



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Part 300**

**[Docket No. 130722646-5874-03]**

**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:** Final rule.

**SUMMARY:** NMFS is issuing regulations under the Tuna Conventions Act to implement Resolution C-14-02 of the Inter-American Tropical Tuna Commission (IATTC) by establishing requirements for any U.S. commercial fishing vessel that is 24 meters (78.74 feet) or more in overall length engaging in fishing activities for either tuna or tuna-like species in the eastern Pacific Ocean. This rule is necessary to ensure full U.S. compliance with its international obligations under the IATTC Convention.

**DATES:** This rule is effective January 1, 2016.

**ADDRESSES:** Copies of supporting documents prepared for this final rule, including the Categorical Exclusion memo, Regulatory Impact Review, Final Regulatory Flexibility Analysis (FRFA), and other supporting documents, 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](mailto:RegionalAdministrator.WCRHMS@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Rachael Wadsworth, NMFS WCR, 562-980-4036.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 19, 2015, the National Marine Fisheries Service (NMFS) published a supplemental proposed rule in the **Federal Register** (80 FR 28572) to implement C-14-02, "Resolution (Amended) on the Establishment of a Vessel Monitoring System (VMS)." This Resolution was adopted by the Inter-American Tropical Tuna Convention (IATTC) at its 87th meeting in July 2014. The supplemental proposed rule revised a proposed rule (79 FR 7152) published on February 6, 2014 in the **Federal Register**.

The public comment period for the supplemental proposed rule was open until June 18, 2015, and NMFS accepted public comment at a hearing held at the NMFS West Coast Region (WCR)

Long Beach office on June 9, 2015. The public comment period for the original proposed rule was open until March 10, 2014, and NMFS accepted public comment at a hearing held at the NMFS WCR Long Beach office on February 28, 2014.

The final rule is implemented under the authority of the Tuna Conventions Act (16 U.S.C. 951 *et seq.*), which directs the Secretary of Commerce, after approval by the Secretary of State, to promulgate regulations as may be necessary to implement resolutions adopted by the IATTC. This authority has been delegated to NMFS.

The supplemental proposed rule contained additional background information, including information on the IATTC, the international obligations of the United States as an IATTC member, and the need for regulations. The differences between this final rule and the supplemental proposed rule are explained below.

### **New Regulations**

This final rule establishes requirements for any U.S. commercial fishing vessel that is 24 meters (78.74 feet) 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 50 CFR 660.707, or high seas fishing permit under 50 CFR 300.13. 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.

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. Or, by contacting NOAA OLE VMS Helpdesk: telephone: (888) 219-9228, ext. 2; e-mail: [ole.helpdesk@noaa.gov](mailto:ole.helpdesk@noaa.gov); or online by going to [http://www.nmfs.noaa.gov/ole/about/our\\_programs/vessel\\_monitoring.html](http://www.nmfs.noaa.gov/ole/about/our_programs/vessel_monitoring.html) (click "approved VMS units"). The business hours of the NOAA OLE VMS Helpdesk are: Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

Federal funds may be available to vessel owners or operators for reimbursement for type-approved VMS units. The VMS units must be installed by a VMS dealer approved by a type-approved VMS unit manufacturer. To qualify for reimbursement, the VMS unit must be purchased and installed before December 1, 2015, and reimbursement must be requested no later than December

15, 2015. The availability of reimbursement funds for the cost of purchasing a VMS unit is not guaranteed; the funds are available on a first-come, first-served basis. Information on the VMS Reimbursement Program is available online at:  
*<http://www.psmfc.org/program/vessel-monitoring-system-reimbursement-program-vms?pid=17>*.

Compliance with the existing VMS requirements at 50 CFR parts 300, 660, or 665 would satisfy these new requirements relating to the installation, carrying, and operation of VMS units, provided that (1) the VMS unit and mobile communications service provider are type-approved by NOAA for fisheries in the Convention Area, (2) the VMS unit is operated continuously at all times while the vessel is at sea, unless the Assistant Director, NOAA Office of Law Enforcement, Pacific Islands Division (or designee) (AD) authorizes a VMS unit to be shut down, and (3) the requirements for the case of VMS unit failure are followed.

This final rule also updates: (1) the definition of "Convention Area," and (2) the description of the purpose and scope of part 300, subpart C, § 300.20 of Title 50 of the Code of Federal Regulations (CFR).

