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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130722646-5430-02]

RIN 0648-BD54

**International Fisheries; Pacific Tuna Fisheries; Establishment
of Tuna Vessel Monitoring System in the Eastern Pacific Ocean**

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

ACTION: Supplemental proposed rule; request for comments.

SUMMARY: NMFS revises a proposed rule published on February 6, 2014, to implement Inter-American Tropical Tuna Commission (IATTC) Resolution C-04-06. Under the original proposed rule Vessel Monitoring Systems (VMS) would be required for any U.S. commercial fishing vessels that are 24 meters (78.74 feet) or more in overall length and used to target tuna in the eastern Pacific Ocean. After publication of the proposed rule on February 6, 2014, the IATTC adopted Resolution C-14-02, which expands the applicability of the VMS requirements to vessels engaged in fishing activities for either tuna or tuna-like species; this action would implement that expanded application.

This action would also revise the original proposed rule by allowing additional conditions to authorize a vessel owner or operator to shut down a VMS unit, and in a few non-substantive ways as described below. This rule is intended to ensure full U.S. compliance with its international obligations under the IATTC Convention.

DATES: Written comments on this supplemental proposed rule must be received on or before [*Insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0117, by any 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-2013-0117, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Rachael Wadsworth, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2013-0117” in the comments.
- **Public Hearing:** The public is welcome to attend a public hearing and offer comments on this supplemental proposed rule from 1 p.m. to 4 p.m. PST, June 9, 2015, at 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. The public may also

participate in the public hearing via conference line: 888-790-6181; participant passcode: 64120.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review (RIR) and other supporting documents prepared for the original proposed rule are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2013-0117 or by contacting the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way, NE, Bldg 1, Seattle, WA 98115-0070 or by e-mail to RegionalAdministrator.WCRHMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS West Coast Region, 562-980-4036.

SUPPLEMENTARY INFORMATION:

NMFS published a proposed rule in the **Federal Register** (79 FR 7152) on February 6, 2014, to broaden the existing Vessel Monitoring System (VMS) requirements in the Pacific Ocean and to clarify the applicability of VMS requirements to U.S. commercial fishing vessels, 24 meters (78.74 feet) or more in overall length, used to target tuna (i.e., any fish of the genus *Thunnus* or of the species *Euthynnus (Katsuwonus) pelamis* (skipjack tuna)) in the waters of the Convention Area. The Convention Area is bounded by the west coast of the Americas and on the north, south, and west respectively, by the 50° N. and 50° S. parallels, and the 150° W. meridian. The original proposed rule was intended to ensure full U.S. implementation of Resolution C-04-06, adopted by the Inter-American Tropical Tuna Commission (IATTC) at its 72nd Meeting in June 2004.

After publication of the original proposed rule, the IATTC adopted Resolution C-14-02 at its 87th Meeting in July 2014, which amends and replaces Resolution C-04-06. This supplemental proposed rule revises the applicability of the VMS requirements to reflect Resolution C-14-02 and updates other sections of the regulatory text that was published in the original proposed rule. The regulatory text of the original proposed rule is

republished in this supplemental proposed rule with the changes described above and in more detail below.

Background and Need for Action

A detailed description of the original proposed rule was published in the preamble to that rule, which is available online (<https://federalregister.gov/a/2014-02598>) and from NMFS (see **ADDRESSES**). The VMS requirements from the original proposed rule are briefly summarized here.

