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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 191002-0053]

RIN 0648-BI45

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Vessel Movement, Monitoring, and Declaration Management for the Pacific Coast Groundfish Fishery

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes revisions to reporting and monitoring provisions for vessels participating in the Pacific Coast groundfish fishery. This proposed action would: increase the position transmission rate for certain vessels using NMFS type-approved vessel monitoring system units, including limited entry groundfish vessels, open access vessels using non-groundfish trawl gear (ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear targeting groundfish or that have groundfish bycatch (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap); allow midwater trawl vessels participating in the Pacific whiting fishery to change their landing declarations while at sea; exempt groundfish trawl vessels from observer coverage while testing authorized fishing gear; and allow shorebased Individual Fishing Quota fixed gear vessels to deploy pot gear in one management area while retrieving gear from another management area on a single trip. The proposed action will increase monitoring efficiency and effectiveness,

improve enforcement of restricted areas, and increase operational flexibility for groundfish fishery participants.

DATES: Comments on this proposed rule must be received on or before [*insert date 30 days after publication in the Federal Register*].

ADDRESSES: Submit your comments, identified by NOAA-NMFS-2019-0093, by any of the following methods:

- *Online Submission:* Go to the Federal e-Rulemaking Portal at www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0093, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Shannon Penna, Fishery Management Specialist, West Coast Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post the comments for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the analytic document supporting this action, are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, *docket NOAA–NMFS–2019–0093*, or by

contacting the Pacific Fisheries Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Shannon Penna, Fishery Management Specialist, 562-980-4238, or *shannon.penna@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Between September 2014 and April 2016, the Pacific Fishery Management Council (Council) developed and considered management measures to address a range of vessel and gear movement issues and aggregated these issues under a single vessel movement monitoring agenda item. Additional details about the Council's considerations are included in the Council's analytic document (see **ADDRESSES**), and included in the discussion of individual measures below.

The Council deemed the proposed regulations consistent with and necessary to implement this action in a July 17, 2019, letter from Council Executive Director, Chuck Tracy, to Regional Administrator Barry Thom. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. We are seeking comment on the Council's proposed measures in this action and whether they are consistent with the Pacific Coast Groundfish Fishery Management Plan, the Magnuson-Stevens Act and its National Standards, and other applicable law.

Summary of the Proposed Regulations

This section discusses proposed regulatory revisions that are expected to increase NMFS's ability to enforce fishing activity in and around restricted areas, and result in cost

savings, increased profitability, and flexibility for the groundfish fishery. The proposed measures would:

- Increase the position transmission rate requirements for certain vessels using NOAA NMFS type-approved vessel monitoring system (VMS) units;
- Amend the definition for continuous transit;
- Allow midwater trawl vessels participating in the Pacific whiting fishery to change their landing declarations while at sea;
- Exempt groundfish trawl vessels from observer coverage while testing authorized fishing gear; and,
- Allow shorebased Individual Fishing Quota (IFQ) fixed gear vessels to retrieve pot gear in one management area and deploy that gear in another management area on a single trip.

A. *Increased Position Transmission Rate for Groundfish VMS*

Vessels participating in the limited entry groundfish fishery (limited entry “A” endorsed permit), open access vessels using non-groundfish trawl gear (ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear targeting groundfish or that have groundfish bycatch (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap), are required to install a NMFS Office of Law Enforcement (OLE) type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to fishing. These units automatically record a vessel’s position (*i.e.*, the vessel’s geographic location in latitude and longitude coordinates), and transmit those coordinates to a communications service provider. The current regulations require that VMS units transmit a

vessel's position once every hour, 24 hours a day throughout the fishing year. Less frequent position reporting, at least once every four hours, may be authorized when a vessel has temporarily paused participation in the fishery and remains in port for an extended period of time. The VMS units record vessel positions at a random time during each hour so that vessel operators are unaware of when the vessel position is being recorded.

An Initial Decision in a 2013 enforcement case (NOAA Case No. SW1002974) concluded that the current requirement of hourly position reports was insufficient to prove that a vessel was not operating in continuous transit through a restricted area as required by regulation. While the raw data from the VMS communications provider in the case did provide reliable information about vessel location and speed, it only accounted for a five second period out of each hour.

