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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200515-0141]

RIN 0648-BI45

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Vessel Movement, Monitoring, and Declaration Management for the Pacific Coast Groundfish Fishery

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

ACTION: Final rule.

SUMMARY: This rule revises reporting and monitoring provisions for vessels participating in the Pacific Coast groundfish fishery. This would: increase the position transmission rate for certain vessels using NMFS type-approved vessel monitoring system units; allow midwater trawl vessels participating in the Pacific whiting fishery to change their landing declarations while at sea; exempt groundfish trawl vessels from observer coverage while testing authorized fishing gear; and allow shorebased Individual Fishing Quota fixed gear vessels to deploy pot gear in one management area while retrieving gear from another management area on a single trip. This action will increase monitoring efficiency and effectiveness, improve enforcement of restricted areas, and increase operational flexibility for groundfish fishery participants.

DATES: Effective [*insert date 30 days after date of publication in the Federal Register*], except for the amendments to § 660.14, which are effective [insert date *90 days after date of publication in the Federal Register*].

ADDRESSES: Electronic copies of supporting documents referenced in this final rule, including the Categorical Exclusions (CE) and final regulatory flexibility analysis (FRFA), are available from *www.regulations.gov* or from the NMFS West Coast Region Groundfish Fisheries website at *https://www.fisheries.noaa.gov/species/west-coast-groundfish*.

FOR FURTHER INFORMATION CONTACT: Shannon Penna, Fishery Management Specialist, 562-980-4238, or *shannon.penna@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Between September 2014 and April 2016, the Pacific Fishery Management Council (Council) developed and considered management measures to address a range of vessel and gear movement issues and aggregated these issues under a single vessel movement monitoring agenda item. The Council deemed the proposed regulations consistent with and necessary to implement this action in a July 17, 2019, letter from Council Executive Director, Chuck Tracy, to Regional Administrator Barry Thom. Additional background information on each of the measures included in this final rule are included in the proposed rule, published on October 10, 2019 (84 FR 54579), and is not repeated here.

Summary of the Regulatory Changes

This section discusses regulatory revisions that are expected to increase NMFS' ability to enforce fishing activity in and around restricted areas, and result in cost savings, increased profitability, and flexibility for the groundfish fishery. This final rule:

- Increases the position transmission rate requirements for certain vessels using NOAA NMFS type-approved vessel monitoring system (VMS) units;
- Amends the definition for continuous transit;
- Allows midwater trawl vessels participating in the Pacific whiting fishery to change their landing declarations while at sea;
- Exempts groundfish trawl vessels from observer coverage while testing authorized fishing gear; and
- Allows shorebased Individual Fishing Quota (IFQ) fixed gear vessels to retrieve pot gear in one management area and deploy that gear in another management area on a single trip.

A. Increased Position Transmission Rate for Groundfish VMS

Vessels participating in the limited entry groundfish fishery (limited entry "A" endorsed permit), any vessels using non-groundfish trawl gear (ridgeback prawn, California halibut, and sea cucumber trawl) in the Exclusive Economic Zone (EEZ), and any vessels that use open access gear to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap), are required to install a NMFS Office of Law Enforcement (OLE) type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to fishing. These units automatically record a vessel's

position (*i.e.*, the vessel's geographic location in latitude and longitude coordinates), and transmit those coordinates to a communications service provider. The current regulations require that VMS units transmit a vessel's position once every hour, 24 hours a day throughout the fishing year. Less frequent position reporting, at least once every 4 hours, may be authorized when a vessel has temporarily paused participation in the fishery and remains in port for an extended period of time. The VMS units record vessel positions at a random time during each hour so that vessel operators are unaware of when the vessel position is being recorded.

The Council recommended increasing the vessel position frequency to increase NMFS' ability to enforce fishing activity around restricted areas. This action increases the position transmission rate to every 15 minutes per hour for groundfish vessels required to use NMFS type-approved VMS units. This increase in frequency will produce more course, location, and speed data to improve NMFS' ability to identify whether vessels are continuously transiting in restricted areas or not.

Increasing the VMS position transmission rate from once every hour to every 15 minutes will increase vessel operating costs. While vessels can choose from a variety of VMS service providers, the average monthly operating costs for transmissions every 15 minutes is $105 per month ($69 to $150 range) compared to an average of $50 per month ($37 to $65 range) for a single transmission per hour.