Commercial fishing vessels that are 24 meters or more in overall length are required to install, activate, carry and operate VMS units (also known as "mobile transmitting units"). The VMS units and mobile communications service providers must be type-approved by NOAA for fisheries in the IATTC Convention Area. Information for current NOAA type-approved VMS units can be obtained from: NOAA, Office of Law Enforcement (OLE), 1315 East-West Hwy, Suite 3301, Silver Spring, MD 20910-3282; telephone at (888) 210-9288; fax at (301) 427-0049. Or, by contacting NOAA OLE VMS Helpdesk: telephone: (888) 219-9228; e-mail: ole.helpdesk@noaa.gov; or online by going to http://www.nmfs.noaa.gov/ole/about/our_programs/vessel_monitoring.html, and click "approved VMS units." The business hours of the VMS Helpdesk are: Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

Compliance with the existing VMS requirements at 50 CFR 300.219, 50 CFR 660.712, 50 CFR 660.14, or 50 CFR 665.19 would satisfy these new requirements relating to the installation, carrying, and operation of VMS units, provided that the VMS unit and mobile communications service provider are type-approved by NOAA for fisheries in the Convention Area, and the VMS unit is operated continuously at all times while the vessel is at sea unless the Special-Agent-In-Charge, NOAA Office of Law Enforcement, Pacific Islands Division (or designee) (SAC) authorizes a VMS unit to be shut down and the same requirements proposed for the case of VMS unit failure are followed.

This supplemental proposed rule would revise the proposed rule in the following ways: (1) expand the applicability of the VMS requirements to include fishing activities for tuna-like species in the Convention Area; (2) additional conditions to allow the SAC to authorize a vessel owner or operator to shut down a VMS unit; (3) update the address for the SAC; (4) update the definition of "Convention Area;" (5) revise the description of the purpose and scope of part 300, subpart C, section 300.20 of Title 50 of the Code of Federal Regulations (CFR); and (6) make minor revisions to the regulatory text for punctuation and clarify circumstances when a vessel owner or operator is responsible for an action. These changes are described in greater detail below.

First, IATTC Resolution C-14-02 expanded the scope of the initial IATTC Resolution. The original proposed rule would have applied only to commercial fishing vessels that are 24 meters or more in overall length and used to target tuna in the Convention Area. This supplemental proposed rule would apply to commercial fishing vessels engaging in fishing activities for tuna or tuna-like species, including those managed under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species, in conformance with Resolution C-14-02. Therefore, this supplemental proposed rule would apply to any commercial fishing vessel of the United States that is 24 meters or more in overall length and engaging in fishing activities for tuna or tuna-like species in the Convention Area, and for which any of the following permits is required: Pacific highly migratory species permit under 50 CFR 660.707, or high seas fishing permit under 50 CFR 300.13.

Second, the supplemental proposed rule would allow additional conditions for the SAC to authorize a vessel owner or operator to shut down a VMS unit. Vessel owners or operators must submit requests to shut down their VMS unit to the SAC. See the regulatory text for more details on the specific conditions and procedures for obtaining SAC authorization for shutting down VMS units.

Third, the supplemental proposed rule would update the address for the SAC of the Pacific Islands Division, reflecting an address change that occurred after the publication of the original proposed rule.

Fourth, this supplemental proposed rule would also update the regulatory definition of the Convention Area, which is currently defined as the waters within the area bounded by the mainland of the Americas, lines extending westward from the mainland of the Americas along the 40° N. latitude and 40° S. latitude, and 150° W. longitude. The current regulatory definition would be updated to be consistent with the definition described in the preamble of the original proposed rule, and the Convention for the Strengthening of the Inter-American Tropical Tuna Commission (Antigua Convention). The Antigua Convention entered into force in 2010 and all IATTC resolutions adopted subsequent to 2010, such as Resolution C-14-02, are premised on the definition of "Convention Area" in the Antigua Convention. Accordingly, this supplemental proposed rule would define the Convention Area as all waters of the eastern Pacific Ocean within the area bounded by the west coast of the Americas and by the following lines: the 50° N. parallel from the coast of North America to its intersection with the 150° W. meridian; the 150° W. meridian to its intersection with the 50° S. parallel; and

the 50° S. parallel to its intersection with the coast of South America.

