

positions to allow limited enforcement resources to be used efficiently and thereby maintain the integrity of the conservation areas.

Comment 19: Vessels that are registered to "small fleet" limited entry permits are placed on trailers and removed from the water each day. Requiring the vessel to keep the VMS transceiver unit on at all times would result in position transmissions from land and unnecessary transmission fees. The commenter recommends that NMFS establish a geo-fence that would trigger the VMS transceiver unit to stop and start position transmissions.

Response: NMFS recognizes there may be some unique circumstances where it is unnecessary for position reports to be sent while vessels are on land, and is therefore evaluating geofencing and other technologies to address the commenter's concern. Upon testing and evaluation, these technologies may provide options for modifying position reporting requirements in the future.

Comment 20: We note that the EA/RIR/IRFA prepared for the proposed rule grossly underestimates installation costs, because they do not include compensation for the travel time of a certified installer to remote ports.

Response: The use of certified installers is not required. The installation of the transceiver units was estimated at 4 hours per vessel, or \$120, at \$30 per hour for the do-it-yourself installation. The actual installation time for a VMS unit is estimated to be less than two hours, but a higher estimate of 4 hours/vessel is used, based on a worst case scenario where the power source (such as a 12-volt DC outlet) is not convenient to a location where the VMS unit can be installed. Most of the systems being considered for type-approval are do-it-yourself installations.

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. This information collection would not increase the time burden for installation of VMS, but would require that an activation report, which includes a certification checklist, be returned to NMFS prior to using the VMS transceiver to meet regulatory requirements. The time and cost burden of preparing and submitting installation information to NMFS is minor. Submission of a checklist would be required only for the initial installation or when the hardware or

communications service provider changes. NMFS estimates a time burden of 5 minutes (\$2.50 at \$30 per hour) for completing the checklist and additional \$3 for mailing/faxing to NMFS, for a total of \$5.50 per occurrence.

Comment 21: Several commenters indicated that NMFS should pay for the costs of the VMS transceiver unit, while the vessel owner should only be responsible for installation and operation related costs of the VMS transceiver units.

Response: Although the Council recommended that NMFS fully fund a VMS monitoring program, it is not possible at this time because neither state nor Federal funding is available for purchasing, installing, or maintaining VMS transceiver units, nor is funding available for data transmission. 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. To move this rulemaking forward at this time, it is necessary to require 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.

Comment 22: The cost for the VMS transceiver units and installation presented in the preamble and the classification section under the Initial Regulatory Flexibility Analysis (IRFA) of the proposed rule are not consistent.

Response: The cost values for the VMS transceiver units and installation presented in the preamble and those values presented in the classification section under the IRFA of the proposed rule are consistent, but represent different groups of VMS transceiver units. The values presented in the preamble represent the current price range for all VMS units that are nationally type-approved for fishery monitoring in the various NMFS regions, this includes upgraded units with 2-way communications and other value added features. In contrast, the values presented in the IRFA are based on a price range for the units that are likely to be type-approved for the Pacific Coast groundfish fishery.

Comment 23: The estimated benefits of VMS presented in the classification section of the proposed rule under the EA/RIR/IRFA analysis misrepresent the benefits of VMS. Benefits associated with depth-based management should

be removed from the analysis since there is no revenue gain to the fishermen from the VMS requirements.

Response: The 2003 depth-based management regime has closed large areas to fishing, but has allowed more liberal trip limits for healthy stocks than would have been available without depth-based closures. To continue to allow this combination of depth closures and higher limits, it is necessary to establish a monitoring program to ensure the integrity of these large depth-based conservation areas. With the 2003 Annual Specifications and Management Measures, the Council recommended several measures, including implementation of VMS, to track movement of vessels through and within depth zones. Without a management strategy based on depth-based conservation areas, the fishery would most likely be managed under more seriously constrained limits on healthy stocks that co-occur with overfished species. Therefore, NMFS believes that the values accurately reflect the benefit to the fisheries from VMS.

Comment 24: Because the cost of the VMS unit and its maintenance will likely be the burden of the vessel owner/operator, the type-approved units must be cost effective and durable enough for vessels registered to "small fleet": 16–21 ft (4.8–6.4 m), limited entry permits.

Response: NMFS is testing VMS transceiver units that are appropriate for "small fleet" limited entry vessels with the intent of type-approving models that are cost effective and durable enough for vessels registered to "small fleet" limited entry permits.

Comment 25: Because the cost of the VMS unit and its maintenance will likely be the burden of the vessel owner/operator, the approved units must be cost effective and durable enough for vessels registered to "small fleet" limited entry permits.

Response: NMFS is testing VMS transceiver units with the intent of type-approving models that are cost effective and durable enough for vessels registered to "small fleet" limited entry permits.

Comment 26: To take enforcement action against a vessel, NMFS should require that an actual observation be made of the violation, so it will hold up in court.

Response: By law, enforcement proceedings are subject to standards of proof and rules of evidence that will determine what evidence is sufficient in particular cases.

Comment 27: The commenter recommends that VMS transceiver units