



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, 660, and 665

[Docket No. 070516126-5907-04]

RIN 0648-AV12

International Affairs; High Seas Fishing Compliance Act; Permitting and Monitoring of U.S. High Seas Fishing Vessels

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

ACTION: Final rule.

SUMMARY: This final action sets forth regulatory changes to improve the administration of the High Seas Fishing Compliance Act program and the monitoring of U.S. fishing vessels operating on the high seas. This final rule includes, for all U.S. fishing vessels operating on the high seas, adjustments to permitting and reporting procedures. It also includes requirements for the installation and operation of enhanced mobile transceiver units (EMTUs) for vessel monitoring, carrying observers on vessels, reporting of transshipments taking place on the high seas, and protection of vulnerable marine ecosystems. This final rule has been prepared to minimize duplication and to be consistent with other established requirements.

DATES: This rule is effective [*INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Mark Wildman, Trade and Marine Stewardship Division, Office for International Affairs and Seafood Inspection, NMFS (phone 301-427-8386 or email mark.wildman@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

The purposes of the High Seas Fishing Compliance Act (HSFCA; 16 U.S.C. 5501 *et seq.*) are (1) to implement the Food and Agriculture Organization of the United Nations (FAO) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement) and (2) to establish a system of permitting, reporting and regulation for vessels of the United States fishing on the high seas. 16 U.S.C. 5501. “High seas” is defined in the HSFCA and its implementing regulations as 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. 16 U.S.C. 5502 (3); 50 CFR 300.11.

The HSFCA authorizes a system of permitting U.S. fishing vessels that operate on the high seas to satisfy the obligation of Parties to the Compliance Agreement (Parties) to require that fishing vessels flying their flags obtain specific authorization to operate on the high seas. The HSFCA requires the Secretary of Commerce (Secretary) to establish conditions and restrictions on each permit issued under HSFCA as necessary and appropriate to carry out the obligations of the United States under the Compliance Agreement. 16 U.S.C. 5503 (d). At a minimum, such conditions and restrictions must include the marking of the permitted vessel in

accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, and reporting of fishing activities. Parties are also responsible for ensuring that their authorized vessels do not undermine conservation and management measures, including those adopted by international fisheries management organizations, or by treaties or other international agreements. Accordingly, the HSFCA prohibits the use of fishing vessels on the high seas in contravention of international conservation and management measures recognized by the United States. 16 U.S.C. 5505(1). A list of the international conservation and management measures recognized by the United States is published by NMFS in the **Federal Register** from time to time, in consultation with the Secretary of State, as required by section 5504(e) of the HSFCA. The last such notice was published on May 19, 2011 (76 FR 28954). NMFS reinforces this prohibition by requiring a high seas fishing permit for any vessel operating on the high seas and, through the permit, authorizing only those activities that would not undermine international conservation and management measures recognized by the United States. The HSFCA also gives NMFS discretion to impose permit conditions and restrictions pursuant to other applicable law, such as the Endangered Species Act (ESA) and the Marine Mammal Protection Act, in addition to international conservation and management measures recognized by the United States. *See* 16 U.S.C. 5503(d); *Turtle Island Restoration Network v. National Marine Fisheries Service*, 340 F.3d 969 (9th Cir. 2003).

Finally, the HSFCA authorizes NMFS to promulgate regulations “as may be necessary to carry out the purposes of the Agreement and [the Act],” including its permitting authorities. 16 U.S.C. 5504(d). In promulgating such regulations, NMFS shall ensure that “[t]o the extent practicable, such regulations shall also be consistent with regulations implementing fishery management plans under the Magnuson-Stevens Fishery Conservation and Management Act,”

16 U.S.C. 1801 *et seq.*, which provides broad authority to establish measures for the conservation and management of fisheries. *Id.* at 1853(b)(14).

Regulations implementing the HSFCA were first promulgated in 1996 (61 FR 11751, March 22, 1996). The initial regulations included application and issuance procedures for high seas fishing permits. Subsequent regulations promulgated in 1999 (64 FR 13, January 4, 1999) specified how high seas fishing vessels must be marked for identification purposes and required vessel owners and operators to report catch and fishing effort when fishing on the high seas.

On April 13, 2015, NMFS published a notice of proposed rulemaking for this action (80 FR 19611) to codify NMFS' procedures for reviewing its high seas fishing authorizations under environmental laws, particularly the ESA and National Environmental Policy Act (NEPA).

Another objective of this action is to improve the monitoring of U.S. fishing vessels operating on the high seas. In order to enhance the U.S. government's ability to ensure compliance with international conservation and management measures. Furthermore, this action describes how NMFS will, through high seas permit conditions and restrictions, address impacts to vulnerable marine ecosystems (VMEs) from bottom fishing consistent with international conservation and management measures recognized by the United States and United Nations General Assembly resolutions regarding VMEs. Additionally, NMFS will continue to assess the impact of the long-term exemption on the use of an EMTU, set forth in § 300.337(d)(2) of this rule, on the efficacy of the HSFCA VMS provisions and may make appropriate adjustments, including elimination of the long-term exemption, through a future rulemaking.

Responses to public comments received on the proposed rule are set forth below.

Changes from the Proposed Rule

NMFS has made one change to the final rule in light of comments received on the proposed rule. Section 300.333(i) in the proposed rule, which addressed provisions for permit modification and revocation, has been modified to clarify that modification, suspension, or revocation of a high seas permit will be carried out consistent with the Administrative Procedure Act and other applicable law. Additional detail is provided in Responses to Public Comments section below.

Responses to Public Comments

NMFS received 18 public comments on the proposed rule. Comments were received from the Western Fish Boat Owners Association, the American Albacore Fishing Association, the Hawaii Longline Association, and individual west coast albacore fishers potentially affected by new requirements in this rule.

General Comments

NMFS received numerous comments from west coast albacore fishers who voiced their view that the proposed rule, if finalized, would impose considerable and unnecessary burdens. These fishers noted that the additional burden on the fleet resulting from the requirements contained in this rule would have adverse impacts on vessels, families, onshore support businesses, local communities, and consumers. Commenters noted the rule could reduce access to high seas fisheries by U.S. vessels and ensure that an increasing portion of catch would be taken by foreign vessels that are not subject to similar requirements. Commenters also noted that the U.S. albacore fishery already has mandatory logbook requirements that would not change under this new rule, and the information in these logbooks provides all the information necessary to monitor this fishery.

Response: NMFS recognizes the new EMTU and observer requirements will primarily impact those fishers who do not currently have to comply with such requirements in domestic fisheries or in international fisheries managed pursuant to conservation and management measures adopted by Regional Fishery Management Organizations (RFMOs). NMFS has therefore made efforts to mitigate these new burdens by informing fishers of possible reimbursement for the cost of purchasing an EMTU unit (see http://www.nmfs.noaa.gov/ole/slider_stories/2015/3june15_vms_program_codifies_requirements.html). Additionally, NMFS notes that observer coverage will not be required under this rule where such coverage is already mandated under other legal authorities. NMFS will also carefully take into consideration both the scientific need for observer coverage as well as the characteristics of the fishery when designating high seas vessels for observer coverage.

These new requirements are deemed necessary to improve U.S. capacity to monitor its vessels' compliance with domestic laws, including those used to implement RFMO requirements (both for those RFMOs to which we are a party as well as those recognized by the United States for purposes of the Compliance Act). This will enhance the United States' ability to comply with its international obligations, including the obligation to report high seas fishery data to the U.N. Food and Agriculture Organization. NMFS believes the cost of complying with these new requirements is justified in light of the benefits that will be gained from a uniform level of real-time monitoring of all high seas activities conducted by U.S. fishers.

Requirements for Enhanced Mobile Transmitting Units (EMTUs)

Comment 1: Several west coast albacore fishers noted that under WCPFC regulations, EMTUs are required for all vessels that fish west of the 150W line. This includes some of the larger U.S. albacore vessels. These fishers commented that EMTUs should not be required for

pole and line and troll vessels fishing for albacore east of the 150W line. These fishers also noted that the Inter-American Tropical Tuna Commission (IATTC) only requires VMS on vessels greater than 24 meters in length and the regulations developed by the Pacific Fishery Management Council for the albacore fishery under its purview do not require VMS. It was also noted that Canadian vessels under 24 meters are not required to have VMS.