If the proposed update to the regulatory definition of the Convention Area becomes effective, there would be no additional impacts to vessels. Although NMFS relied on the current definition (40° N. latitude and 40° S. latitude, and 150° W. longitude) of the Convention Area to modify the procedures and requirements for the Regional Vessel Register for the IATTC (74 FR 1607, January 13, 2009), NMFS uses permits rather than fishing area as a basis for providing the IATTC a list of U.S. vessels to be placed on the Regional Vessel Register. Specifically, NMFS considers vessels that are authorized to fish for highly migratory species in the Convention Area under the following fishing permits: Pacific highly migratory species permit under 50 CFR 660.707, and high seas fishing permit under 50 CFR 300.13. Therefore, the proposed update to the regulatory definition of the Convention Area would not affect the current process NMFS uses to provide the IATTC a list of U.S. vessels to place on the Regional Vessel Register.

Lastly, the supplemental proposed rule would update the purpose and scope of Title 50, part 300, subpart C, section 300.20 of the CFR for consistency with the updated definition for the Convention Area.

Classification

The NMFS Assistant Administrator has determined that this supplemental proposed rule is consistent with the Tuna Conventions Act of 1950 and other applicable laws, subject to further consideration after public comment.

National Environmental Policy Act

This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216-6. A memorandum for the file has been prepared that sets forth the decision to use a categorical exclusion.

Executive Order 12866

This supplemental proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the original proposed rule (79 FR 7152), published on February 6, 2014, as required by section 604 of the Regulatory Flexibility Act (RFA) and is not repeated here. As described above, this supplemental proposed rule would not result in different impacts than those described in the IRFA for the original proposed rule.

As discussed in the preamble, this supplemental proposed rule would expand the applicability of the VMS requirements to commercial fishing vessels that are 24 meters or more in overall length and engaging in fishing activities for tuna or tuna-like

species in the Convention Area. To estimate the number of affected entities for the original proposed rule, the number of vessels authorized to fish for highly migratory species in the Convention Area through fishing permits was considered a reasonable proxy. The permits used to estimate affected entities were those issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) through regulations codified at 50 CFR 660.707 or under the authority of the High Seas Fishing Compliance Act of 1995 (16 U.S.C. 5501 *et seq.*) through regulations codified at 50 CFR 300.13. NMFS also considers these fishing permits a reasonable proxy for estimating the number of vessels used to fish for tuna or tuna-like species in the Convention Area. Copies of the IRFA, prepared for the original proposed rule, are available from NMFS (see **ADDRESSES**).

Paperwork Reduction Act Collections of Information

This supplemental proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and approved by OMB under control number (0648-0690) for the original proposed rule (79 FR 7152), published on February 6, 2014. This supplemental proposed rule does not result in changes to the burden hour estimates prepared for the original proposed rule. Public comment regarding the burden-hour

estimates or other aspects of the collection-of-information requirements was requested in the original proposed rule.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: May 11, 2015

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

1. The authority citation for 50 CFR part 300, subpart C continues to read as follows:

Authority: 16 U.S.C. 951–961 *et seq.*

2. Section 300.20 is revised to read as follows:

§ 300.20 Purpose and scope.

The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950 (Act) and apply to persons and vessels subject to the jurisdiction of the United States. The regulations implement resolutions of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of stocks of highly migratory fish resources in the Convention Area.

3. In § 300.21, the definition for "Convention Area" is revised and the definitions for "Commercial", "Vessel monitoring system (VMS)", and "VMS unit" are added, in alphabetical order, to read as follows:

§ 300.21 Definitions.

* * * * *

Commercial with respect to commercial fishing, means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce through sale, barter or trade.

* * * * *

Convention Area or IATTC Convention Area, means all waters of the eastern Pacific Ocean within the area bounded by the west coast of the Americas and by the following lines: the 50° N. parallel from the coast of North America to its intersection with the 150° W. meridian; the 150° W. meridian to its intersection with the 50° S. parallel; and the 50° S. parallel to its intersection with the coast of South America.

