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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130426413-3719-01]

RIN 0648-BD24

Atlantic Highly Migratory Species; Vessel Monitoring Systems

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to modify the declaration requirements for vessels required to use Vessel Monitoring System (VMS) units in Atlantic Highly Migratory Species (HMS) fisheries. This proposed rule would require operators of vessels that have been issued HMS permits and are required to use VMS to use their VMS units to provide hourly position reports 24 hours a day, 7 days a week (24/7). The proposed rule would also allow the operators of such vessels to make declarations out of the fishery when not retaining or fishing for HMS for specified periods of time encompassing two or more trips. These changes would make the current Atlantic HMS VMS requirements consistent with other VMS-monitored Atlantic fisheries and provide additional reporting flexibility for vessel operators by eliminating the requirement to hail-out two hours in advance of leaving port. Additionally, these changes will continue to provide NOAA's Office of Law Enforcement (OLE) with information necessary to facilitate enforcement of HMS regulations. This rule would affect all commercial fishermen who fish for Atlantic HMS who are required to use VMS.

DATES: Submit comments on or before [insert date 30 days after date of publication in the FEDERAL REGISTER]. We will hold an operator-assisted public hearing via conference call and webinar for this proposed rule on September 23, 2013, from 1 p.m. to 3 p.m., EDT. We will also discuss the proposed rule with the HMS Advisory Panel during the AP meeting the week of September 9, 2013; the details of that meeting were published in a separate Federal Register notice on July 23, 2013 (78 FR 44095).

ADDRESSES:

You may submit comments on this document, identified by NOAA-NMFS-2013-0132, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0132](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0132), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.
- Fax: 301-713-1917, Phone: 301-427-8503; Attn: Margo Schulze-Haugen

Instructions: Please include the identifier NOAA-NMFS-2013-0132 when submitting comments. Comments sent by any other method, to any other address or individual, or received after the close of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments

(enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Atlantic Highly Migratory Species Management Division by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-7285.

#### Public Hearing and Webinar Information

The call-in information for the public hearing is phone number 888-997-8509; participant pass code 3166031. We will also provide a brief presentation via webinar. Participants can register for the webinar at <https://www1.gotomeeting.com/register/242124417>. Following the registration process, participants will receive a confirmation email with webinar log-in information. Presentation materials and other supporting information will be posted on the HMS website at: <http://www.nmfs.noaa.gov/sfa/hms>.

FOR FURTHER INFORMATION CONTACT: Cliff Hutt or Karyl Brewster-Geisz by phone at 301-427-8503 or by fax at 301-713-1917.

Copies of this proposed rule and any related documents can be obtained by writing to the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910, visiting the HMS website at <http://www.nmfs.noaa.gov/sfa/hms/>, or by contacting Cliff Hutt.

#### SUPPLEMENTARY INFORMATION:

##### Background

Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Conservation Act (ATCA). Under the MSA, management measures must be consistent with ten National

Standards, and fisheries must be managed to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce shall promulgate regulations, as necessary and appropriate, to implement measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Maintaining the VMS monitoring program ensures compliance with both international and domestic requirements while facilitating enforcement of Atlantic HMS fisheries regulations. Requirements to use VMS in the pelagic longline fishery were implemented on June 25, 2003 (68 FR 37772). NMFS issued a rule on December 24, 2003 (68 FR 74746), which required VMS operation for vessels with bottom longline gear onboard between 33°00' N. latitude and 36°30' N. latitude to ensure compliance with the mid-Atlantic shark closed area from January 1 through July 31 each year, and also required VMS for fishermen fishing for sharks with gillnet gear operating from November 15 through April 15 each year due to concerns about interactions with right whales. In all of these rules, fishermen were allowed to power down the VMS unit between trips as long as the VMS unit was turned on at least two hours prior to leaving port and remained on until the vessel returned to port. These requirements were specific to vessels both holding an HMS permit and having longline or gillnet gear onboard, regardless of whether a vessel was fishing for HMS on any particular trip.

On December 2, 2011, NMFS published a final rule (76 FR 75492) that required the use of Electronic Mobile Transmitting Unit (EMTU) VMS units for all HMS-permitted fishing vessels that are required to use VMS. The rule required vessel operators to “hail-out” at least two hours prior to departure for each fishing trip and declare the target fishery and gear type

being utilized. Additionally, vessel operators are required to “hail-in” and notify NMFS at least three hours before the vessel returns to port.