The final rule also adds two exemptions that will reduce redundant reporting and may provide cost savings to some portions of the fleet. For the first exemption, vessels that have installed and are using electronic monitoring (EM) systems for the duration of the fishing year can maintain the current position transmission rate of one transmission

per hour. EM systems include a Global Positioning System (GPS) that records the vessel position every 10 seconds. Because EM systems record vessel positions so frequently, it is not necessary to also increase the VMS position transmission rates. The GPS data are recorded to a hard drive, which the captain removes every 10 days and mails to the Pacific States Marine Fisheries Commission. For the second exemption, limited entry trawl vessels fishing with midwater trawl gear can maintain the current position transmission rate of one transmission per hour. Limited entry vessels are only allowed to use midwater trawl gear to target whiting or non-whiting groundfish species during the primary whiting season from May 15 to December 31 each year. These vessels are also limited to using midwater trawl gear seaward of the boundary line approximating the 150 fm (274 m) depth contour (defined at 50 CFR 660.73) south of 40° 10' North (N.) latitude (lat.), but can use midwater trawl gear anywhere within the EEZ north of 40° 10' N. lat. Because there are only very broad seasonal and area restrictions associated with midwater trawl gear, and because these vessels are not generally subject to smaller geographic areas restrictions such as essential fish habitat conservation areas (EFHCAs), the increased position transmission rate is not necessary for restricted area enforcement for vessels using midwater trawl gear. Limited entry vessel operators are allowed to change their transmission rates or VMS declaration reports on a trip-by-trip basis when necessary.

B. Continuous Transit Definition

This rule revises the current definition of "continuous transiting or transit through" to encompass a broader array of vessel activity that is akin to loitering within a restricted area, whether that be by means of a source of power or by drifting with the

prevailing water current or weather conditions. Under this revised definition, visual, electronic, or other evidence of vessel activity should provide information on vessel speed and course sufficient to indicate direct and expeditious transiting of a restricted area.

C. Exemption From Observer Coverage While Testing Gear

This final rule establishes a definition for gear testing. The definition states that gear testing is the deployment of lawful gear without retaining fish, for purposes, including, but not limited to: deployment of nets using open codends; calibration of engines and transmission under load (*i.e.*, towing a net with an open codend); deployment of wire and/or doors; testing new electronic equipment associated with deploying fishing gear; and testing and calibration of newly installed propulsion systems (*i.e.*, engine, transmission, shaft, propeller, etc.).

This final rule also exempts groundfish vessels participating in the shorebased IFQ, Mothership (MS), and Catcher-Processor (C/P) sectors from the requirement to carry an observer while testing gear. Vessels participating in these sectors are subject to a 100 percent observer requirement while conducting fishing activity. However, a vessel would not need an observer while testing gear because gear testing activity would specifically prohibit retaining fish. In addition to being prohibited from retaining fish while gear testing, vessels would be prohibited from testing experimental gear, testing with a closed codend, terminal gear, or with open pots, and from testing gear in groundfish conservation areas or EFHCAs.

This final rule adjusts the declaration requirements for testing gear. To be exempted from observer coverage while testing gear, vessels need to communicate with

both West Coast Groundfish Observer Program (WCGOP) and NMFS OLE. Vessels are required to notify WCGOP by phone or email, of the gear testing activity at least 48 hours prior to departing on a trip to test gear or equipment. This action also adds a VMS declaration code for "Gear testing." When a vessel operator calls the West Coast Groundfish Declaration Line to declare "Gear testing," the VMS technician will review the information submitted and determine if the vessel is eligible for this declaration. This measure will result in observer coverage cost savings on trips to test fishing gear or equipment.

D. Declaration Changes at Sea for Whiting Fishery

This final rule revises restrictions on midwater trawl catcher vessels participating in the Pacific whiting fishery to allow them to change declarations while at sea by calling the West Coast Groundfish Declaration Line. After a vessel offloads onto a mothership, it can immediately change its declaration from one of the "Pacific whiting mothership sector" declarations to one of the "Pacific whiting shorebased IFQ" declarations to make a tow and offload on shore, or vice versa. In the past, midwater catcher trawl vessels participating in the Pacific whiting fishery were restricted to landing either at a mothership or shoreside processor. After Pacific whiting catcher vessels have made their delivery obligation to a mothership, they were not allowed to make a tow for a delivery to a shoreside processor without returning to port first.

Allowing vessels to change their declarations at sea provides vessels the opportunity to optimize available resources before returning to port. As a result, vessels will spend less time at sea, and in transit to and from fishing ports, which will ultimately reduce the cost of fuel and crew.