* * * * *

Vessel monitoring system (VMS) means an automated, remote system that provides information about a vessel's identity, location and activity, for the purposes of routine monitoring, control, surveillance and enforcement of area and time restrictions and other fishery management measures.

VMS unit, sometimes known as a "mobile transmitting unit," means a transceiver or communications device, including all hardware and software that is carried and operated on a vessel as part of a VMS.

4. In § 300.24, paragraphs (y) through (bb) are added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(y) Fail to install, activate, or operate a VMS unit as required in § 300.26(c).

(z) In the event of VMS unit failure or interruption; fail to repair or replace a VMS unit; fail to notify the Special-Agent-In-Charge, NOAA Office of Law Enforcement, Pacific Islands Division (or designee); and follow the instructions provided; or otherwise fail to act as provided in § 300.26(c)(4).

(aa) Disable, destroy, damage or operate improperly a VMS unit installed under § 300.26, or attempt to do any of the same,

or fail to ensure that its operation is not impeded or interfered with, as provided in § 300.26(e).

(bb) Fail to make a VMS unit installed under §300.26 or the position data obtained from it available for inspection, as provided in § 300.26 (f) and (g).

5. Section 300.26 is added to read as follows:

§ 300.26 Vessel monitoring system (VMS).

(a) *Special-Agent-In-Charge (SAC), NOAA Office of Law Enforcement, Pacific Islands Division (or designee) and VMS Helpdesk contact information and business hours:*

(1) The contact information for the SAC for the purpose of this section: 1845 Wasp Blvd., Building 176, Honolulu, HI 96818; telephone: (808) 725-6100; facsimile: 808-725-6199; e-mail: *pidvms@noaa.gov*; business hours: Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m., Hawaii Standard Time.

(2) The contact information for the NOAA Office of Law Enforcement's VMS Helpdesk is telephone: (888) 219-9228; e-mail: *ole.helpdesk@noaa.gov*. The business hours of the VMS Helpdesk are Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

(b) *Applicability.* This section applies to any U.S. commercial fishing vessel that is 24 meters or more in overall length and engaging in fishing activities for tuna or tuna-like species in the Convention Area, and for which either of the

following permits is required: Pacific highly migratory species permit under §660.707, or high seas fishing permit under §300.13 of this part.

(c) *Provisions for Installation, Activation and Operation –*

(1) *VMS Unit Installation.* The vessel owner or operator must obtain and have installed on the fishing vessel, in accordance with instructions provided by the SAC and the VMS unit manufacturer, a VMS unit that is type-approved by NOAA for fisheries in the IATTC Convention Area. The vessel owner or operator shall arrange for a NOAA-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NOAA. The vessel owner or operator shall authorize NOAA OLE, the U.S. Coast Guard (USCG) and other authorized entities to receive and relay position reports. The owner or operator must authorize NOAA to set up the reporting interval of the VMS unit as once per hour. The NOAA OLE VMS Helpdesk is available to provide instructions for VMS installation and a list of the current type-approved VMS units and mobile communication service providers.

(2) *VMS Unit Activation.* If the VMS unit has not yet been activated as described in this paragraph, or if the VMS unit has been newly installed or reinstalled, or if the mobile communications service provider has changed since the previous

activation, or if directed by the SAC, the vessel owner or operator must, prior to leaving port:

- (i) Turn on the VMS unit to make it operational;
- (ii) Submit a written activation report to the SAC, via mail, facsimile or e-mail, that includes the vessel's name; the vessel's official number; the VMS unit manufacturer and identification number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and
- (iii) Receive verbal or written confirmation from the SAC that the proper VMS unit transmissions are being received from the VMS unit.