Response: In light of U.S. obligations under the Compliance Agreement to ensure that U.S. fishing vessels on the high seas do not engage in any activity that undermines the effectiveness of international conservation and management measures, NMFS considers it necessary to require all vessels permitted to fish on the high seas be equipped with EMTUs. NMFS also notes that under its existing regulations, all U.S. vessels with WCPFC endorsement permits must continuously operate a VMS unit while at sea, regardless of where the vessel operates, i.e., east or west of the 150W meridian.

Comment 2: Several west coast albacore fishers noted that the mandatory EMTU requirement is onerous, particularly since most albacore vessels fish inside the U.S. EEZ and only occasionally go out into high seas waters. With the new EMTU requirement, however, these commenters noted that many vessels would forgo obtaining the high seas permit because of the cost associated with procuring and operating an EMTU.

Response: NMFS notes that, in contrast with logbooks, VMS/EMTU reports are received in real time, enabling more timely monitoring and enforcement. NMFS recognizes the additional cost burden associated with procuring and operating EMTUs and offers a reimbursement program to provide eligible vessel owners with up to \$3,100 towards the cost of procuring an EMTU unit (see “further information” below).

Comment 3: Since the focus of the proposed rule is on the activities of U.S. fishers on the high seas, several west coast albacore fishers questioned the necessity of a requirement for the EMTU to transmit while a U.S. vessel is still within the U.S. EEZ.

Response: NMFS considered the alternative of only requiring EMTU operation on the high seas but allowing units to be powered down while a vessel is in the U.S. EEZ or in the EEZ of another country, but determined that such actions would weaken the effectiveness of using EMTU position information to monitor the locations of high seas fishing vessels. Allowing power-downs whenever in the U.S. EEZ, in addition to the in-port and long-term exemptions provided in the rule, could also encourage non-compliance and undermine NMFS' ability to monitor U.S. high seas fishing vessels.

Comment 4: West coast albacore fishers noted that requirements in the rule to notify NOAA's Office of Law Enforcement (OLE) of EMTU power-up during office hours is burdensome and waiting for email confirmation from OLE regarding the receipt of such notifications would be another burdensome delay.

Response: NMFS recognizes that OLE office hours are somewhat constraining, but notes that vessel owners could choose to leave EMTUs on and not power them down to help alleviate pre-planning for turning on such units. NMFS also notes such power up notifications from fishers to OLE may take place after office hours although OLE acknowledgement of receipt will take place during business hours. OLE makes best efforts to minimize delays in its responses to fishers.

Comment 5: Several west coast fishers stated their view that the initial cost and expenses associated with EMTU installation and operation are significant. They furthermore noted that the lost income resulting from downtime while having an EMTU unit installed and the additional

expense of travelling to a different location to have an EMTU unit installed are not included in NMFS cost estimates.

Response: NMFS recognizes the additional cost burden associated with procuring EMTUs and did account for the time necessary to have an EMTU installed as part of its cost estimate. NMFS also has a reimbursement program that will offer up to \$3,100 towards the cost of the EMTU unit for eligible vessel owners (see “further information” below). Such units can usually be installed without unduly impacting the vessel’s normal operations.

Comment 6: Several west coast albacore fishers noted that, with regard to the proposed requirement for high seas vessels to possess a backup communications device in the event of an EMTU failure, it was unclear what kind of backup communications device would be required. These fishers noted that although U.S. vessels are required by the Coast Guard to carry a single side band radio when offshore, such a radio may not be capable of meeting the functionality requirements delineated by NMFS in the proposed rule.

Response: NMFS notes that as long as the communications device is two-way and capable of real-time communications per § 300.337(k) in the final rule, NMFS would allow fishers to use a device of their choosing whether it be a satellite phone or some other communications device, including a single side band radio.

Comment 7: West coast albacore fishers expressed their view that there are no bycatch issues in this fishery, and there are no closed areas where pole and line and troll vessels fish. Because this is the case, these fishers view the EMTU requirement as being unnecessary and creating a considerable financial and administrative burden.

Response: Although there may be little bycatch of protected species in the west coast albacore fishery, NMFS is required under the Compliance Agreement to monitor all its high seas

fishing vessels and believes the enhanced compliance monitoring and enforcement benefits obtained from the EMTU requirement justify the cost of procuring and operating such equipment, a significant portion of which may be lessened through the reimbursement program for eligible fishers needing to procure an EMTU. Furthermore, VMS monitoring allows the U.S. government to comply with its international obligations by ensuring that vessels not authorized to fish in certain areas (for example, west of 150 degrees longitude without a WCPFC Area Endorsement) are not fishing there.

Requirements for Observers

Comment 1: Several west coast albacore fishers noted that the new observer requirement would be problematic due to the small size of most U.S. pole and line and troll vessels fishing for albacore off the west coast. It was furthermore noted that the IATTC does not have observer requirements and neither do regulations developed by the Pacific Fishery Management Council for the albacore fishery under its purview.

Response: NMFS notes that the new observer requirement is consistent with regulations for Pacific HMS fisheries (including the north Pacific albacore fishery) at 50 CFR 660.719(a), which states that “all fishing vessels with permits issued under this subpart and operating in HMS fisheries, including catcher/processors, at-sea processors, and vessels that embark from a port in Washington, Oregon, or California and land catch in another area, may be required to accommodate an NMFS certified observer on board to collect scientific data.” That being said, NMFS would carefully take into consideration both the scientific need for observer coverage as well as the characteristics of the fishery when designating high seas vessels for observer coverage.

Comment 2: The Hawaii Longline Association (HLA) noted that the proposed rule includes a new requirement stating that “[w]here observer coverage is not otherwise required by other regulations or relevant RFMO conservation and management measures, NMFS may select for at-sea observer coverage any vessel that has been issued a high seas fishing permit.” Although the preamble to the proposed rule clarifies that this requirement “would not be invoked by NMFS if the vessel will already be carrying an observer pursuant to other legal authorities,” HLA believes it does not speak to the situation where a fishery is already generally subject to a rigorous observer monitoring program.

Response: NMFS will take other applicable observer coverage requirements into consideration in our assignment of observers under this final rule. As stated in the preamble of the proposed rule, this requirement would not be invoked by NMFS if the vessel will already be carrying an observer pursuant to other legal authorities. NMFS does not view amending the regulatory text as desirable since it could lessen the agency’s flexibility in deploying scientific observers to monitor unforeseen issues that could arise unexpectedly in a high seas fishery.

Provisions for Permit Modification and Revocation

Comment 1: HLA notes that the proposed rule includes a new provision that would allow NMFS to “modify, suspend, or revoke high seas permits if permitted activities impact living marine resources in ways that were not foreseen or anticipated at the time of permit issuance or are in contravention of an international conservation and management measure or are in violation of any provision of domestic law.” HLA is concerned with the ambiguity of the phrase “impact living marine resources in ways that were not foreseen or anticipated” and recommends NMFS modify the proposed § 300.333(i) to eliminate the phrase “may impact living marine resources in ways that were not foreseen or anticipated at the time of permit issuance” and provide a more

transparent standard for the regulated community. In addition to this proposed revision, HLA believes NMFS should provide an administrative process whereby the permit holder may contest the permit modification, suspension, or revocation. HLA notes its proposed revisions would require NMFS to provide reasonable notice to the permit holder before a permit is modified or revoked, as well as an opportunity to be heard, consistent with due process requirements.

Response: Under this rule, consistent with international conservation and management measures and applicable law, NMFS authorizes the issuance of high seas fishing permits for high seas fisheries where fishing activities have been analyzed in accordance with the ESA, NEPA, and other applicable law. However, new information about fishing activities and impacts to living marine resources may arise after a fishery is authorized and permits are issued. Recognizing this, § 300.333(i) provides NMFS with authority to modify, suspend, or revoke a permit, as needed. Prior to doing so, NMFS would provide affected permit holders the new information that was not available and therefore not considered at the time of permit issuance, along with the rationale for the proposed permit modification, suspension, or revocation. In response to comments, NMFS has revised the final rule to refer to impacts that were “not considered” (as opposed to “not foreseen or anticipated”) at the time of permit issuance to provide more clarity. Broad language is necessary here because it is impossible to anticipate and codify all of the types of new information that could lead NMFS to modify, suspend, or revoke an HSFCA permit. However, the final rule also explains that, in the event of a potential permit change, NMFS would notify affected permit holders and provide an opportunity to respond, consistent with the Administrative Procedure Act (APA) and other applicable law. Individual permit infractions will continue to be handled in accordance with procedures at 15 CFR part 904. Beyond the permit change provision of § 300.333(i), NMFS notes that § 300.334(d)-(f) provides

broader authority to delete a fishery from the authorized fisheries list through rulemaking.

