolulu, Hawaii, and Pago Pago, American Samoa, will be among the first national observer programs to be authorized to be part of the WCPFC ROP (it has already received interim authorization until July 1, 2012; full authorization would be granted subsequent to a successful audit of the program). Consequently, there would be little, if any, change in the placement of observers on vessels in the longline fleets based in Hawaii and American Samoa. The WCPFC Secretariat may place an occasional observer as part of an auditing process to ensure that national and sub-regional observer programs are operating up to WCPFC standards. It is also anticipated that U.S. purse seine vessels operating under the SPTA would continue to carry observers from the Pacific Islands Forum Fisheries Agency (FFA) observer program (a sub-regional observer program). If the FFA is unable to provide observers to meet increased coverage levels mandated by the WCPFC, those vessels may make

other arrangements to obtain WCPFC-approved observers.

The responsibilities of vessel operators and crew members with respect to observers would include allowing and assisting observers to: embark and disembark at agreed times and places; have access to and use of all facilities and equipment on board that are necessary to conduct observer duties; remove samples; and carry out all duties safely. The vessel operator also would be responsible for providing observers, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel. In the case of longline vessels in the Hawaii and American Samoa fleets, however, costs incurred for providing subsistence for NMFS observers would be eligible for reimbursement, as currently provided at 50 CFR 665.28.

#### *5. Vessel identification*

Vessels with WCPFC Area Endorsements would be required to be marked in accordance with the Convention's requirements, which are based on the FAO Standard Specifications for the Marking and Identification of Fishing Vessels. Specifically, if assigned an international radio call sign (IRCS), the port and starboard sides of a vessel's hull or superstructure, as well as a deck, would have to be marked with the IRCS; if not assigned an IRCS, it would have to be marked with its official number (i.e., USCG documentation number or state or tribal registration number), preceded by the characters "USA" and a hyphen. In both cases, the specified marking would be the only allowable marking on the hull or superstructure apart from the vessel's name and hailing port. The markings would have to be placed so that they are clear, distinct, uncovered, and unobstructed. Any boats, skiffs, or other watercraft that are carried on board the vessel also would have to be marked with the same identifier as the fishing vessel. For some affected vessels, this marking requirement would conflict with other existing vessel marking requirements, such as those at 50 CFR 300.14 (under the HSFCA; applicable to vessels used for fishing on the high seas), 50 CFR 300.173 (under the legislation implementing the U.S.-Canada Albacore Treaty; applicable to vessels used for fishing under that treaty), 50 CFR 660.704 (under the MSA; applicable to vessels in West Coast HMS fisheries), and 50 CFR 665.16 (under the MSA; applicable to vessels in western Pacific fisheries). Accordingly, the requirement at 50 CFR 300.14 would be

slightly modified in this proposed rule to make it consistent with this new requirement. The Pacific Fishery Management Council and the Western Pacific Fishery Management Council are evaluating whether there is a need to change the other three sets of regulations in order to remove potential conflicts with this proposed rule, if implemented. If the Councils recommend such changes, their recommendations would be subject to the approval of NMFS and would be implemented by NMFS through the rulemaking process.

#### 6. Transshipment restrictions

Offloading fish from or receiving fish from a purse seine vessel at sea in the Convention Area would be prohibited. Transshipping at sea is already regulated for U.S. purse seine vessels licensed under the SPTA.

#### 7. Reporting and recordkeeping

The owner or operator of any U.S. vessel used for commercial fishing for HMS anywhere in the Pacific Ocean would be required to maintain and submit to NMFS information on fishing effort and catch. The proposed rule would be worded so as to avoid duplication with other effort and catch reporting requirements, particularly those established under the MSA, the HSFCA, the Tuna Conventions Act of 1950 (16 U.S.C. 951–961 *et seq.*), the SPTA, and the implementing legislation for the U.S.-Canada Albacore Treaty, as well as relevant State reporting requirements. Specifically, compliance with other existing reporting requirements would satisfy this new Act-mandated reporting requirement. The main effect of these proposed reporting requirements would be to collect fishing effort and catch information under the authority of the Act, which would enable NMFS to meet the reporting requirements of the WCPFC in accordance with the Convention and the decisions of the WCPFC. Confidentiality of information would be protected and handled by NOAA as required under U.S. laws, including the Act and the regulations proposed here (see element 10 below). Once the information is submitted by NOAA to the WCPFC, it would be handled in accordance with policies and procedures adopted by the WCPFC.

#### 8. Compliance with the laws of other nations

A vessel with a WCPFC Area Endorsement would be prohibited from being used for fishing in areas under the jurisdiction of another nation unless it holds any license, permit or

authorization that may be required by such nation to do so. When a vessel with a WCPFC Area Endorsement operates in the Convention Area in areas under the jurisdiction of a Member of the WCPFC other than the United States, it would have to be operated in compliance with the laws of that Member.

Additionally, the owner and operator of any U.S. fishing vessel used in the Convention Area in an area under the jurisdiction of another Member of the WCPFC, if used for fishing for, retaining on board or landing HMS, would be required to comply with the relevant laws of that Member, including any laws related to the use of VMS units.

#### 9. Facilitation of enforcement and inspection

The operator and crew of a vessel with a WCPFC Area Endorsement, when in the Convention Area, would be subject to the following requirements:

- Carry on board any fishing authorizations issued by another nation or political entity, or copies thereof, and make them available to specified authorities, depending on the area of jurisdiction the vessel is in;
- Continuously monitor the international safety and calling radio frequency (156.8 MHz; Channel 16, VHF-FM) and, if equipped to do so, the international distress and calling radio frequency (2.182 MHz);
- Carry on board a copy of the International Code of Signals; and
- When engaged in transshipment, allow and assist transshipment monitors authorized by the WCPFC (if on the high seas) or other Members of the WCPFC (if within their areas of jurisdiction) to inspect the vessel and gather information and samples.

In addition, the operator of any U.S. fishing vessel that is used for commercial fishing for HMS, when present in the Convention Area in an area in which it is not authorized to fish (e.g., on the high seas without a valid WCPFC Area Endorsement or in an area under the jurisdiction of another nation without an authorization from that nation to fish in the area), would be required to stow all fishing gear and equipment so such materials are not readily available for fishing.

Further, the operator of any U.S. fishing vessel (regardless of the species for which it is used to fish), when on the high seas in the Convention Area, would be required to accept and assist boarding and inspection by authorized inspectors of other Contracting Parties to the Convention and, if agreed to by the United States, authorized inspectors of fishing entities that have agreed to be

bound by the regime established by the Convention, such as Chinese Taipei (Taiwan), provided that such boarding and inspection is undertaken in conformance with the WCPFC's adopted procedures.

#### 10. Confidentiality of information

As mandated by the Act, the proposed rule would include procedures designed to preserve the confidentiality of information submitted in compliance with the Act and its implementing regulations. In accordance with the Convention, the proposed procedures would allow for the disclosure of confidential information to the WCPFC. Once such information is held by the WCPFC, access to the information would be governed by the policies and procedures adopted by the WCPFC.

#### Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Western and Central Pacific Fisheries Convention Implementation Act and other applicable laws, subject to further consideration after public comment.

#### National Environmental Policy Act

NMFS has prepared a draft EA that discusses the expected impacts that implementation of this proposed rule would have on the environment. A copy of the draft EA is available from NMFS and NMFS invites public comments on the draft EA (see **ADDRESSES**).

#### Executive Order 12866

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

#### Regulatory Flexibility Act

An IRFA was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The analysis follows:

There would be no disproportionate economic impacts between small and large entities operating vessels resulting from this rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or homeport.

The proposed rule would apply to owners and operators of U.S. vessels used for fishing in the Pacific Ocean. Most elements of the proposed rule would apply to smaller subsets of that

pool of vessels, as shown in Table 1. The numbering of the elements in Table 1 corresponds to the numbering used in the descriptions earlier in this section of the preamble. Table 1 also shows estimates of the numbers of vessels, broken down by vessel type where possible, to which each element of the proposed rule would apply. Based on (limited) financial information about the

affected fishing fleets, NMFS believes that with the exception of most vessels in the purse seine and carrier and support vessel fleets, virtually all the affected vessels are owned by small business entities (i.e., they have gross annual receipts of no more than \$4.0 million). In the purse seine fleet, NMFS believes that as many as 10 of the affected vessels are owned by small

entities. In the carrier and support vessel fleet, NMFS believes that no vessels are owned by small entities. The estimated numbers of small entities that would be affected by each element of the proposed rule are shown in parentheses in the last column of Table 1.

