

**SUPPLEMENTARY INFORMATION:****Background**

The Interstate Commerce Commission (ICC) collected financial and operating statistics from regulated motor carriers from the 1930s until the end of 1995, when the ICC was abolished and data collection was transferred to DOT. (See 49 U.S.C. 11145 and implementing regulations at 49 CFR part 1420.) Following the transfer from the ICC, the Secretary delegated the functions and responsibilities to BTS (see 61 FR 68162). Recently, the Department conducted a comprehensive review of all major BTS programs and activities. One recommendation was that BTS should focus its resources on its core statistical programs. Based on the fact that this mandatory reporting program is regulatory in nature and requires the release of information concerning individually identifiable respondents, OST and BTS identified this program as a candidate re-delegation. Thus, based on the above, the Secretary has decided to change the Department delegations and transfer this reporting function to the FMCSA, in the belief that this program is more closely aligned with the FMCSA's safety mission and its other motor carrier responsibilities.

The Department publishes this rule as a final rule, effective on September 29, 2004, because these amendments relate to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b) and the Department finds good cause under 5 U.S.C. 5539d(3) for the final rule to be effective on September 29, 2004.

**Regulatory Analyses and Notices**

OST has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no costs associated with this rule. Because this rule will only apply to internal DOT operations, OST certifies that this rule will not have a significant economic impact on a substantial number of small entities. Moreover, any impact should be positive. OST also has determined that there are not sufficient federalism implications to warrant preparation of a federalism statement.

**Paperwork Reduction Act**

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

**Unfunded Mandates Reform Act of 1995**

OST has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

**List of Subjects in 49 CFR Part 1**

Authority delegations, Organizations and functions.

■ For the reasons set forth in the preamble, the Office of the Secretary amends 49 CFR Part 1 as follows:

**PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES**

■ 1. The authority citation for Part 1 continues to read as follows:

**Authority:** 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101-552, 104 Stat. 2736; Pub. L. 106-159, 113 Stat. 1748; Pub. L. 107-71, 115 Stat. 597, Pub.L.

**§ 1.71 [Amended]**

■ 2. In § 1.71, remove paragraph (b) and redesignate paragraph (c) as paragraph (b).

■ 3. In § 1.73, add paragraph (p) to read as follows:

**§ 1.73 Delegation to the Administrator of the Federal Motor Carrier Safety Administration.**

\* \* \* \* \*

(p) Carry out the functions vested in the Secretary by 49 U.S.C. 14123, relating to the collection and dissemination of information on motor carriers.

Issued in Washington, DC on this 20th day of August, 2004.

**Norman Y. Mineta,**  
*Secretary.*

[FR Doc. 04-18822 Filed 8-16-04; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 635**

[Docket No. 040504142-4142-01; I.D. 042204B]

**RIN 0648-AS07**

**Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring System (VMS) Requirement; Effective Date for Atlantic Shark Fisheries**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is establishing effective dates for the requirement to have a NOAA-approved VMS unit installed and operating on vessels with directed shark limited access permits (LAPs) and with gillnet or bottom longline gear on board. VMS will aid in the enforcement of time/area closures.

**DATES:** Final rule will become effective September 16, 2004.

**ADDRESSES:** To obtain copies of the list of NMFS-approved VMSmobile transmitting and communications service providers contact the National Marine Fisheries Service, Office for Law Enforcement (OLE):

•Mail: 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

For copies of Amendment 1 to the Fisheries Management Plan for Atlantic Tunas, Swordfish, and Sharks or its implementing regulations contact the National Marine Fisheries Service, Office of Sustainable Fisheries, Highly Migratory Species (HMS) Management Division (F/SF1):

•Mail: 1315 East-West Highway, Silver Spring, MD 20910

•Internet: <http://www.nmfs.noaa.gov/sfa/hms/>

•Phone: 301-713-2347

•Fax: 301-713-1917.

For information or comments regarding the collection of information requirements contained in this rule contact the HMS Management Division at the address noted above and the Office of Management and Budget (OMB):

•Email:

David\_Rostker@omb.eop.gov Fax: 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** For additional information regarding the effective dates specified in this document, contact Mike Clark, Chris Rilling, or Karyl Brewster-Geisz, phone 301-713-2347 or fax 301-713-1917.

For a current listing of NOAA-approved VMS units, contact Mark Oswell, phone 301-427-2300, fax 301-427-2055.

For questions regarding VMS installation and activation checklists, contact Jonathan Pinkerton, phone 301-427-2300, fax 301-427-2055.

An installation checklist, and relevant updates are available at the OLE website: <http://www.nmfs.noaa.gov/ole/vms.html>.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Fishery Management Plan for

Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and Amendment 1 to the HMS FMP are implemented by regulations at 50 CFR part 635.