E. Movement of IFQ Fishpot Gear Across Management Lines

The final rule allows shorebased IFQ fixed gear vessels retrieving pots from one management area to retain their catch on board and move to a second management area to deploy pots. These pots may be either baited or not baited. The vessel may then return to port to deliver their fish, then return to retrieve their pots from the second management area. Although the adjustment increases operational flexibility in deploying pots, vessels are still only permitted to retain and land fish from a single management area. This will ensure the integrity of data to support stock assessments and catch monitoring for a single management area. Overall, fishing vessels will spend less time at sea, which should reduce the cost of fishing.

F. Comments and Responses

NMFS received 13 comment letters during the comment period for the proposed rule. Commenters included Oceana, an environmental organization, the California Department of Fish and Wildlife, seven commercial fishermen, three fishing associations, and a private citizen. Only comments relevant to measures considered in the proposed rule are summarized and addressed below. Comments related to other fishery actions, general fishery management, or unrelated to fisheries are not addressed here. All public comment letters can be viewed along with the proposed rule and supporting documents for this action at *www.regulations.go*v.

Comment 1: Seven commercial fishermen and three fishing associations opposed increasing the VMS transmission rates from once-per-hour to four times per-hour because increasing the transmission rate will increase VMS operating costs.

Response: The Council recommended increasing the VMS transmission rate frequency to improve NMFS' capacity to enforce fishing activity around restricted areas. The analytic document and the preamble to the proposed rule discuss that the once-per-hour transmission rate is insufficient to prove that a vessel was not operating in continuous transit through a restricted area. The increased transmission frequency provides more course, location, and speed data to improve NMFS' ability to identify whether vessels are continuously transiting restricted areas or not.

In addition, NMFS recently revised the network of groundfish essential fish habitat (EFH) conservation areas, areas closed to either bottom trawling or bottom contact fishing gear, in Amendment 28 to the Pacific Coast Groundfish FMP (84 FR 63966; November 19, 2019). In April 2018, while the Council was developing Amendment 28, its Enforcement Committee evaluated the enforceability of proposed new and revised EFH conservation areas. The evaluation concluded that the once-per-hour transmission rate did not provide sufficient data to enforce 9 of the 46 areas recommended by the Council, noted that a four times-per-hour transmission rate greatly improved monitoring incursions, and recommended that NMFS expedite this action. NMFS estimates, based on the Enforcement Committee's prior evaluation, that three EFH conservation areas may continue to present enforcement challenges under the four times-per-hour transmission rate because of their narrow shape. Ultimately, the Council and NMFS determined that the conservation benefits from increasing our ability to enforce restricted areas justified the potential additional operating cost for fishery participants.

The Council did recommend an option to reduce the operating costs of increasing the VMS transmission rate. As an alternative, commercial fishermen would be allowed to

use a non type-approved VMS unit. These units would not be NMFS type-approved, but meet NMFS reporting standards (*e.g.*, type and frequency of data collected, form of transmittal, ruggedized, and an encrypted format) with a reduced operating cost. NMFS OLE and the West Coast Region identified a number of implementation challenges in creating a non type-approved VMS program for the only the West Coast Region, including lack of funding and staffing resources. Ultimately, the Council withdrew its recommendation to implement a non type-approved VMS unit, but maintained its recommendation to increase the ping rate.

NMFS remains committed to exploring cost-effective solutions to meet regional and national monitoring needs. For example, on February 24, 2020, NMFS published a proposed rule to amend the national type-approval requirements (85 FR 4257). In an effort to improve location reporting and get more data at a lower cost to the fishermen, this proposed rule will allow for fishermen to use cellular-based transceiver types, as opposed to satellite-only models.

As data is much less expensive to send by cellular means than by satellite, this action could provide a more cost-effective option to require and receive beneficial fisheries data. The Council would need to evaluate the use of cellular-based systems for monitoring groundfish fisheries to fully understand coverage limitations and determine whether this tool is appropriate for the fishery.

Comment 2: California Department of Fish and Wildlife (CDFW) requested clarification about the vessels subject to the groundfish VMS requirement. The CDFW commented that the description of the measures in the proposed rule implies that additional vessels or fleets, including salmon troll, prawn trap, Dungeness crab, halibut

longline, California halibut line gear, and sheephead trap, that were not previously subject to the requirement will now need to obtain and operate a VMS unit on trips. Two commercial fishermen questioned why the recreational fleet is not required to have VMS.