TABLE 1. DESCRIPTIONS AND NUMBERS OF VESSELS AND SMALL ENTITIES TO WHICH THE PROPOSED RULE WOULD APPLY

Element of proposed rule	Description of vessels to which element would apply	Estimated number of vessels (and small entities) to which element would apply
1. Authorization to fish	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139) Purse seine 40 (10) Troll 69 (69) Support 5 (0) Total 253 (218)
2a. Vessel information high seas	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139) Purse seine 40 (10) Troll 69 (69) Support 5 (0) Total 253 (218)
2b. Vessel information foreign jurisdictions	Vessels used for commercial fishing for HMS in foreign jurisdictions in Convention Area.	Longline, troll, support 20 (20) Purse seine 40 (10) Total 60 (30)
3. VMS	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139) Purse seine 40 (10) Troll 69 (69) Support 5 (0) Total 253 (218)
4a. Vessel observer program high seas	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139) Purse seine 40 (10) Troll 69 (69) Support 5 (0) Total 253 (218)
4b. Vessel observer program foreign jurisdictions	Vessels used for commercial fishing for HMS in areas under jurisdiction of other WCPFC members in Convention Area.	Longline, troll, support 20 (20) Purse seine 40 (10) Total 60 (30)
5. Vessel identification	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139) Purse seine 40 (10) Troll 69 (69) Support 5 (0) Total 253 (218)
6. Transshipment restrictions	Purse seine vessels used for fishing in Convention Area and vessels used to receive fish in Convention Area.	Longline 0 (0) Purse seine 40 (10) Troll 0 (0) Support 5 (0) Total 45 (10)
7. Reporting and recordkeeping	Vessels used for commercial fishing for HMS in Pacific Ocean.	Total 5,000 (5,000)
8a. Compliance with the laws of other nations high seas	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139) Purse seine 40 (10) Troll 69 (69) Support 5 (0) Total 253 (218)
8b. Compliance with the laws of other nations jurisdictions of other WCPFC members	Vessels used for commercial fishing for HMS in areas under the jurisdiction of other WCPFC members.	Longline, troll, support 20 (20) Purse seine 40 (10) Total 60 (30)
9a. Facilitation of enforcement and inspection HMS fishing	Vessels used for commercial fishing for HMS in the Convention Area on high seas or in areas under the jurisdiction of other nations.	Longline 139 (139) Purse seine 40 (10) Troll 69 (69) Support 5 (0) Total 253 (218)
9b. Facilitation of enforcement and inspection—all fishing	Fishing vessels used on high seas in Convention Area.	Longline 139 (139) Purse seine 40 (10) Troll 69 (69) Support 5 (0) Total 253 (218)

TABLE 1. DESCRIPTIONS AND NUMBERS OF VESSELS AND SMALL ENTITIES TO WHICH THE PROPOSED RULE WOULD APPLY—  
Continued

Element of proposed rule	Description of vessels to which element would apply	Estimated number of vessels (and small entities) to which element would apply
10. Confidentiality of information	None .....	Longline 0 (0) Purse seine 0 (0) Troll 0 (0) Support 0 (0) Total 0 (0)

The reporting, recordkeeping and other compliance requirements of this proposed rule are described earlier in the preamble. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill the requirements are as follows:

(1) Authorization to fish: This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act, or PRA), but in order to obtain the authorization vessel owners/operators would have to pay a fee calculated to cover NMFS' administrative costs incurred to issue the authorization, projected to be about \$25 per five-year period. Approximately 218 small business entities would be subject to the requirement. Obtaining the authorization would be accomplished through completion and submission of an application form, as described in element (2) on vessel information.

(2) Vessel information: This requirement is part of a proposed collection of information subject to approval by the Office of Management and Budget (OMB) under the PRA. It would require a vessel owner or operator to complete one or both of two forms (one for vessels used on the high seas in the Convention Area and the other for vessels used in foreign jurisdictions in the Convention Area) designed to collect information about the subject vessel and its owner and operator. Approximately 218 small business entities would be subject to the high seas component of the requirement, and about 30 to the foreign jurisdictions component. A total of about 238 small business entities would be subject to one or the other component (i.e., about 10 would be subject to both). For an entity subject to both the high seas component and the foreign jurisdictions component, it is estimated that about 90 minutes of labor and \$1 in mailing costs would be required twice every five years. If the value of the required labor were \$50 per hour, the annual cost of compliance would therefore be about \$30 per affected entity. The labor requirements

and associated costs would be slightly less for entities subject to just one or the other of the two components. Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(3) VMS: This requirement is part of a proposed collection of information subject to approval by the OMB under the PRA. It would apply to about 218 small business entities. Most of these entities, however, are subject to similar existing VMS requirements and would thus be already in compliance with most aspects of this requirement. It is estimated that about 73 of the estimated 218 affected small entities would have to purchase, install and activate a new VMS. The 73 include the business entities involved in the albacore longline fleet (69) and those operating longline vessels that are not based in either Hawaii or American Samoa (4). Compliance for each of these approximately 73 small entities would involve the following approximate annualized costs: \$1,000 for the purchase and installation of VMS units (based on \$4,000 per unit and a lifespan of 4 years per unit), \$250 for VMS unit maintenance, and \$375 to \$525 for VMS unit operation (i.e., the transmission of automatic vessel position reports to NMFS), for a total of about \$1,625 to \$1,775 per year. In addition, about 2.5 person-minutes of labor for VMS unit activation reports, 25 person-minutes of labor for VMS unit on/off reports, 1 person-hour of labor for VMS unit purchase installation, and 1 person-hour of labor for VMS unit maintenance, on average, would be needed to comply.

The compliance cost of obtaining, carrying on board, and monitoring the required communication devices is expected to be zero, as it is believed that all affected small entities already carry and monitor such devices. The 145 affected small entities that are already subject to VMS requirements would not bear any compliance costs as a result of these new requirements. Fulfillment of this requirement is not expected to require any professional skills that the

vessel owners and operators do not already possess.

(4) Vessel observer program: This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA). Approximately 218 small business entities would be subject to the high seas component of the requirement, and about 30 to the foreign jurisdictions component. A total of about 238 small business entities would be subject to one or the other component (i.e., about 10 would be subject to both). Affected small entities would be responsible for the costs associated with providing WCPFC observers with food, accommodations, and medical facilities.

Assuming that the observer programs administered by NMFS are authorized by the WCPFC to be part of the WCPFC ROP (again, the NMFS observer program has already received interim authorization valid until July 1, 2012), observers deployed by NMFS pursuant to regulations issued under other statutory authorities would be deemed to be WCPFC observers deployed in accordance with this new requirement. As such, vessel owners and operators would be subject to the costs and burdens associated with those other regulatory requirements. For example, in the case of longline vessels in the Hawaii and American Samoa fleets, costs incurred for providing subsistence for NMFS observers would be eligible for reimbursement, as currently provided at 50 CFR 665.28.

The frequency of deployment of WCPFC observers would be determined by the WCPFC, so it is not possible to accurately predict how often a given business entity would be required to accommodate a WCPFC observer. For the purpose of this analysis, it is assumed that observer coverage rates will be equal to the current target observer coverage levels established by the WCPFC for its ROP, which is 5 percent for all fleets except purse seine fleets, as described further below.

The recent coverage rates in the Hawaii and American Samoa fleets (at least 20 percent and about 10 percent, respectively) are in excess of the

WCPFC target coverage rate of 5 percent, so NMFS does not anticipate any substantial changes in the deployment rates to affected small entities in those fisheries, or any associated costs. Longline vessels not operating under Hawaii or American Samoa longline permits (e.g., vessels based in the Mariana Islands or on the U.S. west coast) are not currently subject to observer requirements, so entities that operate such vessels would bear new compliance costs, including the cost of providing food, accommodation, and medical facilities to observers (termed here "observer accommodation costs"). These costs are expected to be about \$20 per day (this is consistent with the amounts reimbursed by NMFS to owners of longline vessels for observer subsistence costs pursuant to 50 CFR 665.28(i)(1)). Assuming that an affected longline vessel spends 250 days at sea each year in the Convention Area on the high seas or in areas under foreign jurisdiction, its annual observer accommodation costs, at a 5 percent coverage rate, would be about \$250.

Recent observer coverage rates in the purse seine fleet are about 20 percent. However, a recent WCPFC decision (in Conservation and Management Measure 2008–01) requires 100 percent coverage in 2010 and 2011. For the purpose of this analysis, it is assumed that a 100 percent coverage rate would be required indefinitely. Assuming, based on logbook data, that an affected purse seine vessel spends 330 days at sea each year, and, as described above for longline vessels, \$20 per observed-sea-day in observer accommodation costs, annual observer accommodation costs at 100 percent coverage would be about \$6,600 per vessel. Of these estimated costs, 80 percent, or \$5,280 per vessel, would be "new" annual costs associated with this proposed requirement. Pursuant to the terms of the SPTT, entities in the purse seine fleet bear not only the costs of feeding and accommodating observers on board, but also certain costs imposed by the FFA for the operation of its observer program as it is applied to the U.S. purse seine fleet. Based on the budget for the FFA observer program for the 2008–2009 SPTT licensing period, which is based on a 20 percent coverage rate, the annual cost per vessel is approximately \$8,630. According to the budget, about 28 percent of those costs are fixed costs (as opposed to per-trip costs). It is not known how the fixed component of costs would change with an increase in coverage to 100 percent. Assuming that fixed costs do not change at all, the annual cost per vessel at 100 percent

coverage would be about \$33,440. If, on the other hand, fixed costs increase in proportion to the level of observer coverage, the annual cost per vessel at 100 percent coverage would be about \$43,150. Of these estimated per-vessel costs, 80 percent, or \$26,750 to \$34,520, would be new annual costs associated with this proposed requirement. Together with observer accommodation costs (\$5,280), the total per-vessel costs would be \$32,000 to \$39,800 per purse seine vessel.

Although the WCPFC target coverage rate for troll vessels is 5 percent, the WCPFC has not established a firm implementation schedule for troll vessels, so 5 percent coverage is not expected to be sought or attained for at least a few years. Nevertheless, for the purpose of this analysis, estimated compliance costs are based on a 5-percent coverage rate. There are currently no observer requirements for the albacore troll fleet (but observers are occasionally taken on a voluntary basis), so small entities that operate albacore troll vessels could be subject to an increase in deployment rates from zero to approximately one per 20 trips in the Convention Area. Affected entities would be responsible for observer accommodation costs, which, as described above for longline vessels, are expected to be about \$20 per day. Assuming, based on logbook information, that an affected albacore troll vessel spends 170 to 350 days at sea each year on trips in the Convention Area on the high seas or in areas under foreign jurisdiction, annual observer accommodation costs would be \$170 to \$350.