Among other things, a relevant consideration is whether fishing activities would detrimentally affect the well-being of a regulated species of fish, marine mammal, or ESA-protected species. If NMFS were to delete an authorized fishery, any activities on the high seas related to that fishery would be prohibited.

Procedures for Deletion of a Fishery from the List of Authorized High Seas Fisheries

Comment 1: The HLA stated it is essential that the process to delete a fishery from the list of authorized high seas fisheries involve a full administrative process, including issuance of a proposed rule and the opportunity for public comment, similar to the Marine Mammal Protection Act (MMPA) List of Fisheries. The HLA view is that the proposed regulations only provide such process for the addition of fisheries—not for the deletion of fisheries. In HLA’s view, such a deletion of a fishery without notice and the opportunity for comment would violate due process requirements.

Response: Section 300.334(d) of the rule provides for rulemaking procedures to take place in the case of any revision (addition or deletion) to the list of authorized high seas fisheries and § 300.334(f) reiterates that NMFS will issue a final rule announcing any deletion from the list of authorized high seas fisheries. NMFS would conduct the rulemaking consistent with the APA which generally requires publication of a proposed and final rule, opportunity for public comment and delayed effectiveness for a final rule, but also provides for good cause waiver of notice and comment when impracticable, unnecessary, or contrary to the public interest. Any such action would also be conducted consistent with the ESA, MMPA, MSA, and other applicable law.

Conditions for Obtaining or Renewing a Permit or Authorization

Comment 1: The HLA notes that § 300.334(b)(2) of the proposed regulations, if finalized, will require a new applicant for a high seas permit to “obtain and renew any appropriate permits or authorizations.” Based on HLA’s past experience, there are situations that may arise in which a required authorization by NMFS for a given fishery is overdue (such as the issuance of a negligible impact determination under the MMPA) as a result of agency delay. In this situation, vessels in the fishery that already have permits are typically allowed to continue fishing under a temporary extension, which is issued by an agency letter. It is not clear to HLA whether § 300.334(b)(2) will prevent a new vessel from receiving a high seas permit or authorization in this situation. HLA recommends that NMFS clarify in the preamble to the final rule or in the final regulations that this condition will not apply to situations in which an authorization cannot be obtained as a result of agency delay or fault by the agency.

Response: NMFS recognizes there are temporary situations such as those noted by HLA. We believe that the phrase “permit or authorization” in § 300.334(b)(2) of the final rule is broad enough to encompass a temporary extension of a permit issued via an agency letter.

Further Information for High Seas Vessel Owners Applying for Reimbursement for Purchase of a Type-Approved VMS/EMTU Unit

High seas vessel owners that do not currently possess VMS/EMTU units type-approved for use on the high seas may apply for reimbursement by contacting the VMS reimbursement program at the Pacific States Marine Fisheries Commission (www.psmfc.org).

Vessel owners are reimbursed on a first-come, first-served basis until funds for the reimbursement program are exhausted. The standard processing time is within 30 days of a completed application. Since funding for these reimbursements is only available until the end of 2015, NOAA recommends VMS installations/activations be made no later than November 15,

2015, and all applications for reimbursement be submitted to the Pacific States Marine Fisheries Commission no later than 5 p.m./PST on November 30, 2015.

Classification

This final rule is published under the authority of the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*). The NMFS Assistant Administrator has determined that this final rule is consistent with this and other applicable laws.

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

A Final Regulatory Flexibility Analysis (FRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The FRFA describes the economic impact this final rule will have on small entities. This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) published in the **Federal Register** on April 13, 2015 (80 FR 19611). A description of the action, why it is being considered, and the legal basis for this action are contained above in the **SUPPLEMENTARY INFORMATION** section. The analysis follows. A copy of the full FRFA is available from NMFS (see **FOR FURTHER INFORMATION CONTACT**).

Description and Estimate of the Number of Small Entities

The final rule will apply to owners and operators of U.S. fishing vessels operating on the high seas, including harvesting vessels, refrigerated cargo vessels, and other vessels used to support fishing. There are approximately 600 U.S. vessels permitted under the HSFCA to fish on the high seas. The majority of these permitted vessels are longliners, purse seiners, trollers, or

pole and line vessels that fish for highly migratory species. There are also small numbers of gillnetting, squid jigging, hand or other lining, multipurpose, and trawl vessels.

In this RFA analysis, an individual vessel is the proxy for each business entity. Although a single business entity may own multiple vessels, NMFS does not have a reliable means at this time to track ownership of multiple vessels to a single business entity. Based on limited financial information about the affected fishing vessels, NMFS believes that all the affected fish harvesting businesses, except for the Pacific tuna purse seine vessels, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$20.5 million.

Projecting Reporting, Record-keeping, and Other Compliance Requirements

For each element of the final rule, the analysis of impacts to small entities is described below.

Permit Application Process. NMFS currently authorizes fisheries on the high seas only after appropriate reviews are completed pursuant to the ESA, MMPA, NEPA, and other applicable law. Applicants select from a list of such authorized fisheries when applying for a high seas fishing permit. The final rule will codify this procedure. Vessel owners and operators apply for a high seas fishing permit every 5 years, paying an application fee currently set at \$129 and completing the application form, which is estimated to take 30 minutes. The rule will not change these burdens.

The final rule is explicit about the requirement that vessels harvesting or participating in operations on the high seas in support of harvesting, such as transshipment and provision of supplies or fuel, have on board a valid high seas fishing permit. NMFS expects this aspect of the final rule to result in few additional applications for high seas permits, if any, because

transshipment of fish on the high seas is prohibited in some fisheries and, where it is not prohibited, records show few instances of transshipment. NMFS is not aware of any U.S. vessels that provide supplies or fuel to harvesting vessels on the high seas.

The rule will require a photograph of the high seas fishing vessel to be submitted with the permit application. The time necessary to photograph the vessel, print or scan the photograph, and attach it to the application is estimated to take 30 minutes per application.

The final rule will allow a person, which could include an organization or a group of persons, to request that NMFS add a fishery to the list of fisheries authorized on the high seas. A request will need to include the following information:

- a) The species (target and incidental) expected to be harvested and the anticipated amounts of harvest and bycatch.
- b) The approximate times and places fishing will take place, approximate number of vessels participating, and the type, size, and amount of gear to be used.
- c) A description of the specific area that may be affected by the fishing activities.
- d) A description of any anticipated impacts on the environment, including impacts on fish stocks, marine mammals, species listed as threatened or endangered under the ESA or their critical habitat.
- e) If requested by NMFS, any additional information necessary for NMFS to conduct analyses under ESA, MMPA and NEPA.

Making the request to add an authorized fishery is expected to take approximately 110 hours. This time would be spent gathering and compiling the required information. NMFS does not expect such requests on a regular basis. For the purposes of this FRFA, NMFS estimates that one request might be submitted every 5 years. The impact from this aspect of the final rule is not

expected to be significant because this is not a requirement, but an option for the public, and such requests are expected to be made infrequently.

Installation and Operation of EMTUs. The final rule will require the installation of EMTUs on all high seas fishing vessels. The EMTU will need to be operated at all times, except when the vessel will be at a dock or permanent mooring for more than 72 consecutive hours, or when the vessel will not operate on the high seas or in any fishery that requires EMTU operation for more than 30 consecutive days. Notices prior to EMTU power-down and power-up will need to be provided to NMFS.

Under the final rule, approximately 200 of the currently permitted high seas fishing vessels will need to install an EMTU. The remaining 400 or so vessels currently holding high seas fishing permits are already subject to EMTU requirements and will not bear any additional compliance costs as a result of this final rule.

The majority of the approximately 200 affected vessels are albacore trollers or pole and line vessels operating in the Pacific Ocean. These vessels have generally not been subject to VMS requirements contained in other regulations. The cost of compliance with this requirement includes the cost of purchase, installation, maintenance, and operation of the EMTU. The costs of purchase and installation are treated as one-time costs because this analysis shows costs just in the near-term future. Table 1 summarizes the costs associated with the EMTU requirement. A description of the estimates and calculations used in Table 1 is provided below the table.

Table 1. Estimated costs of compliance with EMTU requirements.

