

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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