NMFS does not anticipate any small entities to operate support vessels, so no further analysis of observer-related costs for support vessels is provided here.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(5) Vessel identification: This requirement is part of collections of information approved by the OMB under the PRA (OMB control numbers 0648–0348, 0648–0360, 0648–0361, and 0648–0492). Approximately 218 small business entities would be subject to the requirement. All of these entities, however, are already subject to similar vessel marking requirements. Because vessels and their markings are periodically repainted, the proposed rule would not impose any new continuing burden on any entity; it would change (for all affected entities except those associated with the purse seine vessels) only the specifications of the markings that are required.

However, all the affected entities, with the exception of those associated with the purse seine vessels, would have to immediately change their vessel markings. The cost of doing so is approximately \$250 per vessel, including labor and materials; these costs would be borne by each of the approximately 208 affected small entities. Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(6) Transshipment restrictions: This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA). Approximately 10 small business entities would be subject to the requirement. Complying would require that owners and operators of purse seine vessels and receiving vessels refrain from engaging in transshipments from purse seine vessels at sea in the Convention Area. Purse seine vessels are already subject to substantial restrictions on at-sea transshipments under the SPTA, and purse seine vessels consequently do not, in practice, transship at sea. Accordingly, this requirement would impose essentially no compliance burden on affected entities. Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(7) Reporting and recordkeeping: This requirement is part of a collection of information approved by the OMB under the PRA (OMB control numbers 0648–0214, 0648–0218, 0648–0223, 0648–0349, 0648–0492, and 0648–0498). The number of affected small entities is roughly estimated at 5,000. However, all of the affected entities are subject to existing similar (Federal and/or State) recordkeeping and reporting requirements and would thus be in compliance with this requirement and would not bear any additional reporting or recordkeeping burden as a result of this proposed rule.

(8) Compliance with the laws of other nations: This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA). Approximately 218 small business entities would be subject to the high seas component of the requirement, and about 30 to the foreign jurisdictions component. A total of about 238 small business entities would be subject to one or the other component (i.e., about 10 would be subject to both). Fulfillment of this requirement is not expected to require any professional skills that the vessel



owners and operators do not already possess.

(9) Facilitation of enforcement and inspection: This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA). Approximately 218 small business entities would be subject to the requirement. Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators and crew members do not already possess.

(10) Confidentiality of information: This requirement would not impose any new reporting or recordkeeping requirements (within the meaning of the PRA), and it would not apply to any small entities (it would prescribe procedures for NOAA to follow in protecting and disseminating confidential information, including information submitted by owners and operators of fishing vessels and information collected by vessel observers).

A number of Federal rules overlap or conflict with the proposed rule, as described below for each of the 10 elements of the proposed rule:

(1) Authorization to fish: The existing requirement under the HSFCA to obtain a high seas fishing permit (50 CFR 300.13) overlaps with the proposed authorization requirement in that both require a NMFS-issued authorization in order to use a vessel for commercial fishing for HMS on the high seas in the Convention Area. The existing high seas permit requirement has a broader scope, applying to the use of a vessel for commercial fishing for any species on the high seas anywhere in the world. The proposed authorization (the WCPFC Area Endorsement) would be required in addition to the high seas fishing permit.

(2) Vessel information: Some of the information that would be required from owners or operators of vessels used to fish commercially for HMS in the Convention Area on the high seas or in foreign jurisdictions overlaps with information collected under existing regulations. This includes information required for vessels using longline or troll fishing gear in the area of competence of the Inter-American Tropical Tuna Commission (50 CFR 300.22) and information required to obtain the following fishing authorizations: high seas fishing permits (50 CFR 300.13), licenses issued under the SPTA (50 CFR 300.32), permits for West Coast HMS fishing vessels (50 CFR 660.707), and permits for Western Pacific pelagic fishing vessels (50 CFR 665.21).

(3) VMS: The proposed requirement for owners and operators of vessels used for commercial fishing for HMS on the high seas in the Convention Area to install, activate and operate VMS units would be similar to existing VMS requirements at 50 CFR Part 300, 50 CFR Part 660 and 50 CFR Part 665. However, the proposed requirement would be consistent with the aforementioned existing requirements, such that vessels operating in accordance with relevant elements of the applicable existing regulations would also be operating in accordance with the relevant elements of the new requirements (the proposed requirements also include elements that do not overlap with any existing requirements). Thus, there would be no duplication in the compliance burden.

(4) Vessel observer program: The proposed requirement that operators of vessels used for commercial fishing for HMS in the Convention Area (either on the high seas or in areas under the jurisdiction of other WCPFC members) accept and accommodate observers deployed as part of the WCPFC ROP would overlap with existing requirements at 50 CFR 300.43 (South Pacific tuna fisheries) 50 CFR 660.719 (West Coast HMS fisheries) and 50 CFR 665.28 (Western Pacific pelagic fisheries), which require that vessel owners and operators accept and accommodate observers under various authorities. In general, the new requirement would supplement the existing requirements. However, the WCPFC ROP will incorporate existing sub-regional and national observer programs that the WCPFC determines to meet certain standards. It is likely that the sub-regional program implemented under the South Pacific Tuna Treaty (in the case of 50 CFR 300.43) and the national programs implemented by NMFS (in the cases of 50 CFR 660.719 and 50 CFR 665.28) will be incorporated into the WCPFC ROP. It is anticipated that once these programs are incorporated and the WCPFC relies on the information that is collected through them, the new requirement would not impose an additional compliance burden.

(5) Vessel identification: The proposed vessel identification requirement would conflict in certain respects with existing requirements at 50 CFR 300.173, 50 CFR 660.704, and 50 CFR 665.16 for any vessel that is both subject to any of the latter three requirements and that is used to fish commercially for HMS on the high seas in the Convention Area. NMFS intends to modify the three sets of existing requirements to make them compatible

with the proposed new requirement. The new requirement would be made effective only if and when the conflicts (for a given set of vessels) are removed.

The proposed requirement overlaps with the existing vessel identification requirement under the HSFCA (50 CFR 300.14) in that both prescribe vessel marking requirements for vessels used for commercial fishing for HMS on the high seas in the Convention Area. The existing requirement under the HSFCA has a broader scope, applying to the use of a vessel for commercial fishing for any species on the high seas anywhere in the world.

The proposed requirement would overlap with 50 CFR 300.35, which applies to purse seine vessels licensed under the SPTA and to the South Pacific Tuna Treaty Area.

The proposed requirement under the Act conflicts in certain respects with 50 CFR 300.14 in its current form, but the proposed rule would modify 50 CFR 300.14 to make it compatible with the proposed requirement.

(6) Transshipment restrictions: The proposed prohibition on transshipments that involve fish offloaded from purse seiners at sea in the Convention Area overlaps with the existing requirement under the SPTA (50 CFR 300.46), which prohibits purse seine vessels licensed under the SPTA from being used to transship at sea in the South Pacific Tuna Treaty Area except when done in accordance with such terms and conditions as may be agreed between the vessel operator and the State in whose jurisdiction the transshipment would take place.

(7) Reporting and recordkeeping: The proposed requirement for owners and operators of vessels used for commercial fishing for HMS anywhere in the Pacific Ocean to maintain and submit to NMFS information about their fishing effort and catch would overlap with existing reporting requirements at 50 CFR 300.17 (high seas fisheries), 50 CFR 300.22 (Pacific tuna fisheries), 50 CFR 300.174 (Canada albacore fisheries), 50 CFR 300.34 (South Pacific tuna fisheries), 50 CFR 660.708 (West Coast HMS fisheries) and 50 CFR 665.14 (western Pacific pelagic fisheries). The proposed requirement would be satisfied by complying with the applicable existing requirements; thus, there would be no duplication in the reporting or compliance burden. The reason for the overlapping requirement is that the information must be collected under the authority of the Act in order for NMFS to be able to provide it to the WCPFC, as NMFS is obligated to do under the Convention.

(8) Compliance with the laws of other nations: No duplicating, overlapping or conflicting Federal regulations have been identified.

(9) Facilitation of enforcement and inspection: The proposed requirement for operators of vessels that are used for commercial fishing for HMS on the high seas in the Convention Area to continuously monitor the international safety and calling frequency (156.8 MHz; Channel 16, VHF-FM) and, if equipped to do so, the international distress and calling frequency (2.182 MHz) overlaps with 50 CFR 300.37, which requires operators of purse seine vessels licensed under the SPTA to continuously monitor both frequencies. The proposed requirement for operators of vessels that are used for commercial fishing for HMS on the high seas in the Convention Area to carry on board and make accessible a copy of the International Code of Signals overlaps with 50 CFR 300.35, which requires operators of purse seine vessels licensed under the SPTA to do the same. The proposed requirement for operators of vessels that are used for commercial fishing for HMS on the high seas in the Convention Area to accept and accommodate the transshipment monitors authorized by other members of the WCPFC when conducting transshipments in areas under the jurisdiction of such members would overlap with 50 CFR 300.46, which applies to purse seine vessels licensed under the SPTA and to the South Pacific Tuna Treaty Area. The proposed requirement for operators of vessels that are used for commercial fishing for HMS in the Convention Area on the high seas or in areas under the jurisdiction of other nations, when in areas in which the vessel is not authorized to be used for fishing, to stow all fishing gear and equipment so as to not be readily available for fishing overlaps with 50 CFR 300.36, which requires operators of purse seine vessels licensed under the SPTA to do the same when in a Closed Area pursuant to the SPTA.

(10) Confidentiality of information: The proposed procedures to preserve the confidentiality of information submitted in compliance with the Act would overlap with similar procedures established under the MSA (50 CFR Subpart E), the HSFCA (50 CFR 300.17(c)), and the Marine Mammal Protection Act (50 CFR 229.11) in that the different sets of procedures would in some cases apply to the same information. The proposed procedures differ in some respects from the other sets of procedures (particularly in that the proposed procedures would allow the disclosure of confidential

information to the WCPFC), but they would not conflict with them.

