

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 648**

[Docket No. 130402316-4656-01]

RIN 0648-BD02

**Vessel Monitoring Systems; Requirements for Enhanced Mobile Transceiver Unit and Mobile Communication Service Type-Approval**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS is proposing to codify type-approval standards, specifications, procedures, and responsibilities applicable to commercial Enhanced Mobile Transceiver Unit (EMTU) vendors and mobile communications service (MCS) providers seeking to obtain and maintain type-approval by NMFS for EMTU/MTU or MCS, collectively referred to as vessel monitoring system (VMS), products and services. This proposed rule is necessary to specify NMFS procedures for EMTU/MTU and MCS type-approval, type-approval renewal, and revocation; revise latency standards; and ensure compliance with type-approval standards.

**DATES:** Comments must be received by October 24, 2014.

**ADDRESSES:** You may submit comments on this proposed rule, identified by NOAA-NMFS-2014-0019, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0019](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0019), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Send written comments to Kelly Spalding, 1315 East West Highway, Room 3301, Silver Spring, MD 20910

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g.; name, address, etc.), confidential business information, or

otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Draft Initial Regulatory Impact Review, Initial Regulatory Flexibility Analysis (IRFA), and other related documents are available by contacting the individuals listed below in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Kelly Spalding, Vessel Monitoring System Management Analyst, 301-427-8269; or Eric Teeters, Fishery Regulations Specialist, 301-427-8580.

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

Fishers must comply with applicable Federal fishery VMS regulations, and in doing so, may select from a variety of EMTU/MCS vendors who have been approved to participate in the VMS program for specific fisheries. Fishers may be cited for violations of the VMS regulations and held accountable for monitoring anomalies not attributable to faults in the EMTU or MCS. EMTUs and MCS must continue to meet the standards for type-approval throughout the service life of the VMS unit. Therefore, type-approval, periodic type-approval renewal, and procedures for revocation of type-approval are essential to establish and maintain uniformly high VMS system integrity and ensure fishers have access to VMS that meet their needs. Regional Fishery Management Councils and NMFS have established VMS programs to support NMFS regulations requiring the use of VMS that typically are designed to manage fisheries resources and protect marine species and ecologically sensitive areas. VMS is also required on U.S. vessels fishing outside the U.S. EEZ pursuant to conservation and management measures adopted by international Regional Fishery Management Organizations to which the United States is a party.

The NMFS Office of Law Enforcement (OLE) maintains VMS specification requirements. Currently, vessels participating in the VMS program must acquire a NMFS type-approved EMTU that operates pursuant to specific standards set forth in NMFS Policy Directive 06-102. The EMTU allows NMFS OLE to determine the geographic position of the vessel at specified intervals or during specific events, via

mobile communications services between NMFS OLE and the vessel using a NMFS-approved mobile communications service provider (MCSP). These communications are secure and the information is only made available to authorized personnel. In some regions, the use of Mobile Transmitter Units (MTUs) is allowed if the MTU was already installed on vessels when EMTUs were required. MTUs pre-date EMTUs, and, unlike EMTUs, are not capable of supporting two-way communications. No new installations of MTUs are allowed and no additional MTUs will be type-approved. However, the proposed rule would continue to allow use of previously type-approved MTUs for a period of time as set forth in proposed 50 CFR 600.1512 and 600.1513 (approval period and renewal). For an MTU type-approval renewal, 50 CFR 600.1513 provides that the MTU must, among other things, meet requirements applicable when the MTU was originally type-approved. To the extent that this rule lessens or relaxes a prior specification, e.g., latency requirements, previously type-approved MTUs will be held to the new, lesser standard.

To date, NMFS has announced the National VMS type-approval standards by several notices in the **Federal Register** (59 FR 15180, March 31, 1994; 70 FR 61941, October 27, 2005; 71 FR 3053, January 19, 2006; 73 FR 5813, January 31, 2008). NMFS first announced standards for the use of satellite-based VMS via a 1994 notice in the **Federal Register** (1994 VMS Type-Approval Standards; 59 FR 15180, March 31, 1994). NMFS published these standards for any VMS transceiver unit that meets the VMS requirements implemented through amendments to various regional fishery management plans. NMFS published the 1994 VMS Type-Approval Standards as a statement of policy or practice. The 1994 VMS Type-Approval Standards established a process for approval of VMS units by NMFS for fisheries which require use of VMS. These initial VMS Type-Approval Standards have been revised on multiple occasions.