Description	Cost
EMTU purchase	Up to \$3,100
Installation cost (one-time)	\$50-400 (\$400 used for estimation)
Daily position report costs (Hourly, 24/day; \$0.06/report *24 reports/day)	\$1.44
Annual position report cost per vessel (\$1.44/day * 365 days/year)	\$525/vessel
Annual EMTU maintenance cost	\$50-100 (\$100 used for estimation)

Description	Cost
Total cost per vessel (Year 1; unit + installation + position reports)	\$4025
Total cost per vessel after reimbursement of EMTU cost (for eligible vessels only)	\$925
Cost per vessel (Year 2 and beyond; position reports and EMTU maintenance)	\$625/vessel
Number of affected vessels	200
Total cost (Year 1; total cost per vessel before reimbursement * number of affected vessels)	\$805,000
Total cost (Year 2 and beyond; total cost per vessel * number of affected vessels)	\$125,000

Units must be installed by a qualified marine electrician. Based on experience in other fisheries with EMTU requirements, NMFS believes that installation cost can range from \$50 to \$400, depending on the vessel, proximity to the installer, and the difficulty of the installation. For estimation purposes, \$400 was used to calculate the costs of compliance with this final rule.

The cost of transmitting data through the EMTU depends on the type of EMTU installed and the communication service provider selected. For the purposes of this rulemaking, NMFS is assuming the cost of EMTU position data transmissions is approximately \$0.06 per transmission. This equates to \$1.44 per day for the location reports, at a rate of one transmission per hour. Providing position reports throughout the year will cost a high seas fishing vessel \$525 (365 days per year * 24 position reports per day * \$0.06 = \$525).

The EMTU may be powered down if the vessel will be at the dock or mooring for more than 72 consecutive hours or if the vessel, for 30 or more consecutive days, will not be operating on the high seas or participating in a fishery that requires EMTU operation. A message notifying NMFS of the power-down must be sent to NMFS prior to powering down the unit and again when the EMTU will be powered back up. If an EMTU is powered down for portions of the year, the actual annual cost of transmitting position data will be less. Thus the annual costs of

EMTU operation will vary among individual vessels depending on the number of days an EMTU may be powered down.

The cost of compliance for vessel owners is estimated to be \$4025 per vessel in the first year (Table 1). This is the cost of compliance prior to receiving reimbursement for the cost of the EMTU. Reimbursement funds of up to \$3,100 per VMS unit will reduce the cost to \$925 per vessel, on average, for reimbursement-eligible vessels. The cost of operating the EMTU in year two and beyond will include the cost of sending position reports and maintenance and is estimated to be \$625.

Aside from the costs of purchase, installation, and operation of EMTUs, vessel owners or operators will need to spend time purchasing a unit, having it installed, and submitting an installation and activation report form. These steps are estimated to take an average of 4 hours. The notices prior to power-down and powering back up the EMTU are estimated to take 10 minutes each.

The compliance cost of obtaining, carrying on board, and monitoring communication devices required to be used in the event of an EMTU failure is expected to be zero, as NMFS believes all affected small entities already carry and monitor such devices.

Requirement to Carry an Observer. Under the final rule, a high seas fishing vessel will be required to carry an observer for the duration of a fishing trip, if so selected by NMFS. When an observer is deployed pursuant to this rule, NMFS will pay the cost of the observer's salary and benefits. Most high seas fishing vessels are already subject to requirements for carrying an observer. For example, in the shallow-set and deep-set longline sectors of the Hawaii longline fleet, 100 percent and approximately 20 percent of fishing trips, respectively, are covered by

observers. In authorized fisheries where observers are placed on all participating vessels pursuant to other regulations, the compliance cost of the final rule will be nil.

In high seas fisheries where only a portion of the high seas fishing vessels are selected for observer coverage, the possibility of being selected to carry an observer may increase under this final rule. However, as noted in response to Comment 8 above, NMFS would carefully take into consideration both the scientific need for observer coverage as well as the characteristics of the fishery when designating high seas vessels for observer coverage. Vessels that are not already subject to any other observer requirements may be selected to carry observers. This includes, but is not limited to, South Pacific albacore trollers, purse seine vessels of Class 5 or smaller participating in the Eastern Pacific tuna fisheries, and some longline vessels in Western Pacific pelagic fisheries.

When a vessel is selected for observer coverage under this rule, the vessel owner or operator will be required to provide NMFS a notice of their next fishing trip. This notification is estimated to take 5 minutes and cost \$1 in communication costs.

For trips on which an observer is deployed under this new requirement, the affected entity will at least be responsible for the costs associated with providing the observer with food, accommodations, and medical facilities. These costs are expected to be \$20 to \$50 per day. Assuming a high seas fishing trip averages 20 days in duration, the estimated cost of compliance for accommodating an observer on a vessel would be between \$400 and \$1,000.

Transshipment Notices and Reports. For owners and operators of vessels involved in offloading or receiving a transshipment of fish or fish product on the high seas, the final rule will require vessel owners or operators to provide to NMFS notice of transshipments at least 36 hours

prior to any transshipment on the high seas and to submit reports of transshipment following the transshipment events.

Transshipment is also regulated under other applicable law. For example, in the Atlantic Ocean, transshipments (the offloading, unloading, or transferring of fish or fish products from one vessel to another) are generally prohibited, with some exceptions. In the Pacific Ocean, purse seine vessels are prohibited from transshipping in some instances. NMFS is aware that during 2006 to 2009, four to eight vessels offloaded longline-caught fish each year and four to eight vessels received longline-caught fish each year. It is likely that most of these transshipments took place at sea by the Hawaii-based longline fleet, but it is unknown how many of these transshipments took place on the high seas. NMFS also has data on past transshipments on the high seas involving a few U.S. albacore troll vessels.

Each transshipment notice is estimated to take about 15 minutes and no more than \$1 in communication costs to prepare and submit to NMFS.

Each transshipment report is estimated to take about 60 minutes and \$1 in communication costs to prepare and submit to NMFS. Thus, for each transshipment event on the high seas, the time burden is estimated to be 1 hour and 15 minutes and cost \$2 for each U.S. flagged vessel involved in the transshipment.

Reporting Requirements. Existing regulations require submission of high seas fishing logbooks. This final rule deletes that requirement under the HSFCA regulations, and instead, provides that owners and operators of high seas fishing vessels use the reporting forms developed for their authorized fisheries to report high seas catch and fishing effort information. Given that the former reporting requirements would not be changed in a substantive way, the associated compliance cost is unchanged.

Summary. The final rule may increase the cost of operating on the high seas for all affected entities. Fulfillment of these requirements is not expected to require any professional skills that the vessel owners and operators do not already possess.

Significant Alternatives Considered

NMFS attempted to identify alternatives that would accomplish the objectives of the rulemaking and minimize any significant economic impact of the final rule on small entities.

The alternative of taking no action was rejected because it would fail to achieve the objectives of the rulemaking.

NMFS evaluated an option to rely on existing permit programs, other than the HSFCA permit program, to authorize high seas fishing activities. However, by continuing to require the separate HSFCA permit, NMFS is able to maintain a separate record of vessels permitted to fish on the high seas, facilitating NMFS' ability to submit information regarding U.S. high seas vessels to the FAO as required under the Compliance Agreement. FAO compiles records of vessels authorized to fish on the high seas submitted by the Parties to the Compliance Agreement. The separate HSFCA permit, required under the existing regulations to be carried on board the vessel, is also useful in demonstrating to any domestic inspectors, foreign inspectors operating under the authority of a high seas boarding and inspection scheme adopted by an RFMO to which the United States is party, or foreign port inspectors, that a vessel is permitted to fish on the high seas.

With respect to the EMTU requirement, one alternative would be to require EMTU operation at all times, which would provide NMFS the ability to monitor a vessel's location at any time. However, NMFS is aware that some vessels holding high seas fishing permits may remain in the EEZ for extended periods and are not currently subject to EMTU operation

requirements while in the EEZ. Some of these vessels may also dock their vessels and not engage in fishing for portions of the year. This alternative is not preferred because the regulatory burden could be minimized by providing some exemptions to the EMTU operation requirement, such as exemptions to address the two circumstances described above. The preferred alternative would maintain the ability to monitor high seas fishing vessels yet minimize the regulatory burden.