NMFS has identified alternatives that would accomplish the objectives of the Act and minimize any significant economic impact of the proposed rule on small entities. The alternative of taking no action at all was rejected because it would fail to accomplish the objectives of the Act. As a Contracting Party to the Convention, the United States is required to implement the provisions of the Convention and the decisions of the WCPFC. Consequently, NMFS has limited discretion as to how to implement those provisions and decisions. Nonetheless, NMFS has identified for four of the elements of the proposed rule several alternatives that would satisfy the Convention's provisions and thus fulfill the objectives of the Act.

With respect to element (1), authorization to fish, one alternative would be to rely on the existing high seas fishing permit requirement under the HSFCA (that requirement applies to the high seas globally, not just the high seas in the Convention Area), rather than establishing an additional authorization requirement. Although this would be less costly to affected small entities than the proposed action, this alternative would fail to identify the pool of vessel owners and operators interested in fishing on the high seas in the Convention Area and subject to all the other Convention-related requirements. As a consequence, it would be difficult to conduct effective outreach and enforcement activities to achieve a high level of compliance with those requirements. A second alternative would be to create a new stand-alone permit (WCPFC Area Permit) that would be required for any vessel used for commercial fishing for HMS on the high seas in the Convention Area but which, unlike the proposed WCPFC Area Endorsement (which would be an endorsement on a high seas fishing permit), would not be related in any way to the high seas fishing permit. This would be slightly more costly to affected small entities than the WCPFC Area Endorsement.

With respect to element (2), vessel information, one alternative would be to collect the needed information separately from any permit requirement; that is, as a stand-alone requirement for vessel owners to submit specified information to NMFS. The cost to affected small entities would be about the same as that of the proposed action, but because it would not be tied to obtaining a fishing authorization, compliance with this alternative would likely be poorer than for the proposed

action. A second alternative would be to collect the needed information via the application for a WCPFC Area Permit. The cost to affected small entities under this alternative would be about the same as that of the proposed action.

With respect to element (3), VMS, one alternative would be to require that VMS units be carried and operated on vessels used for commercial fishing for HMS on the high seas in the Convention Area, but only when the subject vessel is actually on the high seas in the Convention Area. This could be slightly less costly to affected small entities because they would be allowed to disable the VMS unit when not on the high seas in the Convention Area, but because vessel operators would be allowed to operate in many areas with their VMS units disabled, compliance with this alternative while on the high seas in the Convention Area would be lower than under the proposed action. A second alternative would be to require that VMS units be carried and operated on vessels used for commercial fishing for HMS during the entirety of any trip that includes the high seas in the Convention Area. Like the previous alternative, this could be slightly less costly to affected small entities than the proposed action, but for the same reasons cited for the previous alternative, compliance with this alternative would likely be poorer than for the proposed action. A third alternative would be to require that a VMS unit be carried and operated at all times on any vessel with a WCPFC Area Permit. The costs to affected small entities under this alternative would be slightly more than under the proposed action.

With respect to the high seas boarding and inspection component of element (9), facilitation of enforcement and inspection, one alternative would be to require that only operators of vessels used to fish for HMS (rather than for any species, as being proposed) on the high seas in the Convention Area accept and facilitate boarding and inspection by authorized inspectors of other members of the WCPFC. The number of affected small entities would be smaller than under the proposed action. However, since the inspectors of other members of the WCPFC may not be able to readily distinguish U.S. vessels used for fishing for HMS (which the WCPFC's boarding and inspection regime is designed to target) from other U.S. fishing vessels, an effective boarding regime may require that U.S. fishing vessels in the latter category accept boarding from inspection vessels of other members of the WCPFC in order to verify the fishing vessel's status. By applying this

requirement to all U.S. fishing vessels, not just those used for fishing for HMS, non-HMS U.S. fishing vessels would be more prepared for the prospect of being boarded and inspected. As a consequence of such preparation, any boardings and inspections of non-HMS U.S. fishing vessels would be more likely to be completed quickly and without misunderstandings and conflict. NMFS believes that the proposed action would be safer and less costly to small entities than the alternative of applying the requirement only to operators of vessels used to fish for HMS.

#### *Paperwork Reduction Act*

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval. The public reporting burden for the vessel information requirements is estimated to average 60 minutes to complete an application for a WCPFC Area Endorsement and 90 minutes to complete a Foreign EEZ Form. The public reporting burden for the VMS requirement is estimated to average 5 minutes per activation report, 5 minutes per on/off report, 4 hours per VMS unit installation, and 1 hour per year for VMS unit maintenance. 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.

Public comment is sought regarding: whether these collection-of-information requirements are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection-of-information requirements to William L. Robinson, Regional Administrator, NMFS PIRO (see **ADDRESSES**) and by e-mail to David\_Rostker@omb.eop.gov or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a 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.

#### **List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: May 19, 2009

**John Oliver,**

*Deputy Assistant Administrator For Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

#### **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

##### **Subpart B—High Seas Fisheries**

1. The authority citation for 50 CFR part 300, subpart B continues to read as follows:

**Authority:** 16 U.S.C. 5501 *et seq.*

2. In § 300.14, paragraph (b)(2)(i) is revised to read as follows:

##### **§ 300.14 Vessel identification.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) A vessel must be marked with its IRCS if it has been assigned an IRCS. If an IRCS has not been assigned to the vessel, it must be marked (in order of priority) with its Federal, State, or other documentation number appearing on its high seas fishing permit and if a WCPFC Area Endorsement has been issued for the vessel under § 300.212, that documentation number must be preceded by the characters “USA” and a hyphen (that is, “USA-”).

\* \* \* \* \*

3. Subpart O, consisting of §§ 300.210 through 300.222, is added to part 300 to read as follows:

##### **Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species**

Sec.

- 300.210 Purpose and scope.
- 300.211 Definitions.
- 300.212 Vessel permit endorsements.
- 300.213 Vessel information.
- 300.214 Compliance with laws of other nations.
- 300.215 Observers.
- 300.216 Transshipment.
- 300.217 Vessel identification.
- 300.218 Reporting and recordkeeping requirements.
- 300.219 Vessel monitoring system.
- 300.220 Confidentiality of information.
- 300.221 Facilitation of enforcement and inspection.
- 300.222 Prohibitions.

**Authority:** 16 U.S.C. 6901 *et seq.*

#### **Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species**

##### **§ 300.210 Purpose and scope.**

This subpart implements provisions of the Western and Central Pacific Fisheries Convention Implementation Act (Act) and applies to persons and vessels subject to the jurisdiction of the United States.

##### **§ 300.211 Definitions.**

In addition to the terms defined in § 300.2 and those in the Act and in the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes (WCPFC Convention), which was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High-Level Conference on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, the terms used in this subpart have the following meanings.

*1982 Convention* means the United Nations Convention on the Law of the Sea of 10 December 1982.

*Aggregate or summary form* means information structured in such a way which does not directly or indirectly disclose the identity or business of any person who submits such information.

*Commercial, with respect to commercial fishing*, means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce through sale, barter or trade.

*Commission* means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean established in accordance with the WCPFC Convention, including its employees and contractors.

*Confidential information* means any observer information or any information submitted to the Secretary, a State fishery management agency, or a Marine Fisheries Commission by any person in compliance with any requirement or regulation under the Act or under the Magnuson-Stevens Fishery Conservation and Management Act.

*Conservation and management measure* means those conservation and management measures adopted by the Commission pursuant to Article 10 of the WCPFC Convention.

*Convention Area* means all waters of the Pacific Ocean bounded to the south and to the east by the following line: From the south coast of Australia due south along the 141st meridian of east longitude to its intersection with the 55th parallel of south latitude; thence due east along the 55th parallel of south latitude to its intersection with the

150th meridian of east longitude; thence due south along the 150th meridian of east longitude to its intersection with the 60th parallel of south latitude; thence due east along the 60th parallel of south latitude to its intersection with the 130th meridian of west longitude; thence due north along the 130th meridian of west longitude to its intersection with the 4th parallel of south latitude; thence due west along the 4th parallel of south latitude to its intersection with the 150th meridian of west longitude; thence due north along the 150th meridian of west longitude.

*Fishing* means using any vessel, vehicle, aircraft or hovercraft for any of the following activities, or attempting to do so:

(1) Searching for, catching, taking, or harvesting fish;

(2) Engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish for any purpose;

(3) Placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(4) Engaging in any operations at sea directly in support of, or in preparation for, any of the activities previously described in paragraphs (1) through (3) of this definition, including, but not limited to, bunkering;

(5) Engaging in transshipment, either unloading or loading fish.

*Fishing vessel* means any vessel used or intended for use for the purpose of fishing, including bunkering and other support vessels, carrier vessels and other vessels that unload or load fish in a transshipment, and any other vessel directly involved in fishing.

*High seas* means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

*High seas fishing permit* means a permit issued under § 300.13.