In 2006 and 2008, NMFS revised its VMS Type-Approval Standards through a two-step process. In 2006, NMFS published a notice in the **Federal Register** to announce the standards for type-approvals of VMS MCSP (71 FR 3053, January 19, 2006). In 2008, NMFS published a notice in the **Federal Register** to announce the standards for type-approvals of VMS units (EMTU/MTUs) installed on vessels (73 FR 5813, January 31, 2008). Each notice stated that it superseded all previous notices

on type-approval requirements for VMS MCSP, or VMS units, respectively. The notices also stated the VMS MCS and EMTU/MTU must meet the minimal national VMS standards, as required by the notices, and the requirements of the specific fisheries for which approval is sought. In the notices, NMFS set out the process for the initiation of type-approval. Under that process, upon testing and approval by NMFS OLE Headquarters, a type-approval is officially issued to the applicant-vendor.

The notices also expressly stated that if the EMTU/MTU or MCS were changed in such a way it no longer satisfied the type-approval standards set forth in the notices, NMFS reserved the right to reconsider and revoke individual type-approvals for MCS or EMTU/MTUs installed on vessels. To date, the process for revoking individual type-approvals has not been codified into regulations. By codifying type-approval standards and setting forth type-approval renewal and revocation processes (see 50 CFR 600.1513 (renewal) and 50 CFR 600.1514 through 600.1515 (revocation and appeals)), this proposed rule would improve enforceability of VMS type-approval standards and requirements. If NMFS were to revoke type-approval for an EMTU/MTU or MCS, this proposed rule (see 50 CFR 600.1516) would also ensure affected fishers would be notified of the revocation.

An initial review of Federal rules indicated that there was the potential that this proposed rule would overlap with the NMFS Greater Atlantic Region's VMS vendor and unit requirements at 50 CFR 648.9. Currently, in the NMFS Greater Atlantic Region, the Regional Administrator has the authority and established procedures to issue type-approvals for that region. To eliminate this potential conflict in Federal regulations, this proposed rule would revise the regulations at 50 CFR 648.9 so that the NMFS OLE Director would issue type-approvals for all NMFS regions, including the Greater Atlantic Region. Revising these regulations eliminates the possibility of duplicating, overlapping, or conflicting with other codified Federal regulations.

#### **Purpose of This Proposed Rule**

The purpose of this proposed rule is to codify the VMS type-approval process and standards, improve enforceability of the type-approval standards, and better ensure all type-approved EMTU/MTUs and MCS remain in compliance with NMFS VMS type-approval standards.

#### **Overview of the Proposed Rule**

As explained in detail below, NMFS is proposing procedures and requirements for initial type-approvals for EMTUs, MCS, or EMTU/MTU ("bundle") (valid for 3 years); renewals of type-approvals; revocations of type-approvals; and appeals. NMFS OLE currently publishes in the **Federal Register** notices of type-approved EMTUs/MTUs, MCS, and bundles, and will continue to maintain and post the type-approved list on its Web site at: [http://www.nmfs.noaa.gov/ole/about/our\\_programs/vessel\\_monitoring.html](http://www.nmfs.noaa.gov/ole/about/our_programs/vessel_monitoring.html) and, upon request, provide the list to the Regional Fishery Management Council(s) and members of the public.

NMFS will not issue new type-approvals for MTUs, only for EMTUs. However, as set forth in proposed 50 CFR 600.1512, all MTUs, EMTUs, MCSs, and bundles with valid type-approvals on the effective date of this rule will continue to be type-approved. If a type-approval date is more than 3 years old, the type-approval would expire 30 days after publication of this rule, as finalized.

NMFS is also proposing substantive requirements for EMTUs and MCS in 50 CFR 600.1502 through 600.1509. Failure to meet these requirements or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU or MCS is type-approved would trigger a Notification Letter and potential revocation procedures. For initial type-approvals and renewals, the type-approval requestor (or holder, in the case of a renewal) would be required, among other things, to certify that the EMTU, MCS, or bundle complies with each requirement set out in 50 CFR 600.1502 through 600.1509, and applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which type-approval/renewal is sought. Definitions and acronyms used in this rule are proposed in 50 CFR 600.1500.

