

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

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

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

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

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

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

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

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

Comments and Responses

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

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

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

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

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

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

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

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

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