(3) *VMS Unit Operation.* The vessel owner and operator shall continuously operate the VMS unit at all times, except that the VMS unit may be shut down while the vessel is in port or otherwise not at sea, or if, after the end of the fishing season, the vessel will no longer be engaging in fishing activities in the Convention Area for which either a Pacific highly migratory species permit or a high seas fishing permit is required, provided that the owner or operator:

- (i) Prior to shutting down the VMS unit, reports to the SAC or the NOAA Office of Law Enforcement's VMS Helpdesk via facsimile, e-mail, or web-form the following information: the intent to shut down the VMS unit; the vessel's name; the vessel's official number; an estimate for when the vessel's VMS

may be turned back on; and telephone, facsimile or e-mail contact information for the vessel owner or operator. In addition, the vessel owner or operator shall receive verbal or written confirmation from the SAC before shutting down the VMS unit after the end of the fishing season; and

(ii) When turning the VMS unit back on, report to the SAC or the NOAA Office of Law Enforcement's VMS Helpdesk, via mail, facsimile or e-mail, the following information: that the VMS unit has been turned on; the vessel's name; the vessel's official number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(iii) Prior to leaving port, receive verbal or written confirmation from the SAC that proper transmissions are being received from the VMS unit.

(4) *Failure of VMS unit.* If the VMS unit has become inoperable or transmission of automatic position reports from the VMS unit has been interrupted, or if notified by NOAA or the USCG that automatic position reports are not being received from the VMS unit or that an inspection of the VMS unit has revealed a problem with the performance of the VMS unit, the vessel owner or operator shall comply with the following requirements:

(i) If the vessel is at port: The vessel owner or operator shall repair or replace the VMS unit and ensure it is operable before the vessel leaves port.

(ii) If the vessel is at sea: The vessel owner, operator, or designee shall contact the SAC by telephone, facsimile, or e-mail at the earliest opportunity during the SAC's business hours and identify the caller and vessel. The vessel operator shall follow the instructions provided by the SAC which could include, but are not limited to, ceasing fishing, stowing fishing gear, returning to port, and/or submitting periodic position reports at specified intervals by other means; and repair or replace the VMS unit and ensure it is operable before starting the next trip.

(5) *Related VMS Requirements.* Installing, carrying and operating a VMS unit in compliance with the requirements in 50 CFR 300.219, 50 CFR 660.712, 50 CFR 660.14, or 50 CFR 665.19 relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of paragraph (c) of this section, provided that the VMS unit is operated continuously and at all times while the vessel is at sea, unless the SAC authorizes a VMS unit to be shut down as described in paragraph (c) (3), the VMS unit and mobile communications service providers are type-approved by NOAA for fisheries in IATTC Convention Area, the owner or operator has authorized NOAA to receive and relay transmissions from the VMS unit, and the specific requirements of paragraph (c) (4) of this section are followed. If the VMS unit is owned by NOAA, the requirement

under paragraph (c)(4) of this section to repair or replace the VMS unit will be the responsibility of NOAA, but the vessel owner and operator shall be responsible for ensuring that the VMS unit is operable before leaving port or starting the next trip.

(d) *Costs.* The vessel owner and operator shall be responsible for all costs associated with the purchase, installation and maintenance of the VMS unit and for all charges levied by the mobile communications service provider as necessary to ensure the transmission of automatic position reports to NOAA as required in paragraph (c) of this section. However, if NOAA is paying for the VMS-associated costs because the VMS unit is carried and operated under a requirement of 50 CFR 300.219, 50 CFR 660.712, or 50 CFR 665.19, the vessel owner and operator shall not be responsible to pay the costs.

(e) *Tampering.* The vessel owner and operator must ensure that the VMS unit is not tampered with, disabled, destroyed, damaged or maintained improperly, and that its operation is not impeded or interfered with.

(f) *Inspection.* The vessel owner and operator must make the VMS unit, including its antenna, connectors and antenna cable, available for inspection by authorized officers.

(g) *Access to data.* The vessel owner and operator must make the vessel's position data obtained from the VMS unit or other

means immediately and always available for inspection by NOAA personnel, USCG personnel, and authorized officers.

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