Response: This rule only modifies the frequency of VMS transmission rates, and does not modify the vessels or fleets that are subject to the VMS requirement. Currently, any vessel with a limited entry "A" endorsed permit, any vessel that uses non-groundfish trawl gear to fish in the EEZ, and any vessel that uses open access gear to take and retain, or possess groundfish, or land groundfish taken in the EEZ, is required to maintain an operational VMS unit. If vessels using open access gear do not take and retain, or possess groundfish, or land groundfish taken in the EEZ, then these vessels are not subject to the VMS requirement. All vessels and fleets that are currently subject to the VMS requirement are subject to the increased transmission rate. The Council did not consider including a VMS requirement for the recreational fishing fleet (including charter and private sectors) in this action.

Comment 3: Two commercial fishermen commented that VMS position transmission rates should be unpredictable so that vessels cannot deliberately evade location monitoring. They also commented that NMFS should work with service providers to develop store and forward capability for VMS software to reduce transmission costs.

Response: Vessels are required to use NMFS type-approved VMS units that have defined standards for basic features, described at 50 CFR 600.1500. These VMS units document a vessel's position a predetermined number of times per hour. For example, a four-times-per-hour requirement would result in positions documented every 15 minutes,

and a six-times-per-hour requirement would result in positions documented every 10 minutes. For enforcement effectiveness, vessel operators and NMFS enforcement are unaware of exactly when the VMS unit is transmitting these position signals to the service providers. For example, with a four-times-per-hour requirement, the unit may transmit a position signal during the second minute of the first 15-minute interval of the hour, and during the tenth minute of the second 15-minute interval of the hour. Because operators are unaware of when the VMS units are recording and transmitting position information, it is unlikely that vessel operators will be able to alter their vessel trajectory to conceal prohibited fishing activities.

The National VMS program does not currently permit satellite store and forward for type-approved VMS units. NMFS OLE considered allowing the use of limited store and forward position, but determined that because the magnitude of monthly operating costs is based on the amount of data being transmitted, rather than the frequency of transmission, the potential for cost savings with store and forward for satellite VMS units is insignificant to nonexistent.

Comment 4: Oceana and one unaffiliated private citizen supported the changes to the VMS transmission frequency. They commented that the increased transmission frequency is necessary to adequately monitor and enforce conservation areas in federally managed groundfish fisheries including groundfish conservation areas, rockfish conservation areas and EFH conservation areas.

Response: NMFS agrees. The final rule implements the Council's recommendation to increase the VMS transmission frequency to four-per-hour, which

will provide additional information on vessel location to more accurately monitor groundfish fisheries and conservation areas.

Comment 5: Oceana commented that NOAA should expand its use of enhanced electronic monitoring systems, including gear sensors that can indicate when fishing activity is occurring and GPS units that can make detailed and accurate records of vessel positions.

Response: NMFS encourages all fishery stakeholders, including the Fishery Management Councils, to consider implementing electronic technology (ET) options where appropriate to meet science, management, and data needs. NMFS released a national Policy on Electronic Technologies and Fishery-dependent Data Collection in 2013 to provide guidance on the implementation of ET solutions and in fisheries. An updated policy was released in May 2019. In 2015, NMFS implemented regional ET implementation plans informed by a series of national-level planning documents. These plans were created to help move beyond pilot projects by identifying, evaluating, and prioritizing implementation of promising electronic technologies in specific fisheries around the country. We are in the process of updating these plans, highlighting the lessons-learned from the last 4 years, and looking forward to 2024. The Pacific Council is scheduled to review a draft of the new ET plan at their June 2020 meeting. On the west coast, NMFS currently has an electronic monitoring program in place for two sectors of the groundfish fishery. Catcher vessels in the Pacific whiting fishery (shorebased Individual Fishing Quota (IFQ) and at-sea Mothership Catcher Vessels) are exempt from increasing their VMS transmissions to four times-per-hour while using EM. NMFS is also working to increase EM opportunities for the limited entry groundfish

trawl fishery (including midwater trawl gear and bottom trawl gear). These EM systems include gear sensors and GPS units that can indicate when and where fishing activity is occurring.

Comment 6: One commercial fisherman commented that, in a personal communication with one of the VMS service providers, the service provider stated that the most frequent transmission rate for VMS systems nationwide is twice-per-hour. The commenter requested that NMFS consider implementing a VMS position transmission frequency of two times-per-hour to be consistent with other fisheries in the U.S., and to help reduce VMS costs.