The Council recommended increasing the vessel position frequency to increase NMFS's ability to enforce fishing activity around restricted areas. This proposed action would require an increase in the position transmission rate to every 15 minutes per hour for groundfish vessels using NMFS type-approved VMS units. This increase in frequency would produce more course, location, and speed data to improve NMFS's ability to identify whether vessels are continuously transiting in restricted areas or not.

Increasing the VMS position transmission rate from once every hour to every 15 minutes will increase vessel operating costs. While vessels can choose from a variety of VMS service providers, the average monthly operating costs for transmissions every 15 minutes is \$105 per month (\$69 to \$150 range) compared to an average of \$50 per month (\$37 to \$65 range) for a single transmission per hour.

The Council recommended two exemptions that would reduce redundant reporting and may provide cost savings to some portions of the fleet. For the first exemption, vessels that have installed and are using electronic monitoring (EM) systems for the duration of the fishing year would be allowed to maintain the current position transmission rate of one transmission per hour. EM systems include a Global Positioning System (GPS) that records the vessel position every 10 seconds. Because EM systems record vessel positions so frequently, it is not necessary to also increase the VMS position transmission rates. The GPS data are recorded to a hard drive, which the captain removes every 10 days and mails to the Pacific States Marine Fisheries Commission. For the second exemption, limited entry trawl vessels fishing with midwater trawl gear would be allowed to maintain the current position transmission rate of one transmission per hour. Limited entry vessels are only allowed to use midwater trawl gear to target whiting or non-whiting groundfish species during the primary whiting season from May 15 to December 31 each year. These vessels are also limited to using midwater trawl gear seaward of the trawl rockfish conservation area (RCA) south of 40° 10' North (N.), but can use midwater trawl gear anywhere within the Exclusive Economic Zone north of 40° 10' N. Because there are only very broad seasonal and area restrictions associated with midwater trawl gear, and because these vessels are not generally subject to smaller geographic areas restrictions such as the trawl RCA and essential fish habitat conservation areas (EFHCAs) the increased position transmission rate is not necessary for restricted area enforcement for vessels using midwater trawl gear. Limited entry vessel operators would be allowed to change their transmission rates or VMS declaration reports on a trip-by-trip basis when necessary.

B. Continuous transit definition

Vessels are allowed to continuously transit through restricted areas, such as EFHCA, and restricted areas, when fishing gear is properly stowed and the vessel is on a direct course. This action proposes to revise the current definition of “continuous transiting or transit through” to encompass a broader array of vessel activity that is akin to loitering within a restricted area, whether that be by means of a source of power or by drifting with the prevailing water current or weather conditions. Under this revised definition, visual, electronic, or other evidence of vessel activity should provide information on vessel speed and course sufficient to indicate direct and expeditious transiting of a restricted area.

C. Exemption from observer coverage while testing gear

Groundfish vessels participating in the Shorebased IFQ Program, the Mothership (MS) Coop Program, or the Catcher/processor (C/P) Coop Program are required to have 100 percent observer coverage when fishing. Currently, when fishermen want to test their fishing gear during an open or closed season, they must contact the West Coast Groundfish Observer Program (WCGOP) prior to departure. Although gear testing does not usually involve the retention of fish, it falls under the definition of fishing as defined in the Magnuson-Stevens Act. These vessels sometimes inquire if certain gear testing situations are considered fishing activity and if they are required to carry an observer. NMFS has previously reviewed these on a case-by-case basis.

Vessels with a NMFS required positioning system (VMS, EM) installed must also notify NMFS OLE which fishery or sector they will be participating in with a declaration. This declaration allows NMFS OLE to determine the restricted area closures with which the vessel is required to comply and whether the vessel is in compliance with restricted area regulations, based on the vessel’s course as transmitted from the VMS unit. Other than EM, there is

currently no way to remotely confirm that a vessel is testing fishing gear, and not engaged in fishing activity.

This action would establish a definition for gear testing. The proposed definition states that gear testing is the deployment of lawful gear without retaining fish, for purposes, including, but not limited to: deployment of nets using open codends; calibration of engines and transmission under load (*i.e.*, towing a net with an open codend); deployment of wire and/or doors; testing new electronic equipment associated with deploying fishing gear; and testing and calibration of newly installed propulsion systems (*i.e.*, engine, transmission, shaft, propeller, etc.). NMFS welcomes comments on the sufficiency of this definition, and recommendations to refine and clarify the types of activity that would qualify for gear testing.