Following the publication of the 2011 rule, NMFS received feedback from vessel operators regarding the hail-in/hail-out requirements. Some vessel operators reported that the hail-out requirement can be burdensome. For example, fishermen who are using gear that requires little preparatory work prior to departure (e.g., gillnet gear) feel the current VMS requirements are burdensome by requiring them to arrive at port two hours before departure to notify NMFS of their departure. In addition, fishermen who hold HMS permits but do not fish for or target HMS exclusively (for example, some mid-Atlantic gillnet fishermen who make daily trips for monkfish over winter months do not fish for HMS during that time), have stated that requiring them to hail-out every time they leave for a fishing trip, even when those trips are not targeting HMS, is burdensome. Regardless of what is being fished for, those fishermen that have been issued an HMS permit and have pelagic longline, bottom longline, or gillnet gear onboard, are required, under current regulations, to provide hail-outs each trip.

Although the existing hail-in requirement was established to provide NOAA OLE the ability to properly plan and arrange for inspections upon vessel return, current regulations allow fishermen to hail-in at any time as long as that hail-in occurs at least three hours before returning to port (i.e., they could hail-in before they even leave the dock). Allowing vessels the flexibility to hail-in so far in advance of their actual return to port undermines NOAA OLE’s ability to know when and where to meet a returning vessel for inspection.

In this proposed rule, NMFS is considering modifications to the requirements for hail-in/hail-out declarations as they apply to HMS permit holders. Specifically, fishermen who will not be fishing for or retaining HMS for two or more fishing trips would be given the option to

declare out of the fishery. Once a vessel "declares out," that fisherman would be exempt from the HMS hail-in/hail-out VMS requirements. Under this change, if a fisherman has declared out of the fishery, but incidentally catches any HMS while fishing that they wish to retain, he or she would be required to issue a declaration specifying the target species and fishing gear used while at sea before returning to port with any HMS. The fisherman would also have to hail-in on that trip to report advance notice of landing to NMFS. That fisherman would then need to decide whether to hail-out or declare out of the fishery before leaving for their next trip. It is important to note that declaring out of the fishery exempts fishermen only from the HMS VMS hail-in/hail-out requirements; their VMS units would still be required to be on to provide hourly location signals. All other requirements and restrictions for vessels that have an HMS permit would still apply (e.g., those vessels would not be allowed in relevant closed or gear restricted areas), and other applicable VMS requirements for any other fisheries they are participating in would still apply. Vessels operating under a declaration out of the HMS fishery that wish to begin fishing for and retaining HMS again would need to resume hailing-in and hail-out for each fishing trip. This change in the hail-in/hail-out requirements should reduce reporting burden on fishermen while continuing to provide NOAA OLE with information needed to facilitate enforcement of HMS regulations.

NMFS also considered proposing that fishermen, who target HMS for two or more consecutive trips, and use the same type of fishing gear each trip, be allowed to issue a "declaration into the fishery." As an example, NMFS is aware that there are fishermen who always use pelagic longline gear and always fish for and retain HMS. Allowing such fishermen to "declare into the fishery," would have exempted them from making hail-outs before each trip while still requiring them to hail-in prior to landing HMS. NMFS is not proposing this change at

this time because of NOAA OLE concerns that they would not receive information needed to effectively monitor HMS fisheries with advance notice if vessel operators did not hail-out before each trip.

In this rule, NMFS is also proposing that all VMS units be required to remain on to provide hourly position reports 24 hours a day, 7 days a week (24/7), even when in port. This represents a change from the current regulations, which allow fishermen to turn their VMS unit off while the vessel is in port and require they turn the VMS unit back on at least two hours before leaving port. The proposed change to this requirement would provide vessel operators with additional flexibility since they would no longer be required to hail-out at least two hours before leaving port, but could instead wait to hail-out when leaving port. This change would also improve consistency of HMS fisheries VMS regulations with other Federal fishery VMS regulations while still providing NOAA OLE with location data to facilitate enforcement.

Consistent with existing regulatory requirements regarding times that VMS must be used by particular fisheries, vessels with pelagic longline gear onboard, which are required to use VMS units year round, would be required to provide 24/7 location reporting year round. Vessels with a shark limited access permit (LAP) and gillnet gear onboard would be required to provide 24/7 location signals from November 15 through April 15 of each year. Vessels with bottom longline gear onboard, and located between 33°00' N. latitude and 36°30' N. latitude would be required to provide 24/7 location signals from January 1 through July 31 each year. Fishermen would need to request a documented exemption from the VMS requirements if their VMS unit needs to be powered down for various reasons such as placing the vessel in drydock for repairs or suspending fishing activity for an extended period. Under those or similar situations, fishermen should contact NOAA OLE to request a documented exemption.