Response: NMFS agrees that several fisheries in other regions require fewer than four position transmissions per hour but notes that the required position transmission rate for each fishery depends on the location monitoring needs of the fishery. For this reason, there is no standard, nationwide position transmission rate. As described in the response to Comment 1, the Council and NMFS determined that a more frequent position transmission rate is necessary to monitor area incursions for the Pacific Coast groundfish fishery. In its deliberations for this action, the Council did consider implementing position transmission frequencies of two- and three-times per hour. However, these alternatives were rejected because these position transmission frequencies did not provide frequent enough information for enforcement to determine a vessel's course or fishing activity in small restricted areas.

Comment 7: The Ventura County Commercial Fishermen's Association, the San Diego Fishermen's Working Group, and a private citizen commented that the current once per hour ping rate has proved to be an effective deterrent to illegal fishing in EFH

Conservation Areas, Rockfish Conservation Areas, Marine Protected Areas and the multitude of other Reserves and Conservation Areas up and down the Pacific West Coast.

Response: VMS is a practical tool for monitoring vessel activity in relation to restricted areas. As described in the response to *Comment 1*, the new and revised closed areas implemented in Amendment 28 to the Pacific Coast Groundfish Fishery Management Plan require an increased VMS transmission rate to effectively monitor fishing activity. A VMS transmission rate of four-times-an-hour will improve monitoring to deter possible illegal fishing.

Comment 8: One commercial fisherman commented that NMFS should get location data from logbooks.

Response: Although logbooks require vessels to report coordinates for fishing activity, NMFS does not have the opportunity to review these coordinates until after the vessels have returned to port. VMS provides accurate information on the location of the vessel and can be used to identify where fishing activity takes place with a reasonable degree of accuracy while a trip is underway.

The VMS requirement also extends to a broader range of participants in the groundfish fishery than the logbook requirement. Currently, the groundfish trawl fleet is the only groundfish fleet required to submit a Federal logbook. Although trawl vessels are required to submit coordinates for each haul, the information provided in the logbooks only describes tow information, and does not include information about vessel trajectory. The VMS requirement for the groundfish fishery applies to vessels with a limited entry "A" endorsed permit, any vessel that uses non-groundfish trawl gear to fish in the EEZ, and any vessel that uses open access gear to take and retain, or possess

groundfish, or land groundfish taken in the EEZ. For these reasons, VMS is currently a more comprehensive tool to monitor vessel movement than logbooks.

Comment 9: The South Bay Cable/Fisheries Liaison Committee and Ventura County Commercial Fishermen's Association believes there are going to be major structural changes to southern California Rockfish Conservation Areas (RCA) and possibly even the elimination of the Cowcod Conservation Areas (CCA) in this next groundfish specifications cycle. The groups requested that the Council reconsider its support for and its recommendation to increase the ping rate for groundfish vessels, and others.

Response: The Council is not planning to consider major adjustments to the non-trawl RCA or CCA in the 2021-2022 specifications action. The Council has, however, indicated it intends to consider changes to these management areas in a future action. The Council can evaluate monitoring needs for the non-trawl portion of the groundfish fleet in conjunction with that action.

Comment 10: Three commercial fishermen commented that due to restrictions on turning off the VMS unit when not fishing, the increase to annual VMS operating costs will be too expensive. The commenters asked NMFS to consider allowing a reduction in transmissions when a vessel is in port.

Response: NMFS acknowledges that there are situations in which fishermen may need to be exempted from operating their VMS units. The existing regulations already include an in port exemption that allows vessels to reduce their signals to at least once every four hours while a vessel remains in port for an extended period of time. In addition, vessels operating with EM and vessels fishing in the limited entry midwater

trawl fishery are allowed to maintain at one signal per hour. Additional cost saving exemptions, such as the exemption recommended in the comment, would need to be considered through the Council process.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order (E.O.) 12866.

This final rule is considered an Executive Order 13771 deregulatory action. This final rule removes restrictions on catcher vessels to allow them to change their declarations while at sea. After a catcher vessel offloads onto a mothership, it can immediately change its declaration from the Pacific whiting mothership sector to Pacific whiting shorebased IFQ sector to make a tow and offload on shore, or vice versa. Removing this restriction creates additional flexibility for vessel operation and may increase revenues. This final rule eliminates the requirement for vessels participating in the shorebased IFQ Program and Mothership or Catcher-Processor cooperatives to carry an observer while testing fishing gear. Removing this restriction reduces operating costs while testing gear. Finally, the revised regulations allow pot gear (fixed gear) vessels retrieving gear from one management area to retain their catch on board and move to a second management area to deploy pots. The vessel may then return to port to deliver their fish, then return to retrieve their pots from the second management area.