#### **Public Comments and Responses**

NMFS received comments on both the original and supplemental proposed rules during the public comment periods.

For the original proposed rule, four persons participated in the public hearing, one of whom also submitted written comments. NMFS also received a written comment from a commenter that did not attend the public hearing. NMFS received one written comment in response to the supplemental proposed rule and no persons participated in the public hearing.

Five of the six commenters expressed concern about the burden of operating the VMS units while participating in fisheries for species other than tuna. These same commenters raised questions and provided suggestions regarding the flexibility of the VMS requirements as they apply to vessels that participate in other fisheries. One commenter indicated support for the VMS requirements for tuna fisheries as a worthwhile method to enhance monitoring. Summaries of the comments received for both the supplemental and original proposed rules and NMFS' responses appear below.

*Comment 1:* The proposed rule allows a condition for shutting down the VMS unit after the end of the fishing season, but this condition is too strict and could negatively impact vessels which participate in other fisheries. This could be easily addressed by requiring the VMS unit be turned on only when that vessel will be targeting tuna or tuna-like species.

*Response:* NMFS believes that allowing more VMS on and off flexibility would weaken the effectiveness of using VMS position

information to monitor the locations of vessels. Allowing VMS power-downs, aside from the in-port and after a fishing season exemptions provided in the rule, could also encourage non-compliance and compromise the integrity of the VMS. Lastly, additional fees are imposed on vessel owners and operators for shutting down VMS units as well as reactivating VMS units after they are shut down. For these reasons, NMFS believes that the benefits of requiring position reports everywhere at sea, aside from the exemptions provided in the rule, outweigh the burden.

*Comment 2:* The proposed rule would require that all vessels turn on VMS units when leaving port, regardless of whether a vessel plans to participate in tuna fisheries. There are a number of affected vessels that participate in fisheries other than tuna fisheries. Some of these vessels only opportunistically fish for tuna. For example, the coastal purse seine vessels that fish for tuna typically make infrequent trips (e.g., fewer than 3 trips a year) that are short in duration (e.g., fewer than 18 hours), and they do not fish for tuna in some years due to lack of availability in the U.S. exclusive economic zone, though they remain active in tuna fisheries.

*Response:* In addition to the rationale outlined in the response to Comment 1 above, the United States is obligated, as a member of the IATTC, to implement Resolution C-14-02, which calls for each IATTC Member to require that its commercial

fishing vessels harvesting tuna or tuna-like species be equipped with VMS. Therefore, VMS requirements in this final rule apply 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 50 CFR 660.707, or high seas fishing permit under 50 CFR 300.13.

Since the original proposed rule stage, NMFS revised the VMS requirements to reduce the burden on vessels by allowing an additional option for a vessel owner or operator to shut down a VMS unit. If a vessel owner or operator receives verbal or written authorization by the AD, the VMS unit may be shut down, if, after the end of the fishing season, the vessel will no longer engage in fishing activities in the Convention Area for which either a Pacific highly migratory species permit or a high seas fishing permit is required.

*Comment 3:* VMS requirements for other U.S. fisheries enable vessels to call in to declare the type of fishing trip, which creates a VMS requirement on a trip-by-trip basis. Providing additional flexibility to vessels for trips in which they do not pursue any of the species for which the IATTC has established conservation and management measures could reduce administrative

costs and the potential for unintended losses in fishing opportunity.

*Response:* NMFS does not agree that only requiring VMS operation when on specific trips for tuna or tuna-like species and providing declaration reports would provide an adequate monitoring system or reduce burden on vessel owners and operators. As described in responses to Comment 2, NMFS believes that allowing more VMS unit power-downs, aside from the in-port and after a fishing season exemptions as provided in the rule, could also encourage non-compliance and compromise the integrity of the VMS. In addition, there may be fees associated with shutting down and powering back on VMS units that could ultimately increase the cost burden on vessel owners and operators. Using a declaration system could also increase administrative burdens by increasing the number of activation and deactivation reports and approvals of requests from NOAA OLE.

NMFS notes that, since the original proposed rule, NOAA added an additional option for a vessel owner or operator to shut down a VMS unit. In this final rule, if a vessel owner or operator receives verbal or written authorization by the AD (or designee), the VMS unit may be shut down, if, after the end of the fishing season, the vessel will no longer engage in fishing activities in the Convention Area for which either a Pacific

highly migratory species permit or a high seas fishing permit is required.

