

permitted in the trawl RCA as specified in the groundfish harvest specifications and management measures published in the **Federal Register**.

*Comment 12:* Two commenters indicated that there are no provisions for transferring VMS transceiver units from one owner to another or one boat to another. The commenter suggests the addition of a simple notification system where a unit owner can notify NMFS that he or she no longer owns or controls the unit. The same notification system would be used in the event of a catastrophic vessel loss where a unit cannot be recovered.

*Response:* In response to the comments, NMFS has added a field to the activation report that can be used to recognize that a transceiver VMS unit has been previously used on another vessel. Regulatory language has been added that will prohibit transceiver units from being registered to more than one vessel and that requires proof of ownership of the VMS unit or documentation of service termination from the communication service provider before the transceiver unit can be registered to a new vessel.

*Comment 13:* Two commenters expressed concern that the VMS program will continue indefinitely, even though the need for VMS may disappear if the existing area closures are discontinued. The commenters recommended that a termination clause be written into the final rule.

*Response:* NMFS does not agree that there is a need to include a termination clause at this time. At any point in the future, the Council may choose to recommend changes and NMFS may choose to revise or eliminate the groundfish regulations pertaining to VMS.

*Comment 14:* One commenter indicated that VMS transceiver units should also be required for the open access vessels that target rockfish on the shelf or slope.

*Response:* 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. At its October 7, 2003, meeting (68 FR 54895, September 19, 2003), the Council's ad hoc VMS Committee considered expanding the VMS requirements to other sectors of

the fishery, including the open access groundfish fisheries.

*Comment 15:* The proposed rule requires that a VMS unit be installed according to procedures established by NMFS. Discussions with NMFS indicate that these procedures will include installation by a NMFS-certified installer. The commenter believes that the installation requirements should be limited to installation pursuant to manufacturer instructions. Certified installers are often not available in smaller ports, and this requirement can be both time consuming and costly.

*Response:* The rule does not require that a certified person perform the installation. Most of the systems being considered for type-approval are do-it-yourself installations. Vessels that already have VMS transceiver units installed for other fisheries or personal purposes may continue to use their current transceiver unit provided it is a model that has been type-approved for the Pacific Coast groundfish fishery and the software has been upgraded to meet the defined requirements.

Given that the VMS hardware and satellite communications services are provided by third party businesses, as approved by NMFS, there is a need for NMFS to collect information regarding the individual vessel's installation in order to ensure that automated position reports will be received without error. This would require that an activation report which contains a certification checklist be completed by the individual who installed the unit and that it be returned to NMFS prior to using the VMS transceiver to meet regulatory requirements. An activation report would be submitted to NMFS by the VMS installer who would certify the information about the installation by signing the checklist and returning it to NMFS. The checklist indicates the procedures to be followed by the installers and, upon certification and return to NMFS, provides the Office of Law Enforcement with information about the hardware installed and the communication service provider that will be used by the vessel operator.

*Comment 16:* The proposed rule does not include a provision for a vessel owner to purchase a backup transceiver unit that can be used if the primary transceiver fails during an extended fishing trip. One commenter suggests that a provision be added that will allow a back-up unit to be brought on-line during the course of a fishing trip through simple declaration procedures. This would prevent trips from being interrupted and would continue to meet the information need identified by NMFS.

*Response:* Nothing in this rule prohibits a vessel owner/operator from submitting an activation report for a back-up VMS transceiver unit. A separate activation report will need to be submitted for each VMS transceiver unit. For clarification, NMFS will ask that the owner/operator specify in the activation report if the unit is the primary or a back-up unit.

*Comment 17:* The action that NMFS intends to take if the VMS transceiver fails during a fishing trip is unclear. The rule should specifically state that if the VMS transceiver fails during a fishing trip, the vessel will be allowed to complete the current fishing trip provided the vessel operator notifies NMFS of the malfunction.

*Response:* As stated at § 660.359(d)(5), it is the vessel operator's responsibility to notify NMFS when he or she becomes aware that transmission of automatic position reports have been interrupted. Upon contact with NMFS, the vessel operator will be given specific instructions that may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's position or returning to port until the VMS is operable. Because each incident must be considered on a case-by-case basis, NMFS believes that the regulations adequately reflect the range of actions that may be taken. After a fishing trip during which interruption of automatic position reports has occurred, the vessel owner or operator must replace or repair the mobile VMS transceiver unit prior to the vessel's next fishing trip.

*Comment 18:* The proposed rule states that a vessel registered to limited entry permits must have the VMS transceiver on at all times whether the vessel is fishing or out of the water. The vessel should only be required to have the VMS unit on when it is fishing for groundfish outside the boundary line for state territorial waters. Requiring transmissions when the vessel is out of the water or when it is not participating in the groundfish fishery is an unnecessary cost to fishermen.

*Response:* A vessel owner/operator may choose to send an exemption report to discontinue transmissions during a period when the vessel will be continuously out of the water for more than 7 consecutive days. To reduce the reporting burden on vessels outside the EEZ, an optional exemption report was added to the rule to allow vessels to reduce or discontinue VMS hourly position reports when they are out of the EEZ for more than 7 consecutive days. In all other circumstances, NMFS believes that it is necessary to require continuous transmissions of vessel