This change increases operational flexibility, while ensuring the integrity of data to support stock assessments and catch monitoring for a single management area.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the Pacific Coast Groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

This final rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with section 4 of NOAA's Policies and Procedures for Compliance with the National Environmental Policy Act (NEPA) and Related Authorities (Companion Manual for NAO 216–6A). Per section 4B of the Manual, a categorical exclusion (CE) evaluation document has been prepared that evaluates the applicability of the CE.

NMFS prepared a final regulatory flexibility analysis (FRFA) under section 604 of the Regulatory Flexibility Act (RFA), which incorporates the initial regulatory flexibility analysis (IRFA) prepared during the proposed rule stage. A copy of the FRFA and CE memo are available from NMFS (see **ADDRESSES**), and, as per the requirements of 5 U.S.C. 604(a), the text of the FRFA follows.

Final Regulatory Flexibility Act Analysis

For any rule subject to notice and comment rulemaking, the RFA requires Federal agencies to prepare, and make available for public comment, both an initial and final

regulatory flexibility analysis, unless the agency can certify that the proposed and/or final rule would not have a significant economic impact on a substantial number of small entities. These analyses describe impact on small businesses, non-profit enterprises, local governments, and other small entities as defined by the RFA (5 U.S.C. 603). This analysis is to inform the agency and the public of the expected economic effects of the alternatives, and aid the agency in considering any significant regulatory alternatives that would accomplish the applicable objectives and minimized the economic impact on affected small entities. The RFA does not require that the alternative with the least cost or with the least adverse effect on small entities be chosen as the preferred alternative.

The need for and objective of this final rule is described above in the **Background** section of this preamble and not repeated here.

A Statement of the Significant Issues Raised by the Public Comments in Response to the IRFA

No public comments were received in response to the IRFA. We received a comment on the economic impact and a response is provided earlier in the preamble under comment 1.

The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy in Response to the Final Rule

No agency response was required, as no comments were received.

A Description and, Where Feasible, Estimate of the Number of Small Entities to Which the Final Rule Will Apply

The RFA (5 U.S.C. 601 et *seq.*) requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any

business/organization independently owned and operated, not dominant in its field of operation (including its affiliates).

For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is 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 $11 million for all its affiliated operations worldwide.

For the purposes of our Regulatory Flexibility Act (RFA) analysis, the final action is considered to regulate ownership entities that are potentially affected by the action. The U.S. Small Business Association (SBA) established criteria for business in the fishery sector to qualify as small entities. Limited entry groundfish vessels directly regulated by this action are required to renew a permit annually, and the application asks for entity size including affiliation. Of those who responded as being large entities, 15 permits owned by 9 large entities were attached to vessels that participated in bottom trawl or fixed gear groundfish fisheries in 2018 and are the most likely to be impacted by the rule.

Of the 856 vessels impacted by this rule, none had annual ex-vessel revenue on the West Coast (participation in other fisheries is not known) greater than the NMFS $11 million size standard. The top three revenue vessels, all in the IFQ fishery, had an average revenue of $1.9 million in 2018 in all West Coast fisheries. In contrast, the bottom 10 earning vessels had revenues in all West Coast fisheries of less than $1,000.

While the analysis relies on 2018 data, there have not been significant changes in the number of entities or relative small business size status of the fleet from 2018 to 2019.

Reporting and Record-Keeping Requirements

This action changes two information collection requirements.

NMFS Type-approved VMS Transmission Rate Increase

This action adjusts the position transmissions rate for certain vessels using NMFS type-approved vessel monitoring system units, including limited entry groundfish vessels, vessels using non-groundfish trawl gear in the EEZ (ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear targeting groundfish take and retain, possess groundfish or land groundfish taken in the EEZ in the EEZ (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap). Vessel owners are required to increase their position transmission rate from once- per- hour to four times- per hour. Vessels that are operating with electronic monitoring or in port for an extended period of time will be exempt from this increase and allowed to continue with a rate of four-times-per-hour.

Addition of a Declaration for Testing Fishing Gear

The final action adds a declaration for gear testing so vessels will be exempt from observer coverage while testing gear and restricted from harvesting fish, and allow Groundfish midwater trawl vessels participating in the Pacific whiting fishery (shorebased IFQ Sector and the MS Sector), to make a new declaration from sea and allowed to make a tow for a delivery to a shoreside processor without returning to port first. The numbers of declaration reports the vessel operator is required to submit to

NMFS would not change under this request. Therefore, no small entity would be subject to additional reporting requirements.