Another alternative would be to require EMTU operation only on the high seas. However, allowing units to be powered down while a vessel is in the EEZ of the U.S. for less than the allotted exemption time or in the EEZ of another country would weaken the effectiveness of using EMTU position information to monitor the locations of high seas fishing vessels. For vessels that are highly mobile and could operate at any time of the year, such as many high seas fishing vessels, EMTUs are more effective if they remain in operation at all times. Allowing power-downs whenever in the EEZ, in addition to the in-port and long-term exemptions provided in the proposed rule, could also encourage non-compliance and result in large gaps in NMFS' ability to monitor high seas fishing vessels. Thus, this alternative is not preferred.

With respect to the requirement for prior notice of high seas transshipments, one alternative would be to allow affected entities to provide the notice of high seas transshipment to NMFS at least one business day in advance of the transshipment, rather than 36 hours as proposed. However, a shorter advance notice would reduce opportunities for NMFS or the U.S. Coast Guard to observe transshipments in the event they are able to meet the transshipping vessels at sea. For this reason, this alternative is not preferred.

With respect to the transshipment reporting requirements, one alternative would be to impose a different timeframe for submission of the report. The report could be submitted more than 15 days after completion of the transshipment. However, NMFS believes 15 days is a reasonable timeframe, and that extending it further could lead to NMFS not receiving transshipment reports in a timely manner and would not support collection of complete information regarding authorized fisheries.

Small Entity Compliance Guide

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

National Environmental Policy Act

The provisions of this rule are administrative in nature and facilitate monitoring of all high seas fishing vessels. The requirements for the installation of VMS EMTUs on vessels, the carrying of observers, and the prior notice and reporting of transshipments on the high seas will facilitate monitoring of vessels and will not have any impacts on the human environment. Moreover, the final rule also includes procedures that incorporate reviews under ESA and NEPA

prior to any authorization of activities on the high seas. Therefore, this action is categorically excluded from further environmental review under NEPA pursuant to section 6.03.c.3(i) of NOAA Administrative Order 216-6.

Paperwork Reduction Act

This final rule contains a collection-of-information requirement approved by OMB under the Paperwork Reduction Act (PRA). This collection of information, under OMB Control No. 0648-0304, includes a permit application, vessel marking requirements, and high seas fishing effort and catch reporting. In addition to this collection of information, the final rule includes new requirements listed below.

The public reporting burden for each requirement has been estimated, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information per response. The estimates are as follows:

- Inclusion of a vessel photograph in the permit application: 30 minutes.
- Request for a fishery to be authorized on the high seas (optional): 110 hours.
- EMTU purchase and installation: 4 hours for purchase, installation, and activation of the EMTU and submittal of the installation and activation report.
- Position reports: automatically sent by the EMTU.
- Notices of EMTU power-down and power-up: 10 minutes each.
- Prior notice for high seas transshipments: 15 minutes.
- Transshipment reporting: 1 hour.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information

subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The reporting requirements described above amend an existing collection of information, (OMB Control No. 0648-0304) which has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 660

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

50 CFR Part 665

Accountability measures, Annual catch limits, Fisheries, Fishing, Western and central Pacific.

Dated: October 9, 2015.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300, 600, 660 and 665 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 951 et seq., 16 U.S.C. 1801 et seq., 16 U.S.C. 5501 et seq., 16 U.S.C. 2431 et seq., 31 U.S.C. 9701 et seq.

Subpart B—[Removed and Reserved]

2. Remove and reserve subpart B, consisting of § 300.10 through 300.17.
3. Add subpart Q to read as follows:

Subpart Q—High Seas Fisheries

Sec.
300.330 Purpose.
300.331 Definitions.
300.332 Issuing offices.
300.333 Vessel permits.
300.334 Fisheries authorized on the high seas.
300.335 Bottom fishing.
300.336 Vessel identification.
300.337 Requirements for Enhanced Mobile Transceiver Units (EMTUs).
300.338 Observers.
300.339 Transshipment on the high seas.
300.340 Prohibitions.
300.341 Reporting.

Subpart Q – High Seas Fisheries

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

§ 300.330 Purpose.

This subpart implements the High Seas Fishing Compliance Act of 1995 (Act), which requires the Secretary to license U.S. vessels fishing on the high seas and to ensure that such vessels do not operate in contravention of international conservation and management measures recognized by the United States.

§ 300.331 Definitions.

In addition to the terms defined in section 300.2 and those in the Act and 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 (Agreement), the terms used in this subpart have the following meanings. If a term is defined differently in section 300.2, the Act, or the Agreement, the definition in this section shall apply.

Bottom fishing means fishing using gear that is likely to contact the seafloor during the normal course of fishing operations.

Enhanced mobile transceiver unit (EMTU) is defined in 50 CFR 600.1500.

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 this subpart.

High seas fishing vessel means any vessel of the United States used or intended for use on the high seas for the purpose of the commercial exploitation of living marine resources and as a harvesting vessel, mothership, or any other support vessel directly engaged in a fishing

operation. Support vessels include vessels that process or transship fish on the high seas; provide supplies, personnel or fuel on the high seas to other fishing vessels; or conduct other activities in support of, or in preparation for fishing.

International conservation and management measures means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States. Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements.

Observer means any person serving in the capacity of an observer employed by NMFS, either directly or under contract with a third party, or certified as an observer by NMFS.

Office Director means the director of the NMFS Office for International Affairs and Seafood Inspection.

Regional Administrator means any one of the Directors of a NMFS regional office, defined under § 300.2.

Transship or transshipment means offloading or receiving or otherwise transferring fish or fish products from one fishing vessel to another. Excluded from this definition is net sharing, which means the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

Vessel monitoring system (VMS) is defined in 50 CFR 600.1500.

§ 300.332 Issuing offices.

Any Regional Administrator or the Office Director may issue permits required under this subpart. While applicants for permits may submit an application to any Regional Administrator or the Office Director, applicants are encouraged to submit their applications (with envelopes marked “Attn: HSFCA Permits”) to the Regional Administrator or the Office Director with whom they normally interact on fisheries matters.

§ 300.333 Vessel permits.

(a) *Eligibility.* (1) Any vessel owner or operator of a high seas fishing vessel is eligible to receive a permit for a fishery authorized on the high seas under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and--

(i) The foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(ii) The foreign nation, within the 3 years preceding application for a permit under this section, withdrew such authorization, because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restrictions in paragraphs (a)(1)(i) and (ii) of this section do not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Regional Administrator or Office Director demonstrating that the owner and operator at the time the vessel undermined the effectiveness of such measures have no further legal, beneficial, or financial interest in, or control of, the vessel.

(3) The restrictions in paragraphs (a)(1)(i) and (ii) of this section do not apply if it is determined by the Regional Administrator or Office Director that issuing a permit would not subvert the purposes of the Agreement.

(b) *Applicability.* Any high seas fishing vessel used for fishing, as defined under § 300.2, on the high seas must have on board a valid permit issued under this subpart.

(c) *Application.* Permit application forms are available from the NMFS website or from any Regional Administrator or the Office Director. Failure to submit a complete and accurate application, along with all other required documentation and the specified fee will preclude issuance of a permit. To apply for a permit under this subpart, the owner or operator of a high seas fishing vessel must submit the following to a Regional Administrator or Office Director:

(1) A complete, accurate application form signed by the vessel owner or operator.

(2) Information required under this section and § 300.334(a).

(3) A color photograph showing an entire bow-to-stern side-view of the vessel in its current form and appearance. The photograph must clearly and legibly display the vessel name and identification markings. If the vessel's form or appearance materially changes (such as the vessel is painted another color, the vessel's identification markings change, or the vessel undergoes a structural modification) the vessel owner and operator must submit a new photograph of the vessel within 15 days of the change.

(4) For vessels with state registration instead of U.S. Coast Guard documentation, the applicant must supply additional vessel information that NMFS may request.

(5) The fee specified in the application form. Payment by a commercial instrument later determined to be insufficiently funded will invalidate any permit. NMFS charges this fee to

recover the administrative expenses of permit issuance, and the amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook.

(d) *Permit issuance and validity.* (1) Except as provided for in subpart D of 15 CFR part 904, and subject to paragraphs (a), (c), and (d)(2) and (3) of this section, the Regional Administrator or Office Director will issue a permit, which will include applicable conditions or restrictions, within 15 days of receipt of a completed application and payment of the appropriate fee.

(2) The Regional Administrator or Office Director will not issue a permit unless an EMTU has been installed and activated on the vessel in accordance with § 300.337(c)(2).

(3) The Regional Administrator or Office Director will not issue a permit unless the applicant holds a valid permit for the subject vessel for any U.S. domestic fisheries related to the authorized high seas fishery.