Finally, NMFS is also proposing to modify the current hail-in regulations to require vessel operators to hail-in no more than 12 hours, and no less than three hours, before returning to port. Currently, vessel operators are required to hail-in at least three hours prior to returning to port to specify where they will be landing, but no restriction exists on how far in advance a hail-in declaration can be made prior to landing. Some vessel operators on multi-day trips submit hail-ins days in advance of landing, thus making it difficult for NOAA OLE to plan dockside inspections of vessels landing HMS. By establishing a maximum time limit on when a hail-in can be submitted, NOAA OLE will be more efficient in coordinating inspections of vessels landing HMS to monitor compliance with, and enforce, HMS regulations.

NMFS conducted the following Regulatory Impact Review (RIR) to comply with Executive Order 12866 (E.O. 12866) and provide analyses of the economic benefits and costs of this proposed action to the nation and the fishery as a whole. The information contained in this document, taken together with the data and analysis incorporated by reference, comprise the complete RIR.

Neutral social and economic impacts from the proposed action are expected, as the proposed alternatives are not expected to increase reporting costs for affected vessels and would reduce reporting burden for many vessels. Table 1 provides a summary of the financial impact to affected vessels under the current VMS requirements. NMFS does not anticipate that the proposed changes to the VMS regulations would result in any change to current costs associated with VMS for most vessels because the hourly location signals are automated and most service providers include them in the base cost of the VMS unit plan. For those vessels with VMS plans that charge per location signal, the charge per signal is relatively small (\$0.06 per signal), so the change to 24/7 hourly position reports should not result in a significant cost increase. However,

there are additional benefits associated with the proposed action relative to the no-action alternative. For example, requiring 24/7 hourly position reports would provide NOAA OLE with enhanced communication with HMS vessel operators and provide valuable information concerning target species and gear possessed to facilitate enforcement of closed areas and other regulations. Requiring 24/7 reporting would also reduce the reporting burden on vessel operators by allowing them to hail-out when leaving port instead of doing so at least two hours in advance. Furthermore, allowing vessels not fishing for or retaining HMS for two or more consecutive trips to “declare out of the fishery” would reduce their overall reporting burden.

**Table 1. Estimated Costs of Compliance Under Current VMS Regulations in Affected HMS Fisheries. No Change in Costs is Expected Under the Proposed Rule for Most Vessels.**

	Pelagic Longline Vessels	Shark Bottom Longline Vessels	Shark Gillnet Vessels
<b>Monthly E-MTU VMS Unit Plans average including 24/7 Position Reports and data</b>	\$44.00	\$44.00	\$44.00
<b>Estimated Days (Months) Fishing/Year</b>	324 (12)	212 (7)	152 (5)
<b>Annual Compliance Costs/ Vessel (\$44/month * months fishing/year)</b>	\$528/vessel	\$308/vessel	\$220/vessel
<b>Annual Compliance Costs + Maintenance Costs (\$500/year)</b>	\$1,028	\$808	\$720
<b>Annual Number of Fishing Trips</b>	36	212	152
<b>Number of Affected Vessels</b>	253	25	30
<b>Annual Cost for all Vessels</b>	\$260,084	\$20,200	\$21,600

\*\*The declaration costs per trip will vary based upon the number of target species and gear types possessed onboard as operators would be required to submit one declaration for each target fishery/fishing gear possessed.

## Request for Comments

NMFS is requesting comments on any of the measures or analyses described in this proposed rule. Furthermore, NMFS also requests comments related to the economic impacts and reporting burden associated with this proposed rule, and any other VMS requirements placed on HMS fishermen for which modifications are not being proposed, including:

1. The proposed change to 24/7 reporting, whether the vessel is at sea or in port, unless the vessel operator has a documented power down exemption.
2. The option to declare out of the fishery when not fishing for or retaining HMS for two or more consecutive trips.
3. The proposed modifications to the advance timeframes associated with hail-out and hail-in requirements (i.e., eliminating the requirement to hail-out two hours in advance of leaving port, and requiring vessels to hail-in no less than three hours, but no more than twelve hours, before returning port).
4. The time and costs associated with having an E-MTU VMS unit installed by a qualified marine electrician.
5. The time and costs associated with operation of the E-MTU VMS unit, and the time and costs associated with issuing transmissions (i.e., hail-out/hail-in, declarations) from the E-MTU VMS unit.