On December 24, 2003, NMFS issued a final rule (68 FR 74746) requiring the installation of a NOAA-approved VMS unit on: (1) all commercial vessels issued a directed shark LAP with bottom longline gear on board that are located between 33° 00' and 36° 30' N. latitudes between January 1 and July 31 and (2) all commercial vessels issued a directed shark LAP with gillnet gear on board during the right whale calving season (November 15 - March 31), regardless of location. As specified in the final rule, the requirement to have VMS on board coincides with the start of time/area closures for the right whale calving season (effective as of November 15, 2004, for § 635.69(a)(3)) and the mid-Atlantic time/area closure (effective as of January 1, 2005, for § 635.69(a)(2)) for shark gillnet and bottom longline vessels, respectively.

The December 24, 2003, (68 FR 74746) VMS requirements were stayed pending the publication of a type-approval notice which was published in the **Federal Register** on April 15, 2004 (69 FR 19979). The type-approval notice describes the relevant features of each unit for use by vessels engaged in HMS fisheries. The units may be used by vessels participating in any HMS fishery including vessels with pelagic longline gear on board. This final rule does not revise any other requirement or management measure published in the December 24, 2003, final rule, but would establish the effective date for the VMS requirement as 30 days after publication of this final rule.

The proposed rule establishing the VMS effective dates published on May 18, 2004, (69 FR 28106). One comment was received and is summarized below.

#### Response to Comment

*Comment:* One written comment was received by an individual who believes that longlines and gillnets should be banned and that NMFS is allowing the commercial fishing industry to do whatever it desires, no matter how rapacious.

*Response:* While this comment does not specifically address the VMS requirement or effective dates, it is important to note that NMFS adheres to the Magnuson-Stevens Act, which requires among other things that the agency halt overfishing and rebuild overfished stocks, reduce bycatch, and identify and protect essential fish habitat. The purpose of this rule is to set effective dates for the use of VMS by directed shark vessels fishing in the

vicinity of time/area closures. VMS will assist enforcement officials in preventing fishing in these time/area closures. The time/area closures were created to reduce interactions with endangered species of marine mammals, and reduce mortality of reproductive and juvenile sandbar and prohibited dusky sharks in a identified Habitat Area of Particular Concern. Banning gillnets and longlines entirely would also conflict with National Standards 5 and 7 of the Magnuson-Stevens Act by preventing efficient utilization of the resource and causing excessive economic burdens to fishery participants.

#### Classification

This action is published under the authority of the Magnuson-Stevens Act. The Assistant Administrator for Fisheries previously determined that the implementation of a VMS program in the shark gillnet and bottom longline fisheries is necessary to monitor and enforce closed areas implemented to reduce bycatch.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. This rule would impact approximately 13 vessels, all of which are considered small entities. As required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the VMS requirement in draft Amendment 1 and its proposed rule (68 FR 45196, August 1, 2003) and prepared a Final Regulatory Flexibility Analysis (FRFA) for the final rule, (68 FR 74746, December 24, 2003). Economic impacts of the VMS requirement were addressed in those analyses. Establishing an effective date will not result in any further economic impacts. NMFS received no comments on the economic impact of this rule. As a result, a FRFA was not required and was not prepared.

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this final rule is not significant.

NMFS notified all states, consistent with the Coastal Zone Management Act, of the VMS requirement during the rulemaking for Amendment 1 of the HMS FMP. No states indicated that the VMS requirement is inconsistent with their coastal zone management programs. Thus, this final action is consistent to the maximum extent practicable with the enforceable policies of those Atlantic, Gulf of Mexico, and

Caribbean states and territories that have approved coastal zone management programs.

VMS are intended to aid in the enforcement of time/area closures and thereby reduce interactions with endangered, overfished, and prohibited species. The environmental impacts of the VMS requirement were analyzed during the development of Amendment 1 to the HMS FMP and the December 24, 2003 (68 FR 74746) final rule. Establishing an effective date for this requirement is not expected to increase endangered species or marine mammal interaction rates beyond those considered in the October 29, 2003, Biological Opinion on the continued operation of Atlantic shark fisheries under the FMP and Draft Amendment 1 to the HMS FMP issued by NMFS Office of Protected Resources. This final rule establishing the effective date on the VMS requirement refers to collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB under control number 0648-0483. The public's reporting burden for this collection of information is estimated at: 4 hours for the installation of a VMS, 5 minutes for the completion of a VMS certification statement, 2 hours per year for VMS maintenance, and < 1 second for an automated position report from a VMS.

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 requirements. Written comments regarding these burden estimates or any other aspect of these data collection requirements, including suggestions for reducing the burden must be sent to NMFS and OMB (see **ADDRESSES**).