Application for Initial Type-Approval (50 CFR 600.1501)

Under proposed 50 CFR 600.1501, a requestor must make a written request for type-approval of an EMTU, MSC or bundle, and send electronic copies of supporting material to the NMFS OLE.

As part of its application, the requestor would be required to provide to NMFS OLE two EMTUs, with activated MCS, loaded with forms and software for each NMFS region or Federal fishery for which the application is made, for a minimum of 90 calendar days for testing and evaluation. Two EMTUs, MSCPs, or

bundles are needed for testing in each NMFS region or Federal fishery in order to quickly conduct in-office and field trials simultaneously. The requestor would be responsible for all associated costs of the EMTU and MCS (§ 600.1501(b)(3)(vi)).

In addition, proposed 50 CFR 600.1501 provides that the requestor must, as part of its application, provide information and documentation regarding the EMTU and MCS. The requestor would be required to provide the following information regarding the EMTU: Communication class, manufacturer, brand name, model name, model number, software version and date, firmware version number and date, hardware version number and date, antenna type, antenna model number and date, tablet, monitor, or terminal model number and date, MCS to be used in conjunction with the EMTU, entity providing MCS to the end user, and current satellite coverage of the MSC. The requestor would be required to provide third party entity information for business entities authorized to: Provide bench configuration for the EMTU; distribute/sell the EMTU to end users; install the EMTU onboard vessels; offer a limited warranty; offer a maintenance service agreement; repair or install new software on the EMTU; train end-users; advertise the EMTU; and provide other customer services. The required third party entity information includes business name and contact information, specific services provided and geographic region covered. In addition, the requestor would be required to identify the NMFS region(s) or Federal fisheries for which the requestor is seeking type-approval; include copies of or citation to applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries that require use of VMS; certify that the features, components, configuration, and services of the requestor's EMTU, MCS, or bundle comply with each requirement set out in 50 CFR 600.1502 through 600.1509 and the VMS regulations and requirements for each NMFS region or Federal fishery for which the application is made; and certify that, if the request is approved, the requestor agrees to be responsible for ensuring compliance with each requirement set out in 50 CFR 600.1502 through 600.1509 and the VMS regulations and requirements for each NMFS region or Federal fishery for which the application is made over the course of the type-approval period. Lastly, the application must include thorough documentation, including EMTU fact

sheets, installation guides, user manuals, any necessary interfacing software, satellite coverage, performance specifications, and technical support information.

A requestor seeking type-approval of an EMTU within a particular communications class, as opposed to type-approval for use with one particular MCS, must certify that the EMTU meets requirements under this subpart when using at least one qualified MCSP within the same communications class.

NMFS OLE would review the submissions and evaluate them based on the VMS type-approval standards, and may perform field tests and at-sea trials. For these tests and trials, NMFS OLE would either coordinate test conditions with volunteer or contracted fishing vessels, or contract a third-party to accomplish this task. The tests may involve demonstrating every aspect of EMTU and communications operation, including installation of a registered EMTU, location tracking, messaging, and maintenance procedures. Most initial type-approval decisions are anticipated to be made within approximately 3–6 months of submission of a type-approval request.

No sooner than 90 days after receipt of a complete type-approval request, NMFS OLE will notify the requestor if a request is approved or partially approved as provided in proposed 50 CFR 600.1510, or disapproved or partially disapproved as provided in § 600.1501(d). If NMFS approves or partially approves the type-approval(s), the NMFS OLE Director would issue a type-approval letter. As applicable, the letter would indicate the specific EMTU model, MCS, or bundle that is approved for use, the MCS or class of MCSs permitted for use with the type-approved EMTU, and the regions or fisheries in which the EMTU, MCS, or bundle is approved for use. NMFS would also publish a notice in the **Federal Register** documenting the type-approval and the dates for which it is effective.

If NMFS disapproves or partially disapproves the type-approval(s), NMFS OLE will send a letter to the requestor that explains the reason for the disapproval/partial disapproval. To have the request re-examined, within 21 days of the date of the NMFS OLE letter, the requestor may respond to NMFS OLE in writing with additional information to address the reasons for disapproval identified in the NMFS OLE letter.