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax. Comments may also be submitted during the public hearing call-in and webinar (see DATES and ADDRESSES). Comments must be received by [insert date 30 days after date of publication in the FEDERAL REGISTER]. NMFS is holding one public hearing via conference call and webinar for this proposed rule. NMFS reminds the public that participants at the public

hearings should conduct themselves appropriately. At the beginning of the conference call, a moderator will explain the ground rules (e.g., attendees will be called to give their comments in the order in which they are received; each attendee will have an equal amount of time to speak; and, participants should address one another in a respectful manner). All members of the public participating in the conference call will have the opportunity to comment, if they so choose.

Participants that do not respect the ground rules will be removed from the conference call.

NMFS will also discuss the proposed rule with the HMS Advisory Panel during the week of September 9, 2013; the details of that meeting were published in a separate Federal Register notice on July 23, 2013 (78 FR 44095).

#### Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, the MSA and National Standards, and other applicable law, subject to further consideration after public comment. Upon review, we have determined that this action will not result in significant adverse effects, individually or cumulatively, on the human environment. Therefore, the action may appropriately be categorically excluded from the requirement to prepare either an environmental assessment or environmental impact statement in accordance with Section 6.03c.3(i) of NAO 216-6. This action would not affect fishing effort, quotas, fishing gear, authorized species, or interactions with threatened or endangered species.

#### Executive Order 12866

Under E.O. 12886, the Office of Management and Budget (OMB) has determined this rule to be not significant.

#### Paperwork Reduction Act

This proposed rule would modify a collection-of-information requirement that has been previously approved by the Office of Management and Budget (OMB) under control number 0648-0372. The proposed modification in this rule is subject to review and approval by OMB under the Paperwork Reduction Act (PRA), and will be submitted for approval. There would be 308 vessel operators (respondents) that may be affected by this collection; however, the rule's proposed provisions would reduce the overall burden to vessel operators as opposed to increasing it. Under the current VMS requirements, HMS vessel operators are required to make two declarations per trip (2 minutes per declaration). Under the current regulatory requirements, NMFS calculated the number of trips made by HMS vessels per year for which they are required to make hail-out/hail-in declarations, and estimated that these trips would result in a total of 37,936 declarations and result in a total reporting burden of 1,264 hours, or 4.10 hours per vessel. NMFS estimates that the proposed action, which would allow for long-term declarations out of the fishery and exempt vessels from submitting declarations for each trip during that time frame, could theoretically reduce the average reporting burden hours for each vessel issuing a long-term declaration by as much as 4 hours if the declaration is issued for the entire fishing season. It is highly unlikely that vessels would declare out for the fishery for the entire season, but NMFS does not currently have an estimate of the number of vessels that may take advantage of the long-term declaration.

#### Regulatory Flexibility Act

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by 5 U.S.C. 603 of the Regulatory Flexibility Act (RFA), to analyze the economic impacts that this proposed rule would have on small entities. The full IRFA is included below.

Section 603(b)(1) of the RFA requires that the Agency describe the reasons the action is being considered. A description of the proposed action, why it is being considered, and the legal basis for this proposed action is described in more detail in the preamble to the proposed rule. The purpose of this proposed rulemaking, consistent with the MSA and the 2006 Consolidated HMS FMP and its amendments, is to aid NOAA OLE in compliance monitoring and enforcement of HMS fisheries regulations while also minimizing the reporting burden on fishermen. The proposed action would provide fishermen with additional flexibility regarding the hail-out requirement and also remove the option of turning the VMS off unless the vessel operator has obtained a documented power down exemption from NOAA OLE. Specifically, fishermen that hold an HMS permit and are required to use VMS could declare out of the fishery if they do not intend to fish for and retain HMS for two or more consecutive trips. This declaration would exempt them from the requirement to hail-out before every trip (which can be daily for some fisheries) and hail-in before returning from every trip, but does not exempt them from other applicable HMS regulations (e.g., gear requirements, time/area closures, etc.) or from applicable regulations in other fisheries, including VMS requirements. Additionally, fishermen would still need to operate their VMS units 24 hours a day, 7 days a week to provide hourly location signals for the duration of long-term declaration out of the fishery. Requiring VMS units remain on at all times would mean fishermen could hail-out while they are leaving port. These proposed changes are a direct result of public feedback that indicated the current hail-out requirements were burdensome. Finally, vessel operators would still be required to hail-in at least three hours before returning to port, but would also be required to do so no more than 12 hours before landing. These proposed changes considered the need of NOAA OLE agents to

have information on target species and gear being deployed in order to facilitate enforcement of closed areas and other regulations.