*Highly migratory species (or HMS)* means any of the following species:

Common name	Scientific name
Albacore	<i>Thunnus alalunga</i> .
Pacific bluefin tuna	<i>Thunnus orientalis</i> .
Southern bluefin tuna	<i>Thunnus maccoyii</i> .
Bigeye tuna	<i>Thunnus obesus</i> .
Skipjack tuna	<i>Katsuwonus pelamis</i> .
Yellowfin tuna	<i>Thunnus albacares</i> .
Little tuna	<i>Euthynnus affinis</i> .
Frigate mackerel	<i>Auxis thazard</i> ; <i>Auxis rochei</i> .
Pomfrets	Family <i>Bramidae</i> .
Marlins	<i>Tetrapturus angustirostris</i> ; <i>Tetrapturus audax</i> ; <i>Makaira mazara</i> ;
	<i>Makaira indica</i> ; <i>Makaira nigricans</i> .
	<i>Istiophorus platypterus</i> .
	<i>Xiphias gladius</i> .
Sail-fishes	<i>Coryphaena hippurus</i> ; <i>Coryphaena equiselis</i> .
Swordfish	<i>Hexanchus griseus</i> ; <i>Cetorhinus maximus</i> ; Family <i>Alopiidae</i> ; <i>Rhincodon</i>
Dolphinfish	<i>typus</i> ; Family <i>Carcharhinidae</i> ; Family <i>Sphyrnidae</i> ; Family <i>Isuridae</i> (or
Oceanic sharks	<i>Lamnidae</i> ).

*Marine Fisheries Commission* means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific States Marine Fisheries Commission.

*Member of the Commission* means any Contracting Party to the WCPF Convention, and, unless otherwise stated in context, any territory that has been authorized by an appropriate Contracting Party to participate in the Commission and its subsidiary bodies pursuant to Article 43 of the WCPF Convention and any fishing entity that has agreed to be bound by the regime established by the WCPF Convention pursuant to Annex I of the WCPF Convention.

*NOAA* means the National Oceanic and Atmospheric Administration, Department of Commerce.

*Observer employer/observer provider* means any person that provides observers to fishing vessels, shoreside processors, or stationary floating processors under a requirement of the Act or the Magnuson-Stevens Conservation and Management Act.

*Observer information* means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-specific information (including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.

*Pacific Islands Regional Administrator* means the Regional Administrator, Pacific Islands Region, NMFS, or a designee (1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814).

*Person* means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

*Special Agent-In-Charge (or SAC)* means the Special-Agent-In-Charge, NMFS Office of Law Enforcement, Pacific Islands Division, or a designee (1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814; tel: (808) 203-2500; facsimile: (808) 203-2599; email: [pidvms@noaa.gov](mailto:pidvms@noaa.gov)).

*State* means each of the several States of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

*Transshipment* means the unloading of fish from one fishing vessel and its direct transfer to, and loading on, another fishing vessel, either at sea or in port.

*Vessel monitoring system (or VMS)* means an automated, remote system that provides information about a vessel's identity, location and activity, for the purposes of routine monitoring, control, surveillance and enforcement of area and time restrictions and other fishery management measures.

*VMS unit, sometimes known as a "mobile transmitting unit,"* means a transceiver or communications device, including all hardware and software, that is carried and operated on a vessel as part of a VMS.

*WCPFC Area Endorsement* means the authorization issued by NMFS under § 300.212, supplementary to a valid high seas fishing permit and expressed as an endorsement to such permit, for a fishing vessel used for commercial fishing for highly migratory species on the high seas in the Convention Area.

*WCPFC Convention* means the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (including any annexes, amendments, or protocols that are in force, or have come into force, for the United States) that was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High-Level Conference on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

*WCPFC inspection vessel* means any vessel that is:

(1) authorized by a member of the Commission to be used to undertake boarding and inspection fishing vessels on the high seas pursuant to, and in accordance with, Article 26 of the WCPFC Convention and procedures established by the Commission pursuant thereto;

(2) included in the Commission's register of authorized inspection vessels and authorities or inspectors, established by the Commission in procedures pursuant to Article 26 of the WCPFC Convention; and

(3) flying the WCPFC inspection flag established by the Commission.

*WCPFC inspector* means a person that is authorized by a member of the Commission to undertake boarding and inspection of fishing vessels on the high seas pursuant to, and in accordance with, the boarding and inspection procedures adopted by the Commission under Article 26 of the WCPFC Convention, and referred to therein as a "duly authorized inspector" or "authorized inspector."

*WCPFC observer* means a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the

Commission's Regional Observer Programme.

*WCPFC transshipment monitor* means, with respect to transshipments that take place on the high seas, a person authorized by the Commission to conduct transshipment monitoring on the high seas, and with respect to transshipments that take place in areas under the jurisdiction of a member of the Commission other than the United States, a person authorized by such member of the Commission to conduct transshipment monitoring.

#### **§ 300.212 Vessel permit endorsements.**

(a) Any fishing vessel of the United States used for commercial fishing for HMS on the high seas in the Convention Area must have on board a valid high seas fishing permit, or a copy thereof, that has a valid WCPFC Area Endorsement, or a copy thereof.

(b) *Eligibility.* Only a fishing vessel that has a valid high seas fishing permit is eligible to receive a WCPFC Area Endorsement.

(c) *Application.* (1) A WCPFC Area Endorsement may be applied for at the same time the underlying high seas permit is applied for, or at any time thereafter.

(2) The owner or operator of a high seas fishing vessel may apply for a WCPFC Area Endorsement by completing an application form, available from the Pacific Islands Regional Administrator, and submitting the complete and accurate application, signed by the applicant, to the Pacific Islands Regional Administrator, along with the required fees.

(3) The application must be accompanied by a bow-to-stern side-view photograph of the vessel in its current form and appearance. The photograph must meet the specifications prescribed on the application form and clearly show that the vessel is marked in accordance with the vessel identification requirements of § 300.217. A vessel photograph submitted as part of an application for a high seas fishing permit will be deemed to satisfy the requirement under this section, provided that it clearly shows that the vessel is marked in accordance with the vessel identification requirements of § 300.217 and it meets the specifications prescribed on the WCPFC Area Endorsement application form.

(d) *Fees.* NMFS will charge a fee to recover the administrative expenses of issuance of a WCPFC Area Endorsement. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook, available from the Pacific Islands Regional Administrator, for

determining administrative costs of each special product or service. The fee is specified in the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the WCPFC Area Endorsement. Payment by a commercial instrument later determined to be insufficiently funded is grounds for invalidating the WCPFC Area Endorsement.

(e) *Issuance.* (1) The Pacific Islands Regional Administrator will issue a WCPFC Area Endorsement within 30 days of receipt of a complete application that meets the requirements of this section and upon payment of the appropriate fee.

(2) If an incomplete or improperly completed application is submitted, the Pacific Islands Regional Administrator will notify the applicant of such deficiency within 30 days of the date of receipt of the application. If the applicant fails to correct the deficiency and send a complete and accurate application to the Pacific Islands Regional Administrator within 30 days of the date of the notification of deficiency, the application will be considered withdrawn and no further action will be taken to process the application. Following withdrawal, the applicant may at any time submit a new application for consideration.

(f) *Validity.* A WCPFC Area Endorsement issued under this subpart expires upon the expiration of the underlying high seas fishing permit, and shall be void whenever the underlying high seas fishing permit is void. Renewal of a WCPFC Area Endorsement prior to its expiration is the responsibility of the WCPFC Area Endorsement holder.

(g) *Change in application information.* Any change in the required information provided in an approved or pending application for a WCPFC Area Endorsement must be reported by the vessel owner or operator to the Pacific Islands Regional Administrator in writing within 15 days of such change.

(h) *Transfer.* A WCPFC Area Endorsement issued under this subpart is valid only for the vessel, owner, and high seas fishing permit to which it is issued and is not transferable or assignable to another high seas fishing permit or to another vessel.

(i) *Display.* A valid WCPFC Area Endorsement, or a photocopy or facsimile copy thereof, issued under this subpart must be on board the vessel and available for inspection by any authorized officer while the vessel is at sea and must be available for inspection by any WCPFC inspector while the

vessel is on the high seas in the Convention Area.

#### **§ 300.213 Vessel information.**

(a) The owner or operator of any fishing vessel of the United States that is used for fishing for HMS in the Convention Area in waters under the jurisdiction of any nation other than the United States must, prior to the commencement of such fishing, submit to the Pacific Islands Regional Administrator information about the vessel and its ownership and operation, and the authorized fishing activities, including copies of any permits, licenses, or authorizations issued for such activities, as specified on forms available from the Pacific Islands Regional Administrator. The owner or operator of such a fishing vessel must also submit to the Pacific Islands Regional Administrator a bow-to-stern side-view photograph of the vessel in its current form and appearance, and the photograph must meet the specifications prescribed on the application form. If any of the submitted information changes, the vessel owner or operator must report the updated information to the Pacific Islands Regional Administrator in writing within 15 days of the change.

(b) If any of the information or the vessel photograph required under paragraph (a) of this section has been submitted for the subject vessel on an application for a high seas fishing permit or an application for a WCPFC Area Endorsement, then the requirements of paragraph (a) of this section will be deemed satisfied. However, in order to satisfy this requirement, the high seas fishing permit or WCPFC Area Endorsement must be valid, the information provided must be true, accurate and complete, and in the case of a vessel photograph, it must meet the specifications prescribed on the form used for the purpose of submitting the photograph under this section.

#### **§ 300.214 Compliance with laws of other nations.**

(a) The owner and operator of a fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required:

(1) May not use the vessel for fishing, retaining fish on board, or landing fish in areas under the jurisdiction of a nation other than the United States unless any license, permit, or other authorization that may be required by such other nation for such activity has been issued with respect to the vessel.

(2) Shall, when the vessel is in the Convention Area in areas under the jurisdiction of a member of the Commission other than the United States, operate the vessel in compliance with, and ensure its crew complies with, the applicable national laws of such member.

(b) The owner and operator of a fishing vessel of the United States shall ensure that:

(1) The vessel is not used for fishing for HMS, retaining HMS on board, or landing HMS in the Convention Area in areas under the jurisdiction of a nation other than the United States unless any license, permit, or other authorization that may be required by such other nation for such activity has been issued with respect to the vessel.