(4) Except as otherwise provided, permits issued under this subpart are valid for 5 years from the date of issuance. For a permit to remain valid to its expiration date, the vessel's U.S. Coast Guard documentation or state registration must be kept current. A permit issued under this subpart is void when the vessel owner or the name of the vessel changes, or in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

(5) A permit issued under this subpart is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(e) *Display.* A valid permit, or a copy thereof, issued under this subpart must be on board any high seas fishing vessel while operating on the high seas and available for inspection by an authorized officer.

(f) *Change in application information.* Any changes in vessel documentation status or other permit application information must be reported in writing to the Regional Administrator or Office Director who issued the permit within 15 days of such changes.

(g) *Renewal.* Application for renewal of a permit prior to its expiration is the responsibility of the permit holder and may be completed per § 300.333(c). The Regional Administrator or Office Director will not consider a permit renewal application to be complete until the permit holder satisfies all required fishing activity report requirements under the permit and § 300.341. The Regional Administrator or Office Director will not issue a renewed permit unless an EMTU has been activated on the vessel in accordance with § 300.337(c)(2) and the applicant holds a valid permit for the subject vessel for any U.S. domestic fisheries related to the authorized high seas fishery.

(h) *Marine mammals and ESA-listed species.* Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to take marine mammals or ESA-listed species. No marine mammals or ESA-listed species may be taken in the course of fishing operations unless the taking is allowed under the Marine Mammal Protection Act or the Endangered Species Act (ESA), pursuant to regulations, an authorization, or permit granted by NMFS or the U.S. Fish and Wildlife Service.

(i) *Permit Status Changes.* NMFS may modify, suspend, or revoke a permit issued under this subpart if permitted activities may impact living marine resources in ways that were not considered at the time of permit issuance; are in contravention of an international conservation and management measure; or violate any applicable law. NMFS will notify an affected permit holder of any potential change in permit status by contacting the permit holder at the address of record provided on the permit application or as updated pursuant to paragraph (f) of this

subsection and will provide an opportunity to respond, consistent with the Administrative Procedure Act and other applicable law.

§ 300.334 Fisheries authorized on the high seas.

(a) *General.* When applying for a permit under § 300.333, the owner or operator of a high seas fishing vessel must identify in the application the authorized fisheries in which he or she intends to fish. More than one authorized fishery may be selected. The following fisheries are authorized on the high seas:

- (1) 50 CFR part 300, Subpart C – Eastern Pacific Tuna Fisheries.
- (2) 50 CFR part 300, Subpart D - South Pacific Tuna Fisheries.
- (3) 50 CFR part 300, Subpart G - Antarctic Marine Living Resources.
- (4) 50 CFR part 635 - Atlantic Highly Migratory Species Fisheries.
- (5) 50 CFR part 660, Subpart K – U.S. West Coast Fisheries for Highly Migratory Species.
- (6) 50 CFR part 665, Subpart F - Western Pacific Pelagic Fisheries.
- (7) South Pacific Albacore Troll Fishery.
- (8) Northwest Atlantic Fishery.

(b) *Requirements for authorized fisheries.* For each of the authorized fisheries specified on the high seas fishing permit, the owner or operator of the high seas fishing vessel must:

- (1) Abide by the regulations, set forth in other parts of this chapter and Chapter VI, governing those authorized fisheries while operating on the high seas;
- (2) Obtain and renew any appropriate permits or authorizations; and
- (3) Notify the Regional Administrator or Office Director who issued the permit immediately in the event that a species listed as threatened or endangered under the ESA is taken

incidental to the fishing activities without authorization under a relevant incidental take statement.

(c) *Change in authorized fisheries.* If a high seas fishing permit holder elects to change the authorized fisheries specified on the permit, he or she shall notify the Regional Administrator or Office Director who issued the permit of the change(s) and shall obtain the underlying permits for the authorized fisheries prior to engaging in the fishery on the high seas. Per the process under § 300.333(d), the Regional Administrator or Office Director will then issue a revised high seas fishing permit which will expire 5 years from the original effective date.

(d) *Revision of authorized fisheries list.* Through rulemaking, NMFS will add a fishery to, or delete a fishery from, the list in paragraph (a) of this section. NMFS may add or delete fisheries from the list after completing any analyses required under the Endangered Species Act, Marine Mammal Protection Act, National Environmental Policy Act, and other applicable laws. In taking such action, NMFS, in consultation with the relevant Regional Fishery Management Council(s) where appropriate, will consider, among other things, whether:

(1) The proposed fishing activities would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or species listed as threatened or endangered under the Endangered Species Act;

(2) The proposed fishing activities would be inconsistent with relevant fishery management plans and their implementing regulations or other applicable law;

(3) Insufficient mechanisms exist to effectively monitor the activities of vessels engaged in the proposed fishing activities; or

(4) The proposed fishing activities would contravene international conservation and management measures recognized by the United States.

(e) *Request for revision of authorized fisheries list.* A person may submit a written request to the Office Director to add a fishery to or delete a fishery from the list. A request to delete a fishery from the list of authorized fisheries must include the name of the fishery; information that addresses considerations under paragraph (d) of this section; and, if requested by NMFS, any additional information necessary for NMFS to conduct analyses required under applicable laws. A request to add a fishery to the list of authorized fisheries must include the following information:

(1) The species (target and incidental) expected to be harvested and the anticipated amounts of such harvest and bycatch;

(2) The approximate times and places when fishing is expected to take place, the number and type of vessels expected to participate, and the type, size, and amount of gear expected to be used;

(3) A description of the specific area that may be affected by the fishing activities;

(4) A description of any anticipated impacts on the environment, including impacts on fisheries, marine mammals, and species listed as threatened or endangered under the ESA or their critical habitat;

(5) Other information that addresses considerations under paragraph (d) of this section; and

(6) If requested by NMFS, any additional information necessary for NMFS to conduct analyses required under applicable laws.

(7) Once all required information is received to proceed with consideration of a request, NMFS will publish in the **Federal Register** a proposed rule, noting receipt of the request to add an authorized fishery, and inviting information and comments. Relevant information received

during the comment period may be considered by NMFS and, where appropriate, the relevant Regional Fishery Management Council(s), in analyzing potential environmental impacts of the fisheries and developing any conditions or restrictions. Based on its analysis, considerations under paragraph (d) of this section, and other relevant considerations, NMFS will publish its decision on the request in the **Federal Register**.

(f) *Deletion of a fishery from the authorized fisheries list.* NMFS will delete (i.e., deauthorize) a fishery under paragraph (d) or (e) of this section through publication of a final rule. NMFS will also provide notice to affected permit holders by email and by Registered Mail at the addresses provided to NMFS in the high seas permit application. When a fishery is deleted from the list, any activities on the high seas related to that fishery are prohibited as of the effective date of the final rule. In addition, the high seas permit will be voided unless the permit holder notifies NMFS that he or she elects to change to another authorized high seas fishery or continue in any other authorized fisheries noted on the permit. Once the applicant so notifies NMFS and, if necessary, secures any underlying permits necessary for participation in another authorized high seas fishery, the Regional Administrator or Office Director will then issue a revised high seas fishing permit per the process under § 300.333(d). The revised permit will expire 5 years from the original effective date.

§ 300.335 Bottom fishing.

(a) Bottom fishing may be permitted on the high seas when authorized by international conservation and management measures recognized by the United States. For bottom fishing activity not subject to international conservation measures recognized by the United States, a person who seeks to engage in such fishing must request authorization of a new high seas fishery as described in § 300.334(e) and then, if the fishery is authorized, must obtain all applicable

permits including a high seas fishing permit issued under § 300.333. NMFS may specify conditions and restrictions in the permit to mitigate adverse impacts on VMEs, which may include the types of conditions that have been adopted in relevant RFMO measures recognized by the United States.

(b) *Permit.* To be permitted under this section, the owner or operator of a high seas fishing vessel must follow the procedures under § 300.334(e) or, if he or she seeks to change an existing permit, must follow the procedures under § 300.334(c).

§ 300.336 Vessel identification.

(a) *General.* A vessel permitted under this subpart must be marked for identification purposes in accordance with this section.