Section 603(b)(2) of the RFA requires a succinct statement of the objectives of, and legal basis for, the proposed rule. The objectives of this proposed rulemaking are to consider changes to the HMS regulations at 50 CFR part 635 requiring the use of VMS in Atlantic HMS fisheries that would be less burdensome to fishermen while maintaining the information needed by NOAA OLE to monitor compliance and enforce the regulations. For example, properly functioning VMS units aid NOAA OLE in monitoring and enforcing closed areas implemented to reduce bycatch of undersized swordfish, sharks, sea turtles, and other species necessary to comply with the Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Standard 9 (bycatch and bycatch mortality reduction) of the MSA.

Under 5 U.S.C. 603(b)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Previously, a business involved in fish harvesting was classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. In addition, SBA has defined a small charter/party boat entity (NAICS code 713990, recreational industries) as one with average annual receipts of less than \$7.0 million. On June 20, 2013, SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398; June 20, 2013). The rule increased the size standard for Finfish Fishing from \$ 4.0 to 19.0 million, Shellfish Fishing from \$ 4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million.

NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS does not believe that the new size standards affect analyses prepared for this action and solicits public comment on the analyses in light of the new size standards. NMFS estimates that this proposed rule would require 308 vessel owners deploying either pelagic longline, bottom longline, or gillnet gear in HMS fisheries to use their VMS units to send hourly location reports 24 hours a day, 7 days a week. The action would also allow vessel operators the option of making a long-term declaration out of the HMS fishery for any period of time encompassing two or more trips during which the vessel will not be fishing for or retaining HMS. Such a declaration would exempt the vessel from hail-in and hail-out requirements until the vessel resumes fishing for and retaining HMS at which time the vessel will need to resume hailing-out and hailing-in for each trip.

This proposed rule modified some existing reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Specifically, vessel operators that do not plan to fish for or retain HMS for a period of time encompassing two or more trips would be given the option to declare out of the HMS fishery which would exempt them from having to hail-out and hail-in for each trip. Additionally, the 308 HMS vessel operators currently required to use VMS units would be required to leave their VMS units on 24 hours a day, 7 days a week, to facilitate the delivery of hourly location signals to NOAA OLE. This requirement would also allow vessel operators pursuing HMS to wait until they leave port to issue the required hail-out as opposed to being required to do so at least two hours before leaving port. Finally, this proposed rule would

also require vessel operators to hail-in at least three hours before returning to port, but no more than 12 hours before doing so.

This proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of laws, including, but not limited to, the MSA, ATCA, the High Seas Fishing Compliance Act, the MMPA, the ESA, the National Environmental Policy Act, and the Coastal Zone Management Act. The proposed regulations would not duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule that accomplish the stated objectives and that minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603 (c) (1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with the MSA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. Thus, none of the alternatives being considered fall under the first and fourth categories described above.

Furthermore, because the purpose of this rulemaking is to modify existing VMS reporting requirements, the use of performance standards, such as those mentioned in the third category above, would not be suitable to achieve the goals of this rulemaking. Finally, the proposed modification to the hail-out/hail-in requirement is expected to reduce the burden of reporting for vessels not fishing for or retaining HMS and provide NOAA OLE agents with additional information to accurately monitor fishing activities. Furthermore, the proposed requirement for vessel operators to maintain power to the VMS unit 24 hours a day, 7 days a week will not increase burden over the current requirement (i.e., only having the VMS on while away from port and at least two hours before leaving port) because the hourly location signals are automated, the proposed change would eliminate the need for vessel operators to hail-out at least two hours before leaving port, and hourly location signals are included in the base cost of the VMS unit plans offered by most providers. Since the purpose of the current requirement to hail-out at least two hours before leaving port was to ensure NOAA OLE received at least one location signal from a vessel before it left port, switching to 24 hours a day, 7 days a week reporting under this proposed rule would make advance hail-outs unnecessary. As such, NMFS has determined that this rulemaking meets the objectives stated in the second category. NMFS analyzed several alternatives in this proposed rulemaking, and the rationale for selecting the preferred alternatives is provided below.