Federal Rules Which May Duplicate, Overlap, Or Conflict with this Proposed Rule

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Description of Significant Alternatives to This Final Rule That Minimize Economic Impact on Small Entities

NMFS considered sub alternatives to the proposed rule that may have minimized significant economic impact, but not meet stated objectives of applicable statutes. The Council briefly considered increasing the position transmission signal to every 30 minutes or every 20 minutes, but rejected those alternatives from further analysis because those position transmission signals may not be frequent enough to provide information to enforce small restricted areas, or provide enough information to calculate a vessel's course for enforcement of continuous transit requirements.

Small Entity Compliance Guide

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 final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rules, 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 Regional Office (see **ADDRESSES**), and the

guide will be included in a notice sent to all members of the groundfish email group. To sign-up for the groundfish email group, click on the "subscribe the the Groundfish Email Group" link on the following website: *https://www.fisheries.noaa.gov/species/west-coast-groundfish#commercial*. The guide and this final rule will also be available on the West Coast Region's website (see **ADDRESSES**) and upon request.

Paperwork Reduction Act (PRA) Recordkeeping and Reporting Requirements

This action contains changes to information collection requirements under OMB Control Number 0648-0573, West Coast Region Vessel Monitoring Requirement in the Pacific Coast Groundfish Fishery, described in this final rule, which have been submitted to the Office of Management and Budget (OMB).

The first change is to adjust the VMS signal transmissions for certain vessels using NMFS type-approved vessel monitoring system units, including limited entry groundfish vessels, vessels using non-groundfish trawl gear in the EEZ (ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear to take and retain, or possess groundfish in the EEZ or land groundfish taken in the EEZ (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap). A NMFS type-approved VMS mobile transceiver unit continuously provides the vessel's position throughout the fishing season. Vessel owners would be required to increase their transmission rates from once-per-hour to four-times-per-hour. Vessels that are operating with electronic monitoring or in port for an extended period of time, will be exempt from this increase and allowed to continue with a rate of one-time-per-hour. The proposed change will not affect the number of entities required to comply with this requirement.

The next change is to adjust notification requirements for groundfish trawl vessels testing gear. Vessels participating in the shorebased IFQ, MS, or C/P Sectors will be able to declare "gear/equipment testing" and receive an exemption from observer coverage. This action would not affect the number of entities required to comply with the declaration requirement. Therefore, the proposed change would not be expected to increase the time or cost burden associated with this requirement. Lastly, this action allows Pacific whiting catcher vessels to change their declarations at-sea. After vessels have met their delivery obligations, they can immediately change their declaration from "Pacific whiting motherships sector" to "Pacific whiting shorebased IFQ" to make a tow and offload on shore. This action would not be expected to change the time or cost burden or number of entities associated with this requirement.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: May 18, 2020.

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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, NOAA amends 50 CFR part 660 is as follows:

PART 660--FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.11, revise the definition of "Continuous transiting or transit through" and add the definition of "Gear testing" in alphabetical order to read as follows:

§ 660.11 General definitions.

* * * * *

Continuous transiting or transit through means that a vessel crosses a groundfish conservation area or EFHCA on a heading as nearly as practicable to a direct route, consistent with navigational safety, while maintaining expeditious headway throughout the transit without loitering or delay.

* * * * *

Gear testing means the deployment of lawful gear without retaining fish, for the following purposes, including, but not limited to: deployment of nets using open codends; calibration of engines and transmission under load (*i.e.*, towing a net with an open codend); deployment of wire and/or doors; testing new electronic equipment associated with deploying fishing gear; and testing and calibration of newly installed propulsion systems (*i.e.*, engine, transmission, shaft, propeller, etc.).

* * * * *

3. In § 660.13, revise paragraph (d)(1)(ii) and add paragraph (d)(4)(iv)(A)(*30*) to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(1) * * *

(ii) Limited entry midwater trawl vessels targeting Pacific whiting may change their declarations while at sea between the Pacific whiting shorebased IFQ sector and the mothership sector as specified at paragraph (d)(4)(iv)(A) of this section. The declaration must be made to NMFS before a different sector is fished.

* * * * *

(4) * * *

(iv) * * *

(A) * * *

(*30*) Gear testing.

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4. In § 660.14, revise paragraphs (d)(1), (d)(2) introductory text, and (d)(3), and (5) to read as follows:

§ 660.14 Vessel Monitoring System (VMS) requirements.