(b) *Marking.* Vessels must be marked either:

(1) In accordance with vessel identification requirements specified in Federal fishery regulations issued under the Magnuson-Stevens Act or under other Federal fishery management statutes; or

(2) In accordance with the following identification requirements:

(i) A vessel must be marked with its international radio call sign (IRCS) or, if not assigned an IRCS, 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-”);

(ii) The markings must be displayed at all times on the vessel’s side or superstructure, port and starboard, as well as on a deck;

(iii) The markings must be placed so that they do not extend below the waterline, are not obscured by fishing gear, whether stowed or in use, and are clear of flow from scuppers or overboard discharges that might damage or discolor the markings;

(iv) Block lettering and numbering must be used;

(v) The height of the letters and numbers must be in proportion to the size of the vessel as follows: for vessels 25 meters (m) and over in length overall, the height of letters and numbers must be no less than 1.0 m; for vessels 20 m but less than 25 m in length overall, the height of letters and numbers must be no less than 0.8 m; for vessels 15 m but less than 20 m in length overall, the height of letters and numbers must be no less than 0.6 m; for vessels 12 m but less than 15 m in length overall, the height of letters and numbers must be no less than 0.4 m; for vessels 5 m but less than 12 m in length overall, the height of letters and numbers must be no less than 0.3 m; and for vessels under 5 m in length overall, the height of letters and numbers must be no less than 0.1 m;

(vi) The height of the letters and numbers to be placed on decks must be no less than 0.3 m;

(vii) The length of the hyphen(s), if any, must be half the height (h) of the letters and numbers;

(viii) The width of the stroke for all letters, numbers, and hyphens must be $h/6$;

(ix) The space between letters and/or numbers must not exceed $h/4$ nor be less than $h/6$;

(x) The space between adjacent letters having sloping sides must not exceed $h/8$ nor be less than $h/10$;

(xi) The marks must be white on a black background, or black on a white background;

(xii) The background must extend to provide a border around the mark of no less than h/6; and

(xiii) The marks and the background must be maintained in good condition at all times.

§ 300.337 Requirements for Enhanced Mobile Transceiver Units (EMTUs).

(a) *Vessel position information.* The owner or operator of a vessel issued a permit under this subpart, or for which such permit is required, must have installed on board the vessel a NMFS type-approved enhanced mobile transceiver unit (EMTU). The operator or owner of the vessel must ensure that the EMTU is operational and properly reporting positions to NMFS as required by this section, except when exempt under paragraph (d)(1) or (2) of this section. If the vessel is also subject to EMTU requirements in other parts of this title, the more restrictive requirements apply.

(b) *Contact information and business hours.* With respect to the requirements in this section, vessel owners and operators should consult with the divisional office of the NOAA Office of Law Enforcement (OLE) in, or nearest, the Region issuing the permit under this subpart. The OLE VMS Helpdesk in OLE headquarters office may also be contacted.

(c) *EMTU installation and activation—(1) EMTU installation.* The vessel owner or operator shall obtain and have installed on the fishing vessel, by a qualified marine electrician and in accordance with any instructions provided by the VMS Helpdesk or OLE divisional office, a NMFS type-approved EMTU. OLE is authorized to receive and relay transmissions from the EMTU. The vessel owner and operator shall arrange for a type-approved mobile communications service to receive and transmit position reports and email communications from the EMTU to OLE. NMFS makes available lists of type-approved EMTUs and mobile communications service providers. Vessel owners must ensure that the EMTU and

communications service hardware purchased is type-approved for all fisheries and regions in which their vessel will be operating.

(2) *EMTU activation.* When an EMTU is installed or reinstalled or the mobile communications service provider changes, or if directed by OLE, the vessel owner and operator shall, prior to leaving port:

(i) Turn on the EMTU to make it operational;

(ii) Submit a VMS Installation and Activation Certification form, or an activation report as directed by OLE, to the OLE divisional office within or nearest to the region issuing the permit under this subpart; and

(iii) Receive confirmation from OLE that transmissions are being received properly from the EMTU.

(d) *EMTU operation.* Unless otherwise provided below, and subject to more restrictive requirements where applicable, the vessel owner or operator shall continuously operate the EMTU so that it automatically transmits position information to OLE, once every hour or as directed by OLE.

(1) In-port exemption: The EMTU may be powered down when the vessel will remain at a dock or permanent mooring for more than 72 consecutive hours and after the notice required in paragraph (d)(3) of this section is submitted to OLE. When powering up the EMTU after the in-port exemption, the vessel owner or operator must submit the report required in paragraph (d)(4) of this section at least 2 hours before leaving port or mooring.

(2) Long-term exemption: The EMTU may be powered down if the vessel will not operate on the high seas, or in any fishery that requires EMTU operation, for more than 30 consecutive days and after the notice required in paragraph (d)(3) of this section is submitted.

When powering up the EMTU from the long-term exemption, the vessel owner or operator must submit the report required in paragraph (d)(4) of this section.

(3) Prior to each power-down of the EMTU, under paragraph (d)(1) or (2) of this section, the vessel owner or operator must report to the OLE divisional office in, or nearest, the Region issuing the permit under this subpart during business hours, via email or other means as directed by OLE: the vessel's name; the vessel's official number; the intent to power down the EMTU; the reason for power-down; the port where the vessel is docked or area where it will be operating; and the full name, telephone, and email contact information for the vessel owner or operator.

(4) When powering up the EMTU, the vessel owner or operator must report to the OLE divisional office in, or nearest, the Region issuing the permit under this subpart during business hours, via email or other means as directed by OLE: the fact that the EMTU has been powered up; the vessel's name; the vessel's official number; port name; intended fishery; and full name, telephone, and email contact information for the vessel owner or operator.

(5) If the EMTU is powered up after a long-term or in-port exemption, the vessel owner must receive confirmation from the OLE divisional office in, or nearest, the Region issuing the permit under this subpart that EMTU transmissions are being received properly before leaving port, entering the high seas, or entering a fishery that requires EMTU operation.

(e) *Failure of EMTU.* If the vessel owner or operator becomes aware that the EMTU has become inoperable or that transmission of automatic position reports from the EMTU has been interrupted, or if notified by OLE or the U.S. Coast Guard that automatic position reports are not being received from the EMTU or that an inspection of the EMTU has revealed a problem with

the performance of the EMTU, the vessel owner or operator shall comply with the following requirements:

(1) If the vessel is in port, the vessel owner or operator shall repair or replace the EMTU and comply with the requirements in paragraph (c)(2) of this section before the vessel leaves port.

(2) If the vessel is at sea, the vessel owner, operator, or designee shall contact the OLE divisional office in, or nearest, the Region issuing the permit under this subpart by telephone or email at the earliest opportunity during business hours and identify the caller, vessel name, vessel location, and the type of fishing permit(s). The vessel operator shall follow the instructions provided by the OLE divisional office, which could include: ceasing fishing, stowing fishing gear, returning to port, or submitting periodic position reports at specified intervals by other means. The vessel owner or operator must repair or replace the EMTU and comply with the requirements in paragraph (c)(2) of this section within 30 days or before the vessel leaves port, whichever is sooner.

(f) *Related VMS requirements.* Unless specified otherwise in the high seas fishing permit, a vessel owner's and operator's compliance with requirements in part 300, 635, 660, or 665 of this title relating to the installation, carrying, and operation of EMTUs will satisfy the requirements of this section, if the requirements are the same or more restrictive than those in this section and provided that:

(1) On the high seas, the EMTU is operated continuously and position information is automatically transmitted a minimum of once every hour;

(2) The EMTU is type-approved by NMFS;

(3) OLE is authorized to receive and relay transmissions from the EMTU; and

(4) The requirements of paragraph (d) of this section are complied with. If the EMTU is owned by NMFS, the requirement under paragraph (e) of this section to repair or replace the EMTU will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the EMTU complies with the requirements specified in paragraph (c)(2) of this section before the vessel leaves port.

(g) *Costs.* The vessel owner and operator shall be responsible for all costs associated with the purchase, installation, operation, and maintenance of the EMTU and for all charges levied by vendors as necessary to ensure the transmission of automatic position reports to OLE as required in paragraph (c) of this section. However, if the EMTU is being carried and operated in compliance with the requirements in part 300, 635, 660, or 665 of this title relating to the installation, carrying, and operation of EMTUs, the vessel owner and operator shall not be responsible for any costs that are the responsibility of NMFS under those regulations.

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

(i) *Inspection.* The vessel owner and operator shall make the EMTU, including its antenna, connectors and antenna cable, available for inspection by authorized officers or by officers conducting boarding and inspection under a scheme adopted by an RFMO of which the United States is a member.