NMFS is considering two categories of issues related to the use of VMS by the Atlantic HMS fleet; each issue has its own set of alternatives. The first category (Alternatives A1-A2) addresses the required frequency of hourly location signals issued by VMS units used by HMS fishermen, and whether vessel operators should be allowed to power down their VMS units between trips. The second category (Alternatives B1-B3) addresses hail-out/hail-in

requirements, and proposes the addition of long-term declarations (i.e., ‘declare out of fishery’ option) to the options available to vessels operating under HMS commercial permits. The preferred alternatives include Alternative A2 and Alternative B2. The potential economic impacts that would occur under these preferred alternatives were compared with the other alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the goals of this rule.

For the hourly position reports, Alternative A1, the no action alternative, would maintain the existing VMS requirements in Atlantic HMS fisheries which allow vessel operators to power down their VMS units while at port, and require them to power them back on at least two hours before leaving port for their next trip. Alternative A2 would require that Atlantic HMS vessels provide hourly position reports 24/7, during those periods of the year in which they are required to use VMS, unless extenuating circumstances (e.g., scheduled maintenance, putting the boat in drydock) warrant powering the VMS unit down. In such circumstances, vessel operators would need to contact NOAA OLE to request a documented power down exemption. Additionally, this alternative would eliminate the requirement for vessel operators to hail-out at least two hours before leaving port, and would instead allow them to wait until they are actually leaving port to hail-out. The justification for the current requirement to hail-out two hours before leaving port was to ensure VMS units would transmit at least one location signal while the vessel was still in port. The proposed change to 24/7 location reporting would thus obviate the need for this requirement. Alternative A2 would also require vessel operators to hail-in at least three hours before returning to port, but no more than 12 hours before doing so. NMFS is proposing this change because the open-ended requirement specified in the current regulations has allowed

vessel operators to submit hail-in declarations days before returning to port, making it difficult for enforcement agents to determine when a vessel will actually return to port.

NMFS estimated the costs of 24/7 hourly position reports for all vessels by calculating the average monthly costs from the five main providers of VMS units and services. The monthly cost of these plans ranges from \$35 to \$50 per month (average cost \$44 per month) and includes 24/7 hourly position reports and data costs associated with messaging for declarations and hail-in/hail-outs. It is likely that this pricing model has been adopted because most fisheries using VMS already require 24/7 reporting. Annual costs of compliance for both alternatives for vessel owners are estimated to be \$528, \$308, and \$220 per vessel for pelagic longline, bottom longline, and shark gillnet vessels, respectively (Table 1). NMFS does not anticipate these costs to be different from current monthly VMS costs for most HMS vessels since most VMS providers use plans that include 24/7 hourly position reports and data (for making hail-in/hail-outs and other declarations). For purposes of estimation, NMFS assumed continuous reporting over the course of the year, or that portion of the year in which HMS permitted vessels are required to use VMS. Additionally, maintenance costs for VMS units are estimated at \$500 per vessel per year, but changing to 24/7 reporting is not expected to affect these costs. Changing to 24/7 position reporting would, however, eliminate the need for vessel operators to hail-out at least two hours before leaving port, thus giving them greater flexibility in planning their trip schedules.

Next, NMFS considered alternatives to modify the current hail-in/hail-out reporting requirements to include long-term declarations that can apply to multiple trips. Alternative B1, the no action alternative, would maintain the current hail-in/hail-out declaration requirements. HMS vessel operators required to use VMS currently must hail-out and hail-in for each fishing

trip in addition to submitting a declaration indicating which species they will be targeting, and the gear they will be fishing. Alternative B2, the preferred alternative, would allow for vessels not fishing for or retaining HMS for two or more trips to advise NMFS as such by issuing a declaration out of the fishery. Vessels under a long-term declaration out of the fishery would be exempted from issuing hail-in/hail-out declarations each trip, but would still be required to follow all other Atlantic HMS regulations including continuing to provide 24/7 location signals on their VMS units. Vessels operating under the proposed long-term declaration would still have the option to land HMS if they catch them incidentally, but would have to first declare back into the HMS fishery and issue a hail-in at least three hours, and no more than twelve hours, before returning to port.