(2) If the vessel is used for commercial fishing for HMS, including transshipment of HMS, in the Convention Area in areas under the jurisdiction of a member of the Commission other than the United States, the vessel is operated in compliance with, and the vessel crew complies with, the applicable laws of such member, including any laws related to carrying vessel observers or the operation of VMS units.

(c) For the purpose of this section, the meaning of transshipment does not include transfers that exclusively involve fish that have been previously landed and processed.

#### **§ 300.215 Observers.**

(a) *Applicability.* This section applies to any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required.

(b) *Notifications.* [Reserved]

(c) *Accommodating observers.* All fishing vessels subject to this section must carry a WCPFC observer when directed to do so by NMFS. The operator and each member of the crew of the fishing vessel shall act in accordance with this paragraph with respect to any WCPFC observer.

(1) The operator and crew shall allow and assist WCPFC observers to:

(i) Embark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator;

(ii) Have access to and use of all facilities and equipment on board as necessary to conduct observer duties, including, but not limited to: full access to the bridge, the fish on board, and areas which may be used to hold, process, weigh and store fish; full access to the vessel's records, including its logs and documentation, for the purpose of inspection and copying; access to, and

use of, navigational equipment, charts and radios; and access to other information relating to fishing;

(iii) Remove samples;

(iv) Disembark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; and

(v) Carry out all duties safely.

(2) The operator shall provide the WCPFC observer, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel, at no expense to the WCPFC observer.

(3) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass or interfere with WCPFC observers in the performance of their duties, or attempt to do any of the same. (d) Related observer requirements. Observers deployed by NMFS pursuant to regulations issued under other statutory authorities on vessels used for commercial fishing for HMS in the Convention Area will be deemed by NMFS to have been deployed pursuant to this section.

#### **§ 300.216 Transshipment.**

(a) *Transshipment monitoring.* [Reserved]

(b) *Transshipment restrictions.* Fish may not be transshipped from a purse seine vessel at sea in the Convention Area, and a fishing vessel may not be used to receive a transshipment of fish from a purse seine vessel at sea in the Convention Area.

#### **§ 300.217 Vessel identification.**

(a) *General.* (1) A fishing vessel must be marked in accordance with the requirements of this section in order for a WCPFC Area Endorsement to be issued for the fishing vessel.

(2) Any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required shall be marked for identification purposes in accordance with this section, and all parts of such markings shall be clear, distinct, uncovered, and unobstructed.

(3) Any boat, skiff, or other watercraft carried on board the fishing vessel shall be marked with the same identification markings as required under this section for the fishing vessel and shall be marked in accordance with this section.

(b) *Marking.* (1) Vessels shall be marked in accordance with the identification requirements of § 300.14(b)(2), and if an IRCS has not been assigned to the vessel, then the Federal, State, or other documentation

number used in lieu of the IRCS must be preceded by the characters "USA" and a hyphen (that is, "USA-").

(2) With the exception of the vessel's name and hailing port, the marking required in this section shall be the only vessel identification mark consisting of letters and numbers to be displayed on the hull and superstructure.

#### **§ 300.218 Reporting and recordkeeping requirements.**

(a) *Fishing reports*—(1) *General*. The owner or operator of any fishing vessel used for commercial fishing for HMS in the Pacific Ocean must maintain and report to NMFS catch and effort and other operational information for all such fishing activities. The reports must include at a minimum: identification information for the vessel; description of fishing gear used; dates, times and locations of fishing; and species and amounts of fish retained and discarded.

(2) *Reporting options*. Vessel owners and operators shall be deemed to meet the recordkeeping and reporting requirements of paragraph (a)(1) of this section by satisfying all applicable catch and effort reporting requirements as listed below:

(i) *Western Pacific pelagic fisheries*. Fishing activities subject to the reporting requirements of § 665.14(a) of this title must be maintained and reported in the manner specified in that section.

(ii) *West Coast HMS fisheries*. Fishing activities subject to the reporting requirements of § 660.708(a) of this title must be maintained and reported in the manner specified in that section.

(iii) *Pacific tuna fisheries*. Fishing activities subject to the reporting requirements of § 300.22 must be maintained and reported in the manner specified in that section.

(iv) *South Pacific tuna fisheries*. Fishing activities subject to the reporting requirements of § 300.34(c)(1) must be maintained and reported in the manner specified in that section.

(v) *High seas fisheries*. Fishing activities subject to the reporting requirements of § 300.17(a) must be maintained and reported in the manner specified in § 300.17(a) and (b).

(vi) *Canada albacore fisheries*. Fishing activities subject to the reporting requirements of § 300.174 must be maintained and reported in the manner specified in that section.

(vii) *State-regulated fisheries*. Catch and effort information for fishing activities for which reporting of effort, catch, and/or landings is required under State law must be maintained and reported in the manner specified under such State law.

(viii) *Other fisheries*. All other fishing activities subject to the requirement of paragraph (a)(1) of this section must be recorded on paper or electronic forms specified or provided by the Pacific Islands Regional Administrator. Such forms will specify the information required, which may include: identification information for the vessel; description of fishing gear used; dates, times and locations of fishing; and species and amounts of fish retained and discarded. All information specified by the Pacific Islands Regional Administrator on such forms must be recorded on paper or electronically within 24 hours of the completion of each fishing day. The information recorded must, for each fishing day, include a dated signature of the vessel operator or other type of authentication as specified by the Pacific Islands Regional Administrator. The vessel operator must, unless otherwise specified by the Pacific Islands Regional Administrator, submit the information for each fishing day to the Pacific Islands Regional Administrator within 72 hours of the first landing or port call after the fishing day, and must submit the information in the manner specified by the Pacific Islands Regional Administrator.

(3) *Exceptions*. (i) Catch and effort information for fishing activities that take place in waters under State jurisdiction must be maintained and reported only in cases where the reporting of such activity is required under State law or under Federal regulations at §§ 300.22 and 300.34, and §§ 660.708 and 665.14 of this title.

(ii) Catch and effort information for fishing activities that take place in waters under Federal jurisdiction around American Samoa, Guam and the Northern Mariana Islands need not be reported under this section unless reporting of such activity is required under regulations in chapter VI of this title.

(b) *Transshipment reports*. [Reserved]

#### **§ 300.219 Vessel monitoring system.**

(a) *SAC contact information and business hours*. The contact information for the SAC for the purpose of this section is: 1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814; telephone: (808) 203-2500; facsimile: (808) 203-2599; email: [pidvms@noaa.gov](mailto:pidvms@noaa.gov). The business hours of the SAC for the purpose of this section are: Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m.

(b) *Applicability*. This section applies to any fishing vessel of the United States with a WCPFC Area Endorsement or for

which a WCPFC Area Endorsement is required.

(c) *Provision of vessel position information*—(1) *VMS unit installation*. The vessel owner and operator shall obtain and have installed on the fishing vessel, in accordance with instructions provided by NMFS and the VMS unit manufacturer, a VMS unit that is type-approved by NMFS for fisheries governed under the Act. The vessel owner and operator shall authorize the Commission and NMFS to receive and relay transmissions from the VMS unit. The vessel owner and operator shall arrange for a NMFS-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NMFS. NMFS makes available lists of type-approved VMS units and approved mobile communications service providers.

(2) *VMS unit activation*. If the VMS unit has not yet been activated as described in this paragraph, or if the VMS unit has been newly installed or reinstalled, or if the mobile communications service provider has changed since the previous activation, or if directed by NMFS, the vessel owner and operator shall, prior to the vessel leaving port:

(i) Turn on the VMS unit to make it operational;

(ii) Submit a written activation report, via mail, facsimile or email, to the SAC that includes: the vessel's name; the vessel's official number; the VMS unit manufacturer and identification number; and telephone, facsimile or email contact information for the vessel owner or operator; and

(iii) Receive verbal or written confirmation from NMFS that proper transmissions are being received from the VMS unit.

(3) *VMS unit operation*. The vessel owner and operator shall continuously operate the VMS unit at all times, except that the VMS unit may be shut down while the vessel is at port or otherwise not at sea, provided that the owner and operator:

(i) Prior to shutting down the VMS unit, report to the SAC, via facsimile or email, the following information: the intent to shut down the VMS unit, the vessel's name; the vessel's official number; and telephone, facsimile or email contact information for the vessel owner or operator; and

(ii) When turning the VMS unit back on, report to the SAC, via mail, facsimile or email, the following information: that the VMS unit has been turned on, the vessel's name; the vessel's official number; and telephone, facsimile or email contact information for the vessel owner or operator; and



(iii) Prior to leaving port, receive verbal or written confirmation from NMFS that proper transmissions are being received from the VMS unit.

(4) *Failure of VMS unit.* If the vessel owner or operator becomes aware that the VMS unit has become inoperable or that transmission of automatic position reports from the VMS unit has been interrupted, or if notified by NMFS or the USCG that automatic position reports are not being received from the VMS unit or that an inspection of the VMS unit has revealed a problem with the performance of the VMS unit, the vessel owner and operator shall comply with the following requirements:

(i) If the vessel is at port: The vessel owner or operator shall repair or replace the VMS unit and ensure it is operable before the vessel leaves port.

(ii) If the vessel is at sea: The vessel owner, operator, or designee shall contact the SAC by telephone, facsimile, or email at the earliest opportunity during the SAC's business hours and identify the caller and vessel. The vessel operator shall follow the instructions provided by the SAC, which could include, but are not limited to: ceasing fishing, stowing fishing gear, returning to port, and/or submitting periodic position reports at specified intervals by other means; and, repair or replace the VMS unit and ensure it is operable before starting the next trip.