For these reasons, NMFS believes that the benefits of requiring position reports everywhere at sea, aside from the exceptions provided in the rule, outweigh any associated burden.

*Comment 4:* The commenter asked for clarification as to whether VMS requirements apply to vessels that did not fish for tuna in the last year.

*Response:* Regardless of whether the vessel fished for tuna or tuna-like species in the Convention Area in a previous calendar year or fishing season, the VMS requirements of the rule apply to any vessel engaging in fishing activities for tuna or tuna-like species in the Convention Area, and for which either a Pacific highly migratory species permit or high seas fishing permit is required.

*Comment 5:* The commenter requested clarification as to the confidentiality of the information collected under the VMS rule and asked if it could be utilized for any purposes by: State law enforcement, state fishery managers (e.g., for fisheries managed by the State), or Federal fishery managers and enforcement (e.g., for investigations or management decisions in fisheries other than tuna).

*Response:* Information collected under the VMS requirements of this rule will be handled in accordance with the Trade

Secrets Act, 18 U.S.C. 1905, and NOAA Administrative Order 216-100 for confidential fisheries 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, U.S. Coast Guard (USCG) personnel, and authorized officers. If the vessel owner or operator is under investigation, or an enforcement action has been initiated for violation of federal or state marine natural resource laws, then the VMS data can be used by fishery officials for the purpose of verifying information related to the investigation and as evidence of the violation.

*Comment 6:* The commenter asked for further clarification as to how the data collection for VMS works and how often the VMS data is being collected and about NMFS' ability to detect the location of a vessel outside of the hourly ping rates. Another commenter suggested that because of recent judicial rulings NMFS would be required to increase the VMS reporting interval to more than once per hour.

*Response:* The VMS data (or position reports) will be transmitted to NOAA-approved mobile communications service providers, which will then securely relay the data to the NOAA OLE, the USCG, and other entities that are authorized to receive and relay position reports. The frequency of reporting intervals required by NMFS in a fishery depends on the defined need of the

monitoring program for that fishery. NMFS believes that an hourly reporting interval will be sufficient given the level of monitoring to be conducted under this rule. Generally, the vessel location is only transmitted to NOAA OLE with the position reports. However, during irregular events, such as loss of power to VMS units or if the vessel crosses a pre-set boundary line, the vessel location may also be transmitted to NOAA OLE.

No recent judicial rulings justify or require that NMFS increase the reporting interval of the VMS units covered by this final rule because of recent judicial rulings. If determined necessary for the needs of the monitoring program, NMFS could make a fleet-wide change to this reporting interval through the notice and comment rulemaking process. This rule sets up the reporting interval at once per hour, and maintains that rate for normal operations, and we will not change that default rate except through the notice and comment rulemaking process. However, NOAA maintains the ability to temporarily, and under special circumstances only, increase the reporting interval, to support active enforcement investigations of specific vessels. Under these circumstances NOAA would be responsible for the costs of the increased reporting interval.

*Comment 7:* The proposed rule states that a vessel cannot leave the port until receiving "verbal or written confirmation

from the AD that proper transmissions are being received from the VMS unit." The rule would not allow a vessel to turn the unit back on while away from port. For example, if a vessel is participating in a non-HMS, non-high seas fishery, and receives information that tuna or tuna-like species have appeared in catchable volume within the Convention Area, the vessel operator would have to return to port and receive written confirmation from the AD that the unit is transmitting. There is no guarantee that by the time the operator complies with the proposed rule's requirements, a catchable amount of fish will be within range. Neither the AD nor NOAA OLE's VMS Helpdesk are available 24-hours a day and are closed on weekends, thus it is likely a vessel operator will suffer economic harm as a result of the inability to turn on the VMS unit remotely. The commenter asked if there a system in place to generate the required confirmation during non-business hours.

*Response:* The referenced requirement applies in the case that the vessel owner and operator have chosen to shut down the VMS unit while at port or otherwise not at sea, or after the end of the fishing season. NMFS notes such power-up notifications from vessel owners or operators to the AD or the NOAA OLE's VMS Helpdesk may take place after office hours, although the AD acknowledgement of receipt will take place during business hours. The AD makes best efforts to minimize delays in its

responses to vessel owners or operators. NMFS recognizes that the office hours of the AD do not always coincide with fishing operations, but notes that the owner and operator of a fishing vessel need not wait until immediately prior to the port departure time to turn on the VMS unit and submit the on/off report to NOAA.