This action would also exempt groundfish vessels participating in the Shorebased IFQ, MS, and C/P sectors from the requirement to carry an observer while testing gear. A vessel would not need an observer because gear testing activity would specifically prohibit retaining fish. In addition to being prohibited from retaining fish while gear testing, vessels would be prohibited from testing experimental gear, testing with a closed codend, terminal gear, or with open pots, and from testing gear in groundfish conservation areas or EFHCAs.

To be exempted from observer coverage while testing gear, vessels would need to communicate with both WCGOP and NMFS OLE. Vessels would be required to notify WCGOP by phone or email, of the gear testing activity at least 48 hours prior to departing on a trip to test gear or equipment. This action would also add a VMS declaration code for “Gear testing.” When a vessel operator calls the West Coast Groundfish Declaration Line to declare “Gear testing,” the VMS technician would review the information submitted and determine if the

vessel is eligible for this declaration. This measure would result in observer coverage cost savings on trips to test fishing gear or equipment.

D. Declaration changes at sea for Whiting Fishery

Currently, midwater catcher trawl vessels participating in the Pacific whiting fishery are restricted to landing either at a mothership or shoreside processor. After Pacific whiting catcher vessels have made their delivery obligation to a mothership, they are not allowed to make a tow for a delivery to a shoreside processor without returning to port first. This proposed regulatory revision would remove restrictions on catcher vessels to allow them to change their declarations while at sea by calling the West Coast Groundfish Declaration Line. After a vessel offloads onto a mothership, it could immediately change its declaration from one of the “Pacific whiting mothership sector” declarations to one of the “Pacific whiting shorebased IFQ” declarations to make a tow and offload on shore, or vice versa.

Allowing vessels to change their declarations at sea would provide a vessel the opportunity to optimize available resources before returning to port. As a result, vessels will spend less time at sea, and in transit to and from fishing ports, which will ultimately reduce the cost of fuel and crew.

E. Movement of IFQ fishpot gear across management lines

At the time the Council selected final alternatives for this rule, vessels fishing in the shorebased IFQ program using fixed gear (*i.e.*, pot gear) were prohibited from moving gear from one management area to another during a single trip. The area of operation of the shorebased IFQ fixed gear fishery stretches along the entire west coast and is divided into four management areas (50 CFR 660.140). Vessels were required to land catch from a single management area prior to returning to deploying gear in a different management area. In addition, fish caught

from one management area could not be on board while in a different management area from which they were caught. For example, if a fisherman retrieves fixed gear in area B, they could land their fish from area B before deploying that gear in area C.

The prohibition on harvesting fish in two management areas during a single trip was put into place because the area of harvest is an important element in stock assessment. In addition, allocations to different fishing fleets and gear types stem from area-based stock management. However, this prohibition had negative impacts on fishery participants. For example, unlike trawl and longline vessels who can stow all of their gear on deck, pot gear vessels may have to make multiple trips to move their gear from one management area to the next. Some vessel owners report that the prohibition is expensive to their operations, particularly for those owners that fish out of ports in close proximity to a management line.

The revised regulations would explicitly allow vessels retrieving pots from one management area to retain their catch on board and move to a second management area to deploy pots. These pots may be either baited or not baited. The vessel may then return to port to deliver their fish, then return to retrieve their pots from the second management area. Although the proposed adjustment increases operational flexibility in deploying pots, vessels are still only permitted to retain and land fish from a single management area. This will ensure the integrity of data to support stock assessments and catch monitoring for a single management area. Overall, fishing vessels will spend less time at sea, which should reduce the cost of fishing.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other

applicable law. In making the final determination, NMFS will consider the data, views, and comments received during the public comment period.

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

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

This proposed rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An initial regulatory flexibility analysis (IRFA) was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**). When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

Description of the Reasons Why Action By the Agency Is Being Considered and Statement of the Objectives of, and Legal Basis for, this Action

A description of the action, why it is being considered, and the legal basis for this action is contained in the SUMMARY section and at the beginning of the SUPPLEMENTARY INFORMATION section of the preamble, and is not repeated here.

Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply

For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

For the purposes of our Regulatory Flexibility Act (RFA) analysis, the proposed action is considered to regulate ownership entities that are potentially affected by the action. The U.S. Small Business Association (SBA) established criteria for business in the fishery sector to qualify as small entities. Limited entry groundfish vessels directly regulated by this action are required to renew a permit annually, and the application asks for entity size including affiliation. Of those who responded as being large entities, 15 permits owned by 9 large entities were attached to vessels that participated in bottom trawl or fixed gear groundfish fisheries in 2018 and are the most likely to be impacted by the rule.

