

suitable for use on "small fleet" (16–21 ft) (4.8–6.4 m in length) limited entry vessels, *i.e.*, units that are small and durable, be type-approved for use under this rule.

Response: NMFS is in the process of testing and type-approving VMS transceiver units that are appropriate for "small fleet" limited entry vessels.

Comment 28: One commenter indicated that the final rule should not become effective before the congressionally-mandated capacity reduction program becomes effective because these same vessels would be affected by both actions. Another commenter stated that the final rule should not become effective before January 1, 2004. While yet another commenter stated that it is highly problematic because depth-based management measures are currently in place and need to be monitored. This commenter recommended immediate implementation of VMS.

Response: At its November 2002 meeting, the Council recommended that NMFS move forward with a proposed rule to implement a VMS program for the Pacific Coast groundfish fishery as soon as possible in 2003. NMFS recognizes the importance of VMS for monitoring depth-based management measures and intended to implement the program as soon as possible in 2003 while allowing adequate time for public review and for the affected public to purchase and install all of the necessary equipment and services.

At its June 2003 meeting, the Council reviewed the proposed rule and recommended that the effective date for the rulemaking be January 1, 2004. NMFS agrees with the Council's recommendation for the following reasons: (1) A substantial proportion of limited entry trawl vessels (20–40 percent) could be bought out of the fishery by January 2004, and requiring these vessels to purchase VMS units before then would be unnecessary; and (2) additional time is needed for NMFS to put the necessary VMS infrastructure in place. This is because defining and verifying coordinates for depth contour lines, creating a "geo-fence" for "small fleet" limited entry permits, and completing the type-approval process will require more time than had originally been estimated.

Comment 29: NMFS should require vessels to have VMS transceiver units with 2-way communications rather than the proposed requirement for 1-way communications. Having 2-way communications would allow NMFS to communicate directly with vessels to determine if they are engaged in illegal

fishing rather than having to conduct an at-sea observation.

Response: NMFS agrees that the benefits of a VMS monitoring program that includes 2-way communications are greater than a program with 1-way communications. This is because 2-way communications can be used for transmitting reports from the vessel, receiving operational messages, and for inquiring about use of distress signal. However, the cost to industry and the diversity of fishery participants were also considered. NMFS determined that the Council recommended alternative which included a 1-way communications system (ship-to-shore) satisfied the defined need for action, while being less costly than a 2-way communication system. This rule defines minimum requirements and will not preclude a vessel owner from procuring a VMS unit type-approved by NMFS for the Pacific Coast groundfish fishery that provides additional services such as 2-way communications and has capabilities used exclusively by the vessel owner and operator.

Changes From the Proposed Rule

This final rule includes the following changes from the proposed rule:

1. In § 660.306(z)(6) language has been added that will prohibit transceiver units from being registered to more than one vessel at a time.

2. In § 660.306(bb) language has been added to allow limited entry vessels with trawl endorsements to conduct fishing activities that are permitted in the trawl RCA.

3. In § 660.359(d)(2)(ii) language has been added to require that a proof of ownership of the VMS transceiver unit or service termination from the communication service provider be provided in order for the unit to be registered to a new vessel.

4. In § 660.306(Z)(1) and 660.359(b) references to EEZ have been changed to clearly state that the rule applies to state and Federal marine waters 0–200 nautical miles.

Classification

The Administrator, Northwest Region, NMFS, determined that the FMP regulatory amendment is necessary for the conservation and management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an IRFA which was summarized in the proposed rule published on May 22, 2003 (68 FR 27972). NMFS prepared a FRFA that describes the economic impact of this action on small entities. The following is the summary of the FRFA. The need

for and objectives of this final rule are contained in the **SUPPLEMENTARY INFORMATION** of the preamble and in the proposed rule.

This final rule does not duplicate, overlap, or conflict with other Federal rules. A range of five alternative actions were considered and analyzed. The alternative monitoring systems included: (1) The status quo, (2) a declaration system, (3) a basic VMS program with 1-way communications (the proposed action), (4) an upgraded VMS program with 2-way communications, and (5) the expanded use of fishery observers. Vessel plotters were recommended as a monitoring system by the industry. After consideration, it was determined that vessel plotters, which were designed as a navigational aid, would not be an adequate enforcement monitoring tool for depth-based management.

RCAs are large-scale, depth-related closed areas that are being used to restrict fishing across much of the continental shelf. 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.

Depth-based management measures would have remained in place under each of the alternatives, except that it is reasonable to believe that they would have been discontinued in 2004 under the status quo alternative. Declaration reports (Alternative 2) alone are not as effective as VMS in monitoring a vessel's location in relation to restricted areas. Observers (Alternative 5), the most expensive of the alternatives, provide detailed information, much of which goes beyond the identified need. VMS is an effective tool for monitoring vessel location. The two approaches to VMS considered during the rulemaking process were: A basic VMS system (Alternative 3—the preferred action) and an upgraded VMS system (Alternative 4). The primary difference between the two alternatives was that the upgraded system uses two-way communications between the vessel and shore such that full or compressed data messages can be transmitted and received by the vessel, while the basic system only transmits positions to a shore station. It was determined that the basic system was the minimum system that would maintain the integrity of the closed areas. However, this action will not preclude vessels from installing an upgraded VMS system.