As described in responses to Comments 2 and 3, NMFS revised the VMS requirements since the original proposed rule stage, to allow an additional condition to authorize a vessel owner or operator to shut down a VMS unit. If a vessel owner or operator receives verbal or written authorization by the AD, the VMS unit may be shut down if, after the end of the fishing season, the vessel will no longer engage in fishing activities in the Convention Area for which either a Pacific highly migratory species permit or a high seas fishing permit is required.

*Comment 8:* The commenter asked NMFS to clarify if emails need to be sent to NOAA OLE from port every night before turning the VMS unit off. The commenter also asked if these messages could be sent from a smart phone, or if a telephone call would be sufficient as opposed to written request.

*Response:* Vessel owners or operators are required to notify the AD or the NOAA OLE's VMS Helpdesk via facsimile, email, or web-form prior to shut-down of VMS units. The notification need not be at night, and need not be "every night." Currently, voice

calls from telephones are not an authorized communication method to notify the AD when shutting down the VMS unit because a written record of the request is needed to facilitate enforcement and compliance. The type-approved VMS units required by this final rule are capable of two-way communication, which includes the ability to send emails. Notices to the AD or NOAA OLE's VMS Helpdesk can also be sent by any device that is capable of these forms of communication, such as a smart phone.

Vessel owners and operators should also be aware of fees charged by communication service providers to shut down VMS units and to reactivate the VMS units after they are powered off.

#### **Changes From the Supplemental Proposed Rule**

In § 300.26(c)(5) and (d), under the heading, "Vessel monitoring system (VMS)," the references to "50 CFR 300.219, 50 CFR 660.712, or 50 CFR 665.19" have been replaced by "part 300 of this title, part 660 of this title, or part 665" to clarify that future VMS requirements that may be added to any section in those three parts would also be deemed to satisfy the VMS requirements under this rule. Also in § 300.26, paragraph (d) has been clarified to say that NOAA may pay for the VMS-associated costs for VMS carried and operated under part 300 of this title, part 660 of this title, or part 665 of this title,

but only to the extent that the applicable regulations specify costs are the responsibility of NOAA.

In § 300.26, paragraph (c) (1) has been revised to clarify that "NOAA, the USCG, and other authorized entities are authorized to receive and relay transmissions from the VMS unit." This revision was intended to clarify that the vessel owner and operator do not need to provide additional authorization to NOAA, the USCG, and other authorized entities. In § 300.26, paragraph (d) has been revised for consistency with the previously described change in paragraph (c) (1). Therefore, the following language was removed from the paragraph: "...the owner or operator has authorized NOAA to receive and relay transmissions from the VMS unit...."

In § 300.26, paragraph (c) (1) was revised to clarify the that it is the responsibility of the vessel owner or operator to arrange for a NOAA-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NOAA at a default reporting interval of at least once per hour. Therefore, the following language was removed from the paragraph "...the owner and operator must authorize NOAA to set up the reporting interval of the VMS unit as once per hour...."

In § 300.26, paragraph (d) was revised to clarify that NOAA is responsible for the cost of any temporary increase in the

default reporting interval to support active enforcement investigations of specific vessels.

In addition, throughout § 300.26, several references to "the SAC, or Special-Agent-In-Charge" have been replaced by "the AD, or Assistant Director" to reflect a change in title. AD means the Assistant Director, NOAA Office of Law Enforcement, Pacific Islands Division (or designee).

In § 300.26, paragraph (a)(2) has been revised to add "ext. 2" after the phone number for the NOAA Office of Law Enforcement's VMS Helpdesk.

#### **Classification**

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act of 1950, as revised, and other applicable laws.

#### *National Environmental Policy Act*

This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NOAA Administrative Order (NAO) 216-6. A memorandum for the file has been prepared that sets forth the decision to use a categorical exclusion and a copy of is available from NMFS (see **ADDRESSES**).

#### *Executive Order 12866*

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

#### *Regulatory Flexibility Act*

A Final Regulatory Flexibility Analysis (FRFA) was prepared. A copy of this analysis is available from NMFS (see **ADDRESSES**). The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), and a summary of the analyses completed to support the action is included directly below.

The analysis provided in the IRFA is not repeated here in its entirety. The need for, the reasons why action by the agency is being considered, and the objectives of the action are explained in the supplementary information above, as well as the preambles to the proposed rule and supplemental proposed rule and are not repeated here. Each vessel that is expected to be affected is considered a small business according to the Small Business Administration's revised size standards (79 FR 33647, July 12, 2014). The action is not expected to have a significant or disproportional economic impact on these small business entities.