Of the 571 vessels impacted by this rule, none had annual ex-vessel revenue on the West Coast (participation in other fisheries is not known) greater than the NMFS \$11 million size standard. The top three revenue vessels, all in the IFQ fishery, had an average revenue of \$1.9

million in 2018 in all West Coast fisheries. In contrast, the bottom ten earning vessels had revenues in all West Coast fisheries of less than \$1,000.

Description of the Proposed Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule

This action contains a revision to an information collection requirement, which has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0573: West Coast Region Vessel Monitoring System Requirement for the Pacific Groundfish Fishery. This action proposes to adjust the position transmissions rate for certain vessels using NMFS type-approved vessel monitoring system units, including limited entry groundfish vessels, open access vessels using non-groundfish trawl gear (ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear targeting groundfish or that have groundfish bycatch (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap). Vessel owners would be required to increase their position transmission rate from once per hour to four times per hour. Vessels that are operating with electronic monitoring will be exempt from this increase and allowed to continue with a rate of four times per hour.

The proposed action would add a declaration for gear testing so vessels will be exempt from observer coverage while testing gear and restricted from harvesting fish, and allow Groundfish midwater trawl vessels participating in the Shorebased IFQ Program and the MS Coop Program, to make a new declaration from sea and allowed to make a tow for a delivery to a shoreside processor without returning to port first. The numbers of declaration reports the vessel operator is required to submit to NMFS would not change under this request. Therefore, no small entity would be subject to additional reporting requirements.

Public comment is sought regarding the following: Whether this proposed collection of information is necessary for the proper performance of agency functions, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Regional Administrator (see **ADDRESSES**), and email to *OIRA_Submission@omb.eop.gov* or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Federal Rules Which May Duplicate, Overlap, Or Conflict with this Proposed Rule

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

NMFS considered sub alternatives to the proposed rule that may have minimized significant economic impact, but not meet stated objectives of applicable statutes. The Council briefly considered increasing the position transmission signal to every 30 minutes or every 20 minutes, but rejected those alternatives from further analysis because those position transmission signals may not be frequent enough to provide information to enforce small restricted areas, or

provide enough information to calculate a vessel’s course for enforcement of continuous transit requirements.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: October 3, 2019.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 660—FISHERIES OFF WEST COAST STATES

1. 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.*

2. In § 660.11, revise the definition of “Continuous transiting or transit through” and add the definition of “Gear Testing” in alphabetical order, to read as follows:

§660.11 General Definitions

* * * * *

Continuous transiting or transit through means that a vessel crosses a groundfish conservation area or EFHCA on a heading as nearly as practicable to a direct route, consistent

with navigational safety, while maintaining expeditious headway throughout the transit without loitering or delay.

* * * * *

Gear Testing means the deployment of lawful gear without retaining fish, for the following purposes, including, but not limited to: deployment of nets using open codends; calibration of engines and transmission under load (*i.e.*, towing a net with an open codend); deployment of wire and/or doors; testing new electronic equipment associated with deploying fishing gear; and testing and calibration of newly installed propulsion systems (*i.e.*, engine, transmission, shaft, propeller, etc.).

* * * * *

3. In § 660.13, revise paragraphs (d)(1)(ii) and (d)(4)(iv)(A)(30) to read as follows:

§660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) * * *

(ii) Limited entry midwater trawl vessels targeting Pacific whiting may change their declarations while at sea between the Pacific whiting shorebased IFQ sector and the mothership sector as specified at paragraph (4)(iv)(A) of this section. The declaration must be made to NMFS before a different sector is fished.

* * * * *

(4) * * *

(iv) * * *

(A) * * *

(30) Gear testing.

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4. In §660.14, revise paragraphs (d)(1), (d)(2), (d)(3), and (d)(5) to read as follows:

§ 660.14 Vessel Monitoring System (VMS) requirements.

* * * * *

(d) * * *

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may obtain a copy of the VMS installation and operation instructions from the NMFS OLE West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115-6349, phone: 888-585-5518 or *wcd.vms@noaa.gov*.