(5) *Related VMS requirements.* Installing, carrying and operating a VMS unit in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of paragraph (c) of this section, provided that the VMS unit is operated continuously and at all times while the vessel is at sea, the VMS unit is type-approved by NMFS for fisheries governed under the Act, the owner and operator have authorized the Commission and NMFS to receive and relay transmissions from the VMS unit, and the specific requirements of paragraph (c)(4) of this section are complied with. If the VMS unit is owned by NMFS, the requirement under paragraph (c)(4) of this section to repair or replace the VMS unit will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the VMS unit is operable before leaving port or starting the next trip.

(d) *Costs.* The vessel owner and operator shall be responsible for all costs associated with the purchase, installation and maintenance of the VMS unit, and for all charges levied by

the mobile communications service provider as necessary to ensure the transmission of automatic position reports to NMFS as required in paragraph (c) of this section. However, if the VMS unit is being carried and operated in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units, the vessel owner and operator shall not be responsible for costs that are the responsibility of NMFS under those regulations.

(e) *Tampering.* The vessel owner and operator shall ensure that the VMS unit is not tampered with, disabled, destroyed, damaged or operated improperly, and that its operation is not impeded or interfered with.

(f) *Inspection.* The vessel owner and operator shall make the VMS unit, including its antenna, connectors and antenna cable, available for inspection by authorized officers, by employees of the Commission, by persons appointed by the Executive Director of the Commission for this purpose, and, when the vessel is on the high seas in the Convention Area, by WCPFC inspectors.

(g) *Access to data.* The vessel owner and operator shall make the vessel's position data obtained from the VMS unit or other means immediately and always available for inspection by NOAA personnel, USCG personnel, and authorized officers, and shall make the vessel's position data for positions on the high seas in the Convention Area immediately and always available to WCPFC inspectors and the Commission.

(h) *Communication devices.* (1) To facilitate communication with management and enforcement authorities regarding the functioning of the VMS unit and other purposes, the vessel operator shall, while the vessel is at sea, carry on board and continuously monitor a two-way communication device that is capable of real-time communication with the SAC. The VMS unit used to fulfill the requirements of paragraph (c) of this section may not be used to satisfy this requirement. If the device is anything other than a radio, the contact number for the device must be provided to the Pacific Islands Regional Administrator on the application form for the WCPFC Area Endorsement in accordance with the requirements of § 300.212.

(2) For the purpose of submitting the position reports that might be required in cases of VMS unit failure under paragraph (c)(4)(ii) of this section, the vessel operator shall, while the vessel is at sea, carry on board a communication device capable of transmitting, while

the vessel is on the high seas in the Convention Area, communications by telephone, facsimile, email, or radio to the Commission, in Pohnpei, Micronesia. The VMS unit used to fulfill the requirements of paragraph (c) of this section may not be used to satisfy this requirement. The same communication device may be able to satisfy the requirements of both this paragraph and paragraph (h)(1) of this section.

#### **§ 300.220 Confidentiality of information.**

(a) *Types of information covered.*

NOAA is authorized under the Act and other statutes to collect and maintain information. This section applies to confidential information collected under authority of the Act.

(b) Collection and maintenance of information—(1) *General.*(i) Any information required to be submitted to the Secretary, a State fishery management agency, or a Marine Fisheries Commission under the Act shall be provided to the Assistant Administrator.

(ii) Any observer information collected under the Act shall be provided to the Assistant Administrator.

(iii) Appropriate safeguards as specified by NOAA Administrative Order (NAO) 216–100 or other NOAA/NMFS internal procedures, apply to the collection and maintenance of any information collected pursuant to paragraphs (b)(1) or (b)(2) of this section, whether separated from identifying particulars or not, so as to ensure their confidentiality. Information submitted to the Secretary in compliance with this subpart shall not be disclosed except as authorized herein or by other law or regulation.

(2) Collection agreements with States or Marine Fisheries Commissions—(i) The Assistant Administrator may enter into an agreement with a State or a Marine Fisheries Commission authorizing the State or Marine Fisheries Commission to collect information on behalf of the Secretary.

(ii) To enter into a cooperative collection agreement with a State or a Marine Fisheries Commission, NMFS must ensure that:

(A) The State has authority to protect the information from disclosure in a manner at least as protective as these regulations.

(B) The Marine Fisheries Commission has enacted policies and procedures to protect the information from public disclosure.

(3) Collection services by observer employer / observer provider. The Assistant Administrator shall make the following determinations before issuing a permit or letting a contract or grant to



an organization that provides observer services:

(i) That the observer employer / observer provider has enacted policies and procedures to protect the information from public disclosure;

(ii) That the observer employer / observer provider has entered into an agreement with the Assistant Administrator that prohibits public disclosure and specifies penalties for such disclosure; and

(iii) That the observer employer / observer provider requires each observer to sign an agreement with NOAA/NMFS that prohibits public disclosure of observer information and specifies penalties for such disclosure.

(c) *Access to information*—(1) *General.* This section establishes procedures intended to manage, preserve, and protect the confidentiality of information submitted in compliance with the Act and its implementing regulations. This section applies to those persons and organizations deemed eligible to access confidential information subject to the terms and conditions described in this section and the Act. All other persons requesting access to confidential information should follow the procedures set forth in the Freedom of Information Act, 5 U.S.C. 552, 15 CFR parts 15 and 903, NAO 205–14, and Department of Commerce Administrative Orders 205–12 and 205–14, as applicable. Persons eligible to access confidential information under this section shall submit to NMFS a written request with the following information:

(i) The specific types of information requested;

(ii) The relevance of the information to requirements of the Act;

(iii) The duration of time that access will be required: continuous, infrequent, or one-time; and

(iv) An explanation of why the availability of information in aggregate or summary form from other sources would not satisfy the requested needs.

(2) *Federal employees.* Confidential information will only be accessible to the following:

(i) Federal employees who are responsible for administering, implementing, or enforcing the Act. Such persons are exempt from the provisions of paragraph (c)(1) of this section.

(ii) NMFS employees responsible for the collection, processing, and storage of the information or performing research that requires access to confidential information. Such persons are exempt from the provisions of paragraph (c)(1) of this section.

(iii) Other NOAA employees on a demonstrable need-to-know basis.

(iv) Persons that need access to confidential information to perform functions authorized under a Federal contract, cooperative agreement, or grant awarded by NOAA/NMFS.

(3) *Commission.* (i) Confidential information will be subject to disclosure to the Commission, but only if:

(A) The information is required to be submitted to the Commission under the requirements of the WCPF Convention or the decisions of the Commission;

(B) The provision of such information is in accord with the requirements of the Act, the WCPF Convention, and the decisions of the Commission, including any procedures, policies, or practices adopted by the Commission relating to the receipt, maintenance, protection or dissemination of information by the Commission; and

(C) The provision of such information is in accord with any agreement between the United States and the Commission that includes provisions to prevent public disclosure of the identity or business of any person.

(ii) The provisions of paragraph (c)(1) of this section do not apply to the release of confidential information to the Commission.

(4) *State employees.* Confidential information may be made accessible to a State employee only by written request and only upon the determination by NMFS that at least one of the following conditions is met:

(i) The employee has a need for confidential information to further the Department of Commerce's mission, and the State has entered into a written agreement between the Assistant Administrator and the head of the State's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the State has confidentiality protection authority comparable to the Act and that the State will exercise this authority to prohibit public disclosure of the identity or business of any person.

(ii) The employee enforces the Act or fishery management plans prepared under the authority of the Magnuson-Stevens Conservation and Management Act, and the State for which the employee works has entered into a fishery enforcement agreement with the Secretary and the agreement is in effect.

(5) *Marine Fisheries Commission employees.* Confidential information may be made accessible to Marine Fisheries Commission employees only upon written request of the Marine Fisheries Commission and only if the request demonstrates a need for

confidential information to further the Department of Commerce's mission, and the executive director of the Marine Fisheries Commission has entered into a written agreement with the Assistant Administrator. The agreement shall contain a finding by the Assistant Administrator that the Marine Fisheries Commission has confidentiality protection policies and procedures to protect from public disclosure information that would reveal the identity or business of any person.

(6) *Homeland and national security activities.* Confidential information may be made accessible to Federal employees for purposes of promoting homeland security or national security at the request of another Federal agency only if:

(i) Providing the information promotes homeland security or national security purposes including the USCG's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)); and

(ii) The requesting agency has entered into a written agreement with the Assistant Administrator. The agreement shall contain a finding by the Assistant Administrator that the requesting agency has confidentiality policies and procedures to protect the information from public disclosure.

(7) *Observer and observer employer / observer provider.* Confidential information used for purposes other than those contained in this subpart or in part 600 of this title may only be used by observers and observer employers / observer providers in order:

(i) To adjudicate observer certifications;

(ii) To allow the sharing of observer information among the observers and between observers and observer employers / observer providers as necessary to train and prepare observers for deployments on specific vessels; or

(iii) To validate the accuracy of the observer information collected.

(8) Persons having access to confidential information may be subject to criminal and civil penalties for unauthorized use or disclosure of confidential information. See 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216–100.

(d) *Control system.* (1) The Assistant Administrator maintains a control system to protect the identity or business of any person who submits information in compliance with any requirement or regulation under the Act. The control system:

(i) Identifies those persons who have access to the information;

(ii) Contains procedures to limit access to confidential information to authorized users; and

(iii) Provides handling and physical storage protocols for safeguarding of the information.

(2) This system requires that all persons who have authorized access to the information be informed of the confidentiality of the information. These persons, with the exception of employees and contractors of the Commission, are required to sign a statement that they:

(i) Have been informed that the information is confidential; and

(ii) Have reviewed and are familiar with the procedures to protect confidential information.