Based on public comments received, NMFS assumed that many, if not all, shark gillnetters and bottom longliners would declare out of the HMS fishery for at least part of the season in which they are required to use VMS. NMFS expects few, if any, fishermen using pelagic longline to declare out of the HMS fishery as most of these vessels target HMS almost exclusively. Therefore, to assess the effect of Alternatives B2 on reporting burden, NMFS estimated the total number of HMS fishing trips that bottom longline vessels from Virginia to South Carolina and shark gillnet vessels could annually take and thus be required to make daily hail-in/hail-outs (Table 1). The estimates vary by gear type possessed onboard. Bottom longline vessels primarily target large coastal sharks (LCS) and Council-managed species (snapper/grouper, tilefish, etc.). Bottom longline vessels from Virginia to South Carolina (between 33°00' N. latitude and 36°30' N. latitude) are required to use VMS to provide hourly position signals from January 1<sup>st</sup> to July 31<sup>st</sup> of each year to facilitate enforcement of the Mid-Atlantic bottom longline closed area. In recent years, except for 2013, the seasons for LCS in the

Atlantic region have not opened until July 15, resulting in a two-week period where vessels could be fishing for or retaining LCS with bottom longline gear and would be required to use VMS. However, seasons for small coastal sharks (SCS), pelagic sharks, and Council-managed species also require consideration as affected vessels may be fishing for other species with bottom longline gear onboard. NMFS assumes that approximately 50 bottom longline vessels could be fishing (day trips) in the vicinity (between 33°00' N. latitude and 36°30' N. latitude) of the Mid Atlantic bottom longline closed area where VMS is required during the entire 212 day-closure (January 1–July 31), resulting in 212 trips per year. Shark gillnet vessels can target LCS, SCS, and Council-managed species, but have targeted sharks less in recent years. The gillnet fishery primarily targets small coastal sharks (SCS) and blacktip sharks (included in the aggregate LCS management group in the Atlantic region and as its own management group in the Gulf of Mexico region). Season length for the different shark management groups varies annually based on quota availability, catch rates, and other considerations. Many shark gillnet vessel owners have been issued permits that allow them to participate in other fisheries using gillnet gear; therefore, to estimate burden, NMFS assumed that affected vessels could be engaged in fishing activities and subject to VMS requirements from November 15 – April 15 for the duration of this time period every year (152 days). NMFS also assumed that vessels would return to port once every 24 hours to offload catch and procure supplies. Based on public comments, NMFS expects many gillnetters and bottom longliners would make long-term declarations out of the fishery if given the option, which would require them to make only one declaration report. However, if HMS are caught during a trip and the fishermen wish to land them, they must declare back in to the HMS fishery and then provide NOAA OLE with a hail-in at least three hours, and no more than twelve hours, before returning to port. While NMFS does

not expect there to be a difference in costs for vessel operators between Alternatives B1 and B2, Alternative B2 could result in a substantial reduction in reporting burden for vessels not fishing for or retaining HMS. For this reason and because the enforcement capabilities are the same under either alternative, we prefer Alternative B2 at this time.

Finally, Alternative B3 would allow vessels fishing for the same HMS with the same gear for two or more consecutive trips to make long-term declarations into the HMS fishery which would exempt them from making daily hail-out declarations, but would still require them to hail-in before landing HMS. NMFS determined that pelagic longline vessels would be most likely to take advantage of a long-term declaration into the HMS fishery as many of those vessels target HMS almost exclusively. Logbook data (2006-2009) for pelagic longline vessels indicates that across all regions and months of the year, vessels make approximately 6.7 sets per trip. Each set takes approximately one day. For the purpose of estimation, seven sets per trip were used in the following calculations. Vessels would require at least one day transiting to and from fishing grounds and at least one day in between fishing trips for offloading. Therefore, NMFS estimates that average pelagic longline trips are 10 days (7 days fishing + 2 days transit + 1 day offload/resupply) in duration, meaning vessels could make up to 36 complete trips per year (365 days per year / 10 days per trip). Under Alternative B3, aside from the initial long-term declaration into the fishery, declaration reports would only be required prior to the vessels return to port (1 declaration/trip). Assuming the vessels make 36 trips per year, they would submit 37 declarations (36 trips per year \* 1 declaration per trip + 1 long-term declaration into the fishery = 37 declarations per year), which are included in the cost of the VMS unit plans offered by most providers. These calculations would represent a maximum possible burden on pelagic longline vessels in Alternative B3 were adopted. NMFS assumed that costs will vary slightly among

individual vessel owners based on the number of days at sea per year, the VMS provider, and the number of messages sent and received using the VMS unit. While NMFS does not expect there to be a difference in costs for vessel operators between Alternatives B1 and B3, Alternative B3 would result in a reduction in reporting burden for vessels exclusively fishing for HMS as they would only have to make one declaration per trip. However, because this alternative would potentially complicate NOAA OLE's ability to monitor vessels fishing for HMS by reducing the frequency of communication with fishermen, and eliminating notification of when HMS trips are beginning, this alternative is not preferred at this time.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 23, 2013