* * * * *

(d) *** * ***

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may obtain a copy of the VMS installation and operation instructions from the NMFS OLE West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115-6349, phone: 888-585-5518 or wcd.vms@noaa.gov.

* * * * *

(2) Activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a trip in which VMS is required, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS OLE West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115-6349, phone: 888-585-5518 or *wcd.vms@noaa.gov*. An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

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(3) Operate and maintain the mobile transceiver unit in good working order continuously, 24 hours a day throughout the fishing year, unless such vessel is exempted under paragraph (d)(4) of this section.

(i) *Position frequency.* The mobile transceiver unit must transmit a signal accurately indicating the vessel's position at least once every 15 minutes, 24 hours a day, throughout the year unless an exemption in paragraph (d)(3)(ii) of this section applies or a valid exemption report, as described in paragraph (d)(4) of this section, has been received by NMFS OLE. The signal indicating the vessel's position can consist of either: a single position report transmitted every 15 minutes; or a series of position reports, at no more than a 15 minute interval, combined and transmitted at least once every hour.

(ii) *Exemptions to position frequency requirement.* --(A) *Electronic monitoring exemption.* If a vessel has an electronic monitoring system installed and in use for the duration of a given fishing year, the mobile transceiver unit must transmit a signal at least once every hour.

(B) *Midwater trawl exemption.* If a limited entry trawl vessel is fishing with midwater trawl gear under declarations in paragraph (d)(4)(iv)(A) of this section, the mobile transceiver unit must transmit a signal at least once every hour.

(C) *In port exemption*. If a vessel remains in port for an extended period of time, the mobile transceiver unit must transmit a signal at least once every four hours. The mobile transceiver unit must remain in continuous operation at all times unless the vessel is exempt under paragraph (d)(4) of this section.

* * * * *

(5) When aware that transmission of automatic position reports has been interrupted, or when notified by NMFS OLE that automatic position reports are not being received, contact NMFS West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115-6349, phone: 888-585-5518 or *wcd.vms@noaa.gov* and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating to a location designated by NMFS OLE the vessel's position or returning to port until the VMS is operable.

* * * * *

5. In § 660.112, revise paragraph (a)(4) and add paragraphs (a)(7) and (b)(1)(xvii) to read as follows:

§ 660.112 Trawl fishery -- prohibitions.

* * * * *

(a) * * *

(4) *Observers.* (i) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program without observer coverage unless exempt from the observer coverage requirement

for gear testing activity and have satisfied the declaration and notification requirements, as described in § 660.140(h), § 660.150(j), or § 660.160(g).

(ii) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program if the vessel is inadequate or unsafe for observer deployment as described at § 660.12(e).

(iii) Fail to maintain observer coverage in port as specified at § 660.140(h)(1)(i).

* * * * *

(7) *Gear testing.* (i) Retain fish while gear testing.

(ii) Fish with a closed codend, use terminal gear (*i.e.*, hooks), or fish with open pot gear while gear testing.

(iii) Test gear in groundfish conservation areas described in § 660.70, or EFHCAs described in §§ 660.76 through 660.79.

(iv) Test experimental gear, or any other gear not currently approved for groundfish fishing.

* * * * *

(b) * * *

(1) * * *

(xvii) When declared into the limited entry groundfish non-trawl Shorebased IFQ fishery, retain fish caught with fixed gear in more than one IFQ management area, specified at § 660.140(c)(1), on the same trip.

* * * * *

6. In § 660.140, add paragraphs (c)(2) and (h)(1)(i)(A)(*5*) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(c) * * *

(2) *Moving pot or trap gear between multiple IFQ management areas.* A vessel using fixed gear declared into the limited entry groundfish non-trawl Shorebased IFQ fishery may deploy pot or trap gear in multiple IFQ management areas on a trip provided the vessel does not retrieve gear from more than one IFQ management area during a trip.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(A)* * *

(5) Is exempt from the requirement to maintain observer coverage as specified in this paragraph (h) while gear testing as defined in § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

7. In § 660.150, add paragraph (j)(1)(i)(C) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(j) * * *

(1) * * *

(i) * * *

(C) *Gear testing exemption.* Vessels are exempt from the requirement to maintain observer coverage as specified in this paragraph (j) while gear testing as defined at § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

8. In § 660.160, add paragraph (g)(1)(iv) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(g) * * *

(1) * * *

(iv) *Gear testing exemption.* Vessels exempt from the requirement to maintain observer coverage as specified in this paragraph (g) while gear testing as defined at § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

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