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 requirement of the PRA unless that collection of information displays a currently valid OMB control number.

#### List of Subjects in 50 CFR Part 635

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

Dated: August 11, 2004.

**Rebecca Lent,**

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

For the reasons set forth in the preamble, 50 CFR part 635 is amended as follows:

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

■ 1. The authority citation for 50 CFR part 635 continues to read as follows:

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

■ 2. In § 635.69, paragraphs (a)(2) and (a)(3) are revised to read as follows:

**§ 635.69 Vessel monitoring systems.**

(a) \* \* \*

(2) As of January 1, 2005, whenever a vessel issued a directed shark LAP, is away from port with bottom longline gear on board, is located between 33°00' N. lat. and 36°30' N. lat., and the mid-Atlantic shark closed area is closed as specified in § 635.21(d)(1); or

(3) As of November 15, 2004, whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board during the right whale calving season specified in the Atlantic Large Whale Take Reduction Plan in § 229.32(f) of this title.

\* \* \* \* \*

[FR Doc. 04-18825 Filed 8-16-04; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 031216314-4118-03; I.D. 081104I]

**Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; End of the Pacific Whiting Primary Season for the Shore-based Sector and the Resumption of Trip Limits**

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

**ACTION:** Fishing restrictions; request for comments.

**SUMMARY:** NMFS announces the end of the 2004 primary season for the Pacific whiting (whiting) shore-based sector at 1600 local time (l.t.) August 14, 2004, because the allocation is projected to be reached. This action is intended to keep the harvest of whiting at the 2004 allocation levels.

**DATES:** Effective from 1600 l.t. August 14, 2004, until the effective date of the 2005-2006 specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**, unless modified, superseded or rescinded. Comments will be accepted through September 1, 2004.

**ADDRESSES:** You may submit comments, identified by 031216314-4118-03, by any of the following methods:

- E-mail:

*WhitingSBclosure.nwr@noaa.gov*

Include 031216314-4118-03 in the subject line of the message.

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

- Fax: 206-526-6736, Attn: Becky Renko.

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Becky Renko.

**FOR FURTHER INFORMATION CONTACT:**

Becky Renko at 206-526-6110.

**SUPPLEMENTARY INFORMATION:** This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California.

The 2004 non-tribal commercial optimum yield (OY) for whiting is 215,500 mt (this is calculated by deducting the 32,500 mt tribal allocation and 2,000 mt for research catch and bycatch in non-groundfish fisheries from the 250,000 mt total catch OY). Regulations at 50 CFR 660.323(a) divide the commercial whiting OY into separate allocations for the catcher-processor, mothership, and shore-based sectors. The catcher-processor sector is composed of vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shore-based sector is composed of vessels that harvest whiting for delivery to land-based processors. Each commercial sector receives a portion of the commercial OY. For 2004 the catcher-processors received 34 percent (73,270 mt), motherships received 24 percent (51,720 mt), and the shore-based sector received 42 percent (90,510 mt).

Regulations at 50 CFR 660.373(b) describe the primary season for each sector. The primary season for the shore-based sector is the period(s) when the large-scale target fishery is conducted, and when "per trip" limits

are not in effect. Before and after the primary season, per-trip limits are in effect for whiting.

The best available information on August 11, 2004, indicates that 79,399 mt had been taken through August 8, 2004, and that the 90,510-mt shore-based allocation would be reached by 1600 l.t. August 14, 2004. This **Federal Register** document announces that the primary season for the shore-based sector ends on August 14, 2004, and a 10,000-lb (4,536 kg) trip limit is imposed as of August 14, 2004. Per-trip limits are intended to accommodate small bait and fresh fish markets, and bycatch in other fisheries. To minimize incidental catch of chinook salmon by vessels fishing shoreward of the 100-fm (183-m) contour in the Eureka area, at any time during a fishing trip, a limit of 10,000 lb (4,536 kg) of whiting is in effect year-round, except when landings of whiting are prohibited.

**NMFS Action**

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(b), NMFS herein announces: Effective 1600 l.t. August 14, 2004, no more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed or landed by any vessel participating in the shore-based sector of the whiting fishery, unless otherwise announced in the **Federal Register**. If a vessel fishes shoreward of the 100 fm (183 m) contour in the Eureka area (43° - 40°30' N. lat.) at any time during a fishing trip, the 10,000-lb (4,536-kg) trip limit applies, as announced in the annual management measures at paragraph IV, B (3)(c)(ii), except when the whiting fishery is closed.

**Classification**

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The Assistant Administrator for fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because if this closure were delayed in order to provide notice and comment, the fishery would be expected to greatly exceed the sector allocation. This would either result in the entire whiting optimum yield being exceeded, or in the allocations for the other sectors being