As discussed in the preamble, the provisions in the rule would apply 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 IATTC Convention Area, and for which either of the following permits is required: (1) Pacific highly migratory species permit under 50 CFR 660.707, or (2) high seas fishing permit under 50 CFR 300.13. To estimate affected entities, the number of vessels authorized to fish for

highly migratory species in the EPO through highly migratory species and high seas fishing permits was considered a reasonable proxy. As of August 2015, approximately 15 vessels did not have VMS units installed and would be subject to the regulations in the final rule. Gear types for U.S. West Coast commercial vessels that would be impacted include purse seine and hook-and-line (i.e., bait and troll/jig).

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA. Certain comments with socio-economic implications are addressed in the comment and response section of the preamble, specifically, the response to Comments 1, 2, and 3. As described in responses to Comments 2 and 3, NMFS revised the VMS requirements since the original proposed rule stage. The requirements lessen the burden on fishermen.

Because the action will not have any significant impacts to small entities, there was no need to include additional alternatives that would minimize any disproportionate adverse economic burdens on a substantial number of small entities while achieving the objectives of the action.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small

entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Region, and the guide will be sent to vessels that hold a Pacific highly migratory species permit and/or a high seas fishing permit for fisheries in the IATTC Convention Area. The guide and this final rule will be available upon request and on the West Coast Region Web site:

*[http://www.westcoast.fisheries.noaa.gov/fisheries/migratory\\_species/highly\\_migratory\\_species\\_rules\\_req.html](http://www.westcoast.fisheries.noaa.gov/fisheries/migratory_species/highly_migratory_species_rules_req.html)*.

*Paperwork Reduction Act Collections of Information*

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number (0648-0690). Public reporting burden for VMS is estimated as an average per individual response for each requirement. The estimated time for initial VMS unit installation is 4 hours. The estimated time to maintain or repair a VMS unit is 1 hour annually. The estimated response time for respondents to prepare and submit activation reports is estimated to be 5 minutes per report. The estimated response

time to prepare and submit each on/off report is also 5 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA\_Submission@omb.eop.gov*, or fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

All currently approved NOAA collections of information may be viewed at:

*[http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html)*.

## **List of Subjects**

### *15 CFR Part 902*

Reporting and recordkeeping requirements.

### *50 CFR Part 300*

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

Dated: September 30, 2015.

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Samuel D. Rauch III,

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

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 300 are amended as follows:

### **Title 15—Commerce and Foreign Trade**

#### **PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE**

#### **PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read

as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in the table in paragraph (b), under the entry "50 CFR", add an entry in alphanumeric order for "300.26" to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
*****	
50 CFR:	
*****	
300.26	-0690
*****	

**Title 50—Wildlife and Fisheries**

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart C—Eastern Pacific Tuna Fisheries**

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

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

4. 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.

5. In § 300.21, the definition for "Convention Area" is revised and 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.

6. 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).

7. Section 300.26 is added to subpart C to read as follows:

**§ 300.26 Vessel monitoring system (VMS).**

(a) *Assistant Director (AD), NOAA Office of Law Enforcement, Pacific Islands Division (or designee) and VMS Helpdesk contact information and business hours.* (1) The contact information for the AD 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, ext. 2; 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 AD 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 at a default reporting interval of at least once per hour. NOAA, the USCG, and other authorized entities are authorized to receive and relay transmissions from the VMS unit. 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 AD, 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 AD, 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 AD 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 AD 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 AD 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 AD 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 AD 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 AD by telephone, facsimile, or e-mail at the earliest opportunity during the AD's business hours

and identify the caller and vessel. The vessel operator shall follow the instructions provided by the AD 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 part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of this paragraph (c), provided that the VMS unit is operated continuously and at all times while the vessel is at sea, unless the AD authorizes a VMS unit to be shut down as described in paragraph (c)(3) of this section, the VMS unit and mobile communications service providers are type-approved by NOAA for fisheries in IATTC Convention Area, 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 part 300 of this title, part 660 of this title, or part 665 of this title, the vessel owner and operator shall not be responsible for costs that those regulations specify are the responsibility of NOAA. In addition, NOAA is responsible for the cost of any temporary increase in the default reporting interval to support active enforcement investigations of specific vessels.

(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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