(e) *Release of information.* (1) The Assistant Administrator will not disclose to the public any confidential information, except:

(i) When the Secretary has obtained from the person who submitted the information an authorization to release the information to persons for reasons not otherwise provided for in this subpart. In situations where a person provides information through a second party, both parties are considered joint submitters of information and either party may request a release. The authorization to release such information will require:

(A) A written statement from the person(s) who submitted the information authorizing the release of the submitted information; and

(B) A finding by the Secretary that such release does not violate other requirements of the Act or other applicable laws.

(ii) Observer information as authorized by a fishery management plan (prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act) or regulations under the authority of the North Pacific Council to allow disclosure of observer information to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification.

(iii) When such information is required to be submitted for any determination under a limited access program.

(iv) When required by a court order.

(2) All requests from the public for confidential information will be processed in accordance with the requirements of 5 U.S.C. 552a, 15 CFR parts 4 and 903, NAO 205–14, and Department of Commerce Administrative Orders DAO 205–12 and DAO 205–14. Nothing in this section is intended to confer any right, claim, or

entitlement to obtain access to confidential information not already established by law.

(3) NMFS does not release or allow access to confidential information in its possession to members of advisory groups of the Regional Fishery Management Councils established under the Magnuson-Stevens Fishery Conservation and Management Act, except as provided by law.

#### **§ 300.221 Facilitation of enforcement and inspection.**

In addition to the facilitation of enforcement provisions of § 300.5, the following requirements apply to this subpart.

(a) A fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required, including the vessel's operator and each member of the vessel's crew shall, when in the Convention Area, be subject to the following requirements:

(1) The Federal Certificate of Documentation or State or other documentation for the vessel, or a copy thereof, shall be carried on board the vessel. Any license, permit or other authorization to use the vessel to fish, retain fish, transship fish, or land fish issued by a nation or political entity other than the United States, or a copy thereof, shall be carried on board the vessel. These documents shall be made available for inspection by any authorized officer. If the vessel is on the high seas, the above-mentioned licenses, permits, and authorizations shall also be made available for inspection by any WCPFC inspector. If the vessel is in an area under the jurisdiction of a member of the Commission other than the United States, they shall be made available for inspection by any authorized enforcement official of that member.

(2) For the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the members of the Commission, the operator shall ensure the continuous monitoring of the international safety and calling radio frequency 156.8 MHz (Channel 16, VHF-FM) and, if the vessel is equipped to do so, the international distress and calling radio frequency 2.182 MHz (HF).

(3) The operator shall ensure that an up-to-date copy of the International Code of Signals (INTERCO) is on board and accessible at all times.

(4) When engaged in transshipment on the high seas or in an area under the jurisdiction of a member of the Commission other than the United States, the operator and crew shall:

(i) Provide any WCPFC transshipment monitor with full access to, and use of, facilities and equipment which such authorized person may determine is necessary to carry out his or her duties to monitor transshipment activities, including full access to the bridge, fish on board, and all areas which may be used to hold, process, weigh and store fish, and full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying;

(ii) Allow and assist any WCPFC transshipment monitor to collect and remove samples and gather any other information required to fully monitor transshipment activities.

(iii) Not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, interfere with, unduly obstruct or delay any WCPFC transshipment monitor in the performance of such person's duties, or attempt to do any of the same.

(b) The operator and crew of a fishing vessel of the United States, when on the high seas in the Convention Area, shall be subject to the following requirements:

(1) The operator and crew shall immediately comply with instructions given by an officer on board a WCPFC inspection vessel to move the vessel to a safe location and/or to stop the vessel, provided that the officer has, prior to the issuance of such instructions:

(i) Provided information identifying his or her vessel as a WCPFC inspection vessel, including its name, registration number, IRCS and contact frequency; and

(ii) Communicated to the vessel operator his or her intention to board and inspect the vessel under the authority of the Commission and pursuant to the boarding and inspection procedures adopted by the Commission.

(2) The operator and crew shall accept and facilitate prompt and safe boarding by any WCPFC inspector, provided that an officer on board the WCPFC inspection vessel has, prior to such boarding:

(i) Provided information identifying his or her vessel as a WCPFC inspection vessel, including its name, registration number, IRCS and contact frequency; and

(ii) Communicated to the vessel operator an intention to board and inspect the vessel under the authority of the Commission and pursuant to the boarding and inspection procedures adopted by the Commission.

(3) Provided that the WCPFC inspector has presented to the vessel operator his or her identity card identifying him or her as an inspector authorized to carry out boarding and

inspection procedures under the auspices of the Commission, and a copy of the text of the relevant conservation and management measures in force pursuant to the WCPF Convention in the relevant area of the high seas, the operator and crew shall:

(i) Cooperate with and assist any WCPFC inspector in the inspection of the vessel, including its authorizations to fish, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the conservation and management measures in force pursuant to the WCPF Convention;

(ii) Allow any WCPFC inspector to communicate with the crew of the WCPFC inspection vessel, the authorities of the WCPFC inspection vessel and the authorities of the vessel being inspected;

(iii) Provide any WCPFC inspector with reasonable facilities, including, where appropriate, food and accommodation; and

(iv) Facilitate safe disembarkation by any WCPFC inspector.

(4) If the operator or crew refuses to allow a WCPFC inspector to board and inspect the vessel in the manner described in this paragraph, they shall offer to the WCPFC inspector an explanation of the reason for such refusal.

(5) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, interfere with, unduly obstruct or delay any WCPFC inspector in the performance of such person's duties, or attempt to do any of the same.

(c) When a fishing vessel of the United States that is used for commercial fishing for HMS is in the Convention Area and is either on the high seas without a valid WCPFC Area Endorsement or is in an area under the jurisdiction of a nation other than the United States without an authorization by that nation to fish in that area, all the fishing gear and fishing equipment on the fishing vessel shall be stowed in a manner so as not to be readily available for fishing, specifically:

(1) If the fishing vessel is used for purse seining and equipped with purse seine gear, the boom must be lowered as far as possible so that the vessel cannot be used for fishing but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and the launches must be secured.

(2) If the fishing vessel is used for longlining and equipped with longline gear, the branch or dropper lines and

floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(3) If the fishing vessel is used for trolling and equipped with troll gear, no lines or hooks may be placed in the water; if outriggers are present on the vessel, they must be secured in a vertical position; if any power-operated haulers are located on deck they must be covered in such a manner that they are not readily available for use.

(4) If the fishing vessel is used for pole-and-line fishing and equipped with pole-and-line gear, any poles rigged with lines and hooks must be stowed in such a manner that they are not readily available for use.

(5) For any other type of fishing vessel, all the fishing gear and equipment on the vessel must be stowed in a manner so as not to be readily available for use.

(d) For the purpose of this section, the meaning of transshipment does not include transfers that exclusively involve fish that have been previously landed and processed.

#### **§ 300.222 Prohibitions.**

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Fail to obtain and have on board a fishing vessel a valid WCPFC Area Endorsement as required in § 300.212.

(b) Fail to report a change in the information required in an application for a WCPFC Area Endorsement as required in § 300.212(g).

(c) Fail to provide information on vessels and fishing authorizations or fail to report changes in such information as required in § 300.213.

(d) Fish for, retain on board, or land fish, including HMS, in areas under the jurisdiction of a nation other than the United States without authorization by such nation to do so, as provided in § 300.214(a)(1) and (b)(1).

(e) Operate a fishing vessel in violation of, or fail to ensure the vessel crew complies with, the applicable national laws of a member of the Commission other than the United States, including any laws related to carrying vessel observers or the operation of VMS units, as provided in § 300.214(a)(2) and (b)(2).

(f) Fail to carry, allow on board, or assist a WCPFC observer as required in § 300.215.

(g) Assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, or interfere with a WCPFC observer, or

attempt to do any of the same, or fail to provide a WCPFC observer with food, accommodation or medical facilities, as required in § 300.215.

(h) Offload, receive, or load fish from a purse seine vessel at sea in the Convention Area, in contravention of § 300.216.

(i) Fail to mark a fishing vessel or a boat, skiff, or other watercraft on board the fishing vessel as required in § 300.217, or remove, obscure, or obstruct such markings, or attempt to do so.

(j) Fail to maintain and report catch and effort information or transshipment information as required in § 300.218.

(k) Fail to install, activate, or operate a VMS unit as required in § 300.219(c).

(l) In the event of VMS unit failure or interruption, fail to repair or replace a VMS unit, fail to notify the SAC and follow the instructions provided, or otherwise fail to act as provided in § 300.219(c)(4).

(m) Disable, destroy, damage or operate improperly a VMS unit installed under § 300.219, or attempt to do any of the same, or fail to ensure that its operation is not impeded or interfered with, as provided in § 300.219(e).

(n) Fail to make a VMS unit installed under § 300.219 or the position data obtained from it available for inspection, as provided in § 300.219(f) and (g).

(o) Fail to carry on board and monitor communication devices as required in § 300.219(h).

(p) Fail to carry on board and make available the required vessel documentation and authorizations as required in § 300.221(a)(1).

(q) Fail to continuously monitor the specified radio frequencies as required in § 300.221(a)(2).

(r) Fail to carry on board, and keep accessible, an up-to-date copy of the International Code of Signals as required in § 300.221(a)(3).

(s) Fail to provide access to, or fail to allow and assist, a WCPFC transshipment monitor as required in § 300.221(a)(4).

(t) Fail to comply with the instructions of, or fail to accept and facilitate prompt and safe boarding by, a WCPFC inspector, or fail to cooperate and assist a WCPFC inspector in the inspection of a fishing vessel, as provided in § 300.221(b).

(u) Fail to stow fishing gear or fishing equipment as required in § 300.221(c).

[FR Doc. E9-12037 Filed 5-21-09; 8:45 am]

**BILLING CODE 3510-22-S**