(2) Activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a trip in which VMS is required, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS OLE West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115-6349, phone: 888-585-5518 or *wcd.vms@noaa.gov*. An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

(3) *Transceiver unit operation.* Operate and maintain the mobile transceiver unit in good working order continuously, 24 hours a day throughout the fishing year, unless such vessel is exempted under paragraph (d)(4) of this section.

(i) *Position frequency.* The mobile transceiver unit must transmit a signal accurately indicating the vessel's position at least once every 15 minutes, 24 hours a day, throughout the year unless an exemption in (ii) of this paragraph applies or a valid exemption report, as described in paragraph (d)(4) of this section, has been received by NMFS OLE. The signal indicating the vessel's position can consist of either: a single position report transmitted every 15 minutes; or a series of position reports, at no more than a 15 minute interval, combined and transmitted at least once every hour.

(ii) *Exemptions to position frequency requirement.* (A) *Electronic monitoring exemption.* If a vessel has an electronic monitoring system installed and in use for the duration of a given fishing year, the mobile transceiver unit must transmit a signal at least once every hour.

(B) *Midwater trawl exemption.* If a limited entry trawl vessel is fishing with midwater trawl gear under declarations (d)(4)(iv)(A), the mobile transceiver unit must transmit a signal at least once every hour.

(C) *In port exemption.* If a vessel remains in port for an extended period of time, the mobile transceiver unit must transmit a signal at least once every four hours. The mobile transceiver unit must remain in continuous operation at all times unless the vessel is exempt under paragraph (d)(4) of this section.

* * * * *

(5) When aware that transmission of automatic position reports has been interrupted, or when notified by NMFS OLE that automatic position reports are not being received, contact NMFS West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115-6349, phone: 888-585-5518 or wcd.vms@noaa.gov and follow the instructions provided to you. Such instructions may include, but are not limited to, manually

communicating to a location designated by NMFS OLE the vessel's position or returning to port until the VMS is operable.

* * * * *

5. In §660.112, revise paragraph (a)(4), and add paragraphs (a)(7) and (b)(1) (xvii) to read as follows:

§ 660.112 Trawl fishery -- prohibitions.

* * * * *

(a) * * *

(4) *Observers.* (i) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program without observer coverage unless exempt from the observer coverage requirement for gear testing activity and have satisfied the declaration and notification requirements, as described in § 660.140(h), § 660.150(j), or § 660.160(g).

(ii) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program if the vessel is inadequate or unsafe for observer deployment as described at § 660.12(e).

(iii) Fail to maintain observer coverage in port as specified at § 660.140(h)(1)(i).

* * * * *

(7) *Gear testing.* (i) Retain fish while gear testing.

(ii) Fish with a closed codend, use terminal gear (*i.e.*, hooks), or fish with open pot gear while gear testing.

(iii) Test gear in groundfish conservation areas described in § 660.70, or EFHCAs described in §§ 660.76 through 660.79.

(iv) Test experimental gear, or any other gear not currently approved for groundfish fishing.

* * * * *

(b) * * *

(1) * * *

(xvii) When declared into the limited entry groundfish non-trawl Shorebased IFQ fishery, retain fish caught with fixed gear in more than one IFQ management area, specified at §660.140(c)(1), on the same trip.

* * * * *

6. In 660.140, add paragraphs (c)(2) and (h)(1)(i)(A)(4) to read as follows:

§660.140 Shorebased IFQ Program.

* * * * *

(c) * * *

(2) A vessel using fixed gear declared into the limited entry groundfish non-trawl Shorebased IFQ fishery may deploy pot or trap gear in multiple IFQ management areas on a trip provided the vessel does not retrieve gear from more than one IFQ management area during a trip.

* * * * *

(h) * * *

(1) ***

(i) ***

(A) * * *

(4) Is exempt from the requirement to maintain observer coverage as specified in this paragraph (h) while gear testing as defined in §660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by §660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

7. In 660.150, add paragraph (j)(1)(i)(C) to read as follows:

§660.150 Mothership (MS) Coop Program.

* * * * *

(j) * * *

(1) ***

(i) ***

(C) *Gear testing exemption.* Vessels are exempt from the requirement to maintain observer coverage as specified in this paragraph (j) while gear testing as defined at §660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by §660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

8. In 660.160, add paragraph (g)(1)(iv) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(g) * * *

(1) * * *

(iv) *Gear testing exemption.* Vessels exempt from the requirement to maintain observer coverage as specified in this paragraph (g) while gear testing as defined at § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

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