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635, as proposed to be amended at 78 FR 52032, August 21, 2013, is further proposed to be amended as follows:

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

2. In § 635.69, paragraphs (a)(1) through (3), paragraph (d) introductory text, and paragraphs (e)(1) through (3) are revised, and paragraph (e)(5) is added to read as follows:

### § 635.69 Vessel monitoring systems.

(a) \* \* \*

- (1) Whenever the vessel has pelagic longline or purse seine gear on board;
- (2) Whenever a vessel issued a directed shark LAP, has bottom longline gear on board, is located between 33°00' N. lat. and 36°30' N. lat., and the mid-Atlantic shark closed area is closed as specified in § 635.21(d)(1); or
- (3) Whenever a vessel issued a directed shark LAP has a gillnet(s) on board from November 15-April 15.

\* \* \* \* \*

(d) Installation and activation. Only an E-MTU VMS that has been approved by NMFS for Atlantic HMS Fisheries may be used. Any VMS unit must be installed by a qualified marine electrician. When any NMFS-approved E-MTU VMS is installed and activated or reinstalled and reactivated, the vessel owner or operator must—

\* \* \* \* \*

(e) \*\*\*

(1) Owners or operators of vessels subject to requirements specified in paragraph (a) of this section must ensure the VMS unit is on so that it will submit automatic position reports every hour, 24 hours a day. Except as otherwise noted in this paragraph, the VMS unit must always be on, operating and reporting without interruption, and NMFS enforcement must receive hourly position reports without interruption. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement. Owners of vessels may request a documented power down exemption from NMFS enforcement if the vessel will not be fishing for an extended period of time. The request must describe the reason an exemption is being requested; the location of the vessel during the time an exemption is sought; the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and sufficient information to determine that a power down exemption is appropriate. Approval of a power down must be documented and will be granted, at the discretion of NMFS enforcement, only in certain circumstances (e.g., when the vessel is going into dry dock for repairs, or will not be fishing for an extended period of time).

(2) Prior to departure for each trip, a vessel owner or operator must initially report to NMFS any highly migratory species the vessel will target on that trip and the specific type(s) of fishing gear that will be on board the vessel, using NMFS-defined gear codes. If the vessel owner or operator participates in multiple HMS fisheries, or possesses multiple fishing gears on board the vessel, the vessel owner or operator must submit multiple electronic reports to NMFS. If, during the trip, the vessel switches to a gear type or species group not reported on the initial declaration, another declaration must be submitted before this fishing begins. This information

must be reported to NMFS using an attached VMS terminal or using another method as instructed by NMFS enforcement.

(3) A vessel owner or operator must report advance notice of landing to NMFS. For the purposes of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The vessel owner or operator is responsible for ensuring that NMFS is contacted at least 3 hours and no more than 12 hours in advance of landing regardless of trip duration. This information must be reported to NMFS using an attached VMS terminal and must include the date, approximate time, and location of landing.

\* \* \* \* \*

(5) Vessel owners or operators that decide not to fish for or retain HMS for a period of time encompassing two or more trips may follow the requirements of this paragraph in lieu of paragraphs (e)(2) and (3) of this section.

(i) If a vessel owner or operator decides not to fish for or retain HMS for a period of time encompassing two or more trips, that owner or operator may choose to “declare out” of the fishery. To “declare out,” the vessel owner or operator must contact NMFS using an attached VMS terminal to indicate the operator does not plan to fish for or retain HMS. By “declaring out” of the HMS fishery, the vessel owner or operator is exempt from the requirements of paragraphs (e)(2) and (3) of this section, unless the circumstances described in (e)(5)(ii) apply, but must still comply with all other HMS regulations that are applicable to the vessel including area and gear closures.

(ii) If a vessel owner or operator has advised NMFS that it will not be fishing for or retaining HMS as described in paragraph (e)(5)(i) of this section, but incidentally catches and retains any HMS while fishing, the vessel owner is required to change the target species

declaration and advise NMFS as described in paragraph (e)(2) of this section while at sea before returning to port with any HMS. The vessel must also report advance notice of landing to NMFS as described in paragraph (e)(3) of this section.

(iii) Once the vessel owner or operator changes the declaration per paragraph (e)(5)(ii) of this section, that vessel is assumed to be fishing under the requirements of paragraphs (e)(1) through (3) of this section until the vessel owner or operator makes another declaration under this paragraph (e)(5).

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