(j) *Access to data.* As required under fishery-specific regulations in other parts of this title, the vessel owner and operator shall make the vessel's position data, obtained from the EMTU or other means, available to authorized officers and to any inspector conducting a high

seas boarding and inspection pursuant to a scheme adopted by an RFMO of which the United States is a member.

(k) *Communication devices.* In cases of EMTU failure as specified under paragraph (e) of this section, and to facilitate communication with management and enforcement authorities regarding the functioning of the EMTU and other purposes, the vessel operator shall, while the vessel is at sea, carry on board and continuously monitor a two-way communication device, in addition to the EMTU, that is capable of real-time communication with the OLE divisional office in, or nearest, the Region issuing the permit under this subpart.

§ 300.338 Observers.

(a) Where observer coverage is not otherwise required by other regulations or relevant RFMO conservation and management measures, NMFS may select for at-sea observer coverage any vessel that has been issued a high seas fishing permit. A vessel so selected by NMFS must carry an observer when directed to do so.

(b) NMFS will contact a vessel owner, in writing, when his or her vessel is selected for observer coverage under this section.

(c) A vessel shall not fish on the high seas without taking an observer if NMFS contacted the vessel owner under paragraph (b) of this section, or if so required as a condition of a permit issued under this subpart or pursuant to other legal authorities, unless the requirement to carry an observer has been waived under paragraph (d) of this section.

(d) The vessel owner that NMFS contacts under paragraph (b) of this section must notify NMFS of his or her next fishing trip that may take place on the high seas before commencing the fishing trip. NMFS will specify the notification procedures and information requirements, such as expected gear deployment, trip duration and fishing area, in its selection letter. Once notified

of a trip by the vessel owner, NMFS will assign an observer for that trip or notify the vessel owner that coverage pursuant to this subpart is not required, given the existing requirement for observer coverage under other legal authorities.

(e) The owner, operator, and crew of a vessel on which a NMFS-approved observer is assigned must comply with safety regulations at §§ 600.725 and 600.746 of this title and –

(1) Facilitate the safe embarkation and debarkation of the observer.

(2) Provide the observer with accommodations, food, and amenities that are equivalent of those provided to vessel officers.

(3) Allow the observer access to all areas of the vessel necessary to conduct observer duties.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer access to EMTUs, communications equipment, and navigation equipment to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(6) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and disposition of fish for that trip.

(7) Provide accurate vessel locations by latitude and longitude upon request by the observer.

(8) Provide access to sea turtle, marine mammal, sea bird, or other specimens as requested by the observer.

(9) Notify the observer in a timely fashion when commercial fishing activity is to begin and end.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties.

(g) The permit holder, vessel operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator or Office Director imposes by written notice.

§ 300.339 Transshipment on the high seas.

(a) In addition to any other applicable restrictions on transshipment, including those under parts 300 and 635 of this title, the following requirements apply to transshipments, when authorized, taking place on the high seas:

(1) The owner or operator of a U.S. vessel receiving or offloading fish on the high seas shall provide a notice by fax or email to the Regional Administrator or the Office Director at least 36 hours prior to any intended transshipment on the high seas with the following information: the vessels offloading and receiving the transshipment (names, official numbers, and vessel types); the location (latitude and longitude to the nearest tenth of a degree) of transshipment; date and time that transshipment is expected to occur; and species, processed state, and quantities (in metric tons) expected to be transshipped. If another requirement for prior notice applies, the more restrictive requirement (i.e., a requirement for greater advance notice and/or more specific information regarding vessels, location etc.) must be followed.

(2) U.S. high seas fishing vessels shall report transshipments on the high seas to the Regional Administrator or Office Director within 15 calendar days after the vessel first enters into port, using the form obtained from the Regional Administrator or Office Director. If there

are applicable transshipment reporting requirements in other parts of this title, the more restrictive requirement (e.g., a reporting requirement of fewer than 15 calendar days) must be followed.

(b) [Reserved]

§ 300.340 Prohibitions.

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

(a) Use a high seas fishing vessel on the high seas in contravention of international conservation and management measures.

(b) Fish on the high seas unless the vessel has been issued, and has on board, a valid permit issued under § 300.333(d).

(c) Fish on the high seas unless the vessel has been issued, and has on board, valid permits related to the authorized fisheries noted on the high seas fishing permit, as required under § 300.334(b).

(d) Operate a high seas fishing vessel on the high seas that is not marked in accordance with § 300.336.

(e) With respect to the EMTU,

(1) Fail to install, activate, or continuously operate a properly functioning and type-approved EMTU as required in § 300.337;

(2) Power-down or power-up the EMTU without following the procedures required in § 300.337;

(3) In the event of EMTU failure or interruption, fail to repair or replace an EMTU, fail to notify the appropriate OLE divisional office and follow the instructions provided, or otherwise fail to act as required in § 300.337;

(4) Disable, destroy, damage or operate improperly an EMTU installed under §300.337, attempt to do any of the same, or fail to ensure that its operation is not impeded or interfered with, as provided in § 300.337;

(5) Fail to make an EMTU installed under § 300.337 or the position data obtained from it available for inspection, as provided in § 300.337; or

(6) Fail to carry on board and monitor communication devices as required in § 300.337(1);

(f) With respect to observers,

(1) Fail to provide to an observer, a NMFS employee, or a designated observer provider, information that has been requested pursuant to § 300.338 or § 600.746 of this title, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 300.338 or § 600.746 of this title;

(2) Fish without an observer when the vessel is required to carry an observer pursuant to § 300.338(c);

(3) Assault, oppose, harass, impede, intimidate, or interfere with an observer;

(4) Prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, an observer from conducting his or her duties as an observer; or

(5) Tamper with or destroy samples or equipment.

(g) Fail to submit a prior notice or a report of a transshipment as provided in § 300.339(b) of this title.

(h) Fail to comply with reporting requirements as provided in § 300.341.

§ 300.341 Reporting.

(a) *General.* The operator of any vessel permitted under this subpart must accurately maintain on board the vessel a complete record of fishing activities, such as catch, effort, and other data and report high seas catch and effort information to NMFS in a manner consistent with the reporting requirements of the authorized fishery(ies) noted on the high seas permit. Reports must include: identification information for vessel and operator; operator signature; crew size; whether an observer is aboard; target species; gear used; dates, times, locations, and conditions under which fishing was conducted; species and amounts of fish retained and discarded; and details of any interactions with sea turtles, marine mammals, or birds.

(1) The vessel owner and operator are responsible for obtaining and completing the reporting forms from the Regional Administrator or Office Director who issued the permit holder's high seas fishing permit. The completed forms must be submitted to the same Regional Administrator or Office Director or, if directed by NMFS, to a Science Center.

(2) Reports must be submitted within the deadline provided for in the authorized fishery or within 15 days following the end of a fishing trip, whichever is sooner. Contact information for the Regional Administrators and Science Center Directors can be found on the NMFS website.

(b) [Reserved]

PART 600 – MAGNUSON-STEVENSON ACT PROVISIONS

4. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

5. In § 600.705, add paragraph (g) to read as follows:

§ 600.705 Relation to other laws.

* * * * *

(g) *High seas fishing activities.* Regulations governing permits and requirements for fishing activities on the high seas are set forth in 50 CFR part 300, subparts A and Q. Any vessel operating on the high seas must obtain a permit issued pursuant to the High Seas Fishing Compliance Act.

6. In § 600.745, revise the first two sentences in paragraph (a) to read as follows:

§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity.* Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities on board a scientific research vessel in the EEZ or on the high seas are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific activity. * * *

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PART 660 – FISHERIES OFF WEST COAST STATES

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

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

8. In § 660.2, add paragraph (c) to read as follows:

§ 660.2 Relation to other laws.

* * * * *

(c) Fishing activities on the high seas are governed by regulations of the High Seas Fishing Compliance Act set forth in 50 CFR part 300, subparts A and Q.

§ 660.708 [Amended]

9. In § 660.708, remove paragraph (a)(1)(iii) and redesignate paragraph (a)(1)(iv) as paragraph (a)(1)(iii).

PART 665 – FISHERIES IN THE WESTERN PACIFIC

10. The authority citation for part 665 continues to read as follows:

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

11. In § 665.1, revise paragraph (b) to read as follows:

§ 665.1 Purpose and scope.

* * * * *

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in 50 CFR parts 300 and 600.

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[FR Doc. 2015-26398 Filed: 10/15/2015 08:45 am; Publication Date: 10/16/2015]