If any additional information is submitted, and after reviewing such information, NMFS OLE may approve,

partially approve, or continue to disapprove or partially disapprove the request. In the latter case, the NMFS OLE Director will send a letter to the requestor that explains the reasons for the disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

#### **Communications Functionality (50 CFR 600.1502)**

Proposed 50 CFR 600.1502 provides that an EMTU must be able to transmit automatically-generated Global Positioning System (GPS) position reports, provide visible or audible alarms onboard the vessel to indicate malfunctioning of the EMTU, be able to disable non-essential alarms in non-Global Maritime Distress and Safety System (GMDSS) installations, be able to send communications that function uniformly throughout the geographic area(s) covered by the type-approval, have two-way communications between authorized entities and the EMTU via MCS, have the capacity to send and receive electronic forms and Internet email messages, meet the latency requirement proposed at § 600.1504 (described below), and have messaging and communications that are completely compatible with NMFS vessel monitoring software. Messages and communications from an EMTU would be required to be parsed out for separate billing when necessary. In addition, the costs associated with position reporting and the costs associated with other communications (for example, personal email or communications/reports to non-NMFS OLE entities) would be required to be parsed out and billed to separate parties, as appropriate.

#### **Position Report Data Formats and Transmission (50 CFR 600.1503)**

Pursuant to 50 CFR 600.1503, an EMTU, MCS, or bundle would be required to comply with the following requirements in addition to providing position information as required by the applicable VMS regulations and requirements in effect for each fishery or region for which the type-approval applies. An EMTU must be able to transmit automatically generated position reports, for vessels managed individually or grouped by fleet, that meet the latency requirement (proposed § 600.1504, described below). When an EMTU is powered up, it must automatically re-establish its position reporting function without manual intervention. Position reports must contain unique identification of an EMTU within the communications

class; date (year/month/day with century in the year) and time stamp (GMT) of the position fix; position fixed latitude and longitude, including the hemisphere of each, where the position fix precision must be to the decimal minute hundredths and accuracy of the reported position must be within 100 meters, unless otherwise indicated by an existing regulation or VMS requirement.

An EMTU would be required to have the ability to store 1,000 position fixes in local, non-volatile memory, allow for defining variable reporting intervals between 5 minutes and 24 hours, and allow for changes in reporting intervals remotely and only by authorized users. An EMTU would also be required to generate specially identified position reports upon antenna disconnection, loss of positioning reference signals, loss of the mobile communications signals, security events, power-up, power down, and other status data, the vessel crossing a pre-defined geographic boundary, and upon a request for EMTU status information such as configuration of programming and reporting intervals.

#### **Latency Requirement (50 CFR 600.1504)**

All of the previously published VMS type-approval specification notices (59 FR 15180, March 31, 1994; 70 FR 61941, October 27, 2005; 71 FR 3053, January 19, 2006; 73 FR 5813, January 31, 2008) included a reporting latency standard for type-approved EMTU/MTUs. NMFS OLE special agents and the U.S. Coast Guard (USCG) have indicated that near-real-time data transmissions are necessary to effectively enforce Federal fisheries laws and regulations. Near-real-time awareness of the location of vessels is essential to at-sea enforcement efforts, and the use of enforcement resources, in the event a vessel crosses into a closed area or other protected or ecologically sensitive area. NMFS and the USCG must ensure optimal and cost-effective dispatch of enforcement assets for at-sea interception, landing inspections, follow-up inspections, and active investigations of already-suspect vessels.

NMFS OLE, states (through Joint Enforcement Agreements), and the USCG all use VMS for indication and substantiation for dispatching their assets. VMS-reporting delays result in less efficient use of funds, personnel, and other assets. NMFS OLE, states, and the USCG use near real-time VMS data on a daily basis to enhance law enforcement capabilities.

Delayed data delivery is detrimental to fishers as well. Fishers may be delayed in starting a fishing trip if they

are required to deliver notice to NMFS OLE via VMS before leaving the dock and delivery is delayed due to a latency issue with that delivery, or days-at-sea may be miscalculated due to the delayed reporting of Demarcation-Line crossings. The delayed position reporting may cast doubt on documentation regarding when a vessel reported the required information via their VMS, leading to administrative or legal implications.

Delayed data delivery may also allow illegal or non-compliant vessel activity to go undetected, which impedes the VMS program's utility in the enforcement of fishery regulations.

Finally, in order for VMS data to carry its proper weight as admissible evidence, the national VMS program must be reliable in its entirety. Long latency periods draw into question the reliability of VMS data altogether.

For these reasons, NMFS has determined it is essential for all VMS data to continue to be delivered by type-approved EMTU/MTUs in near-real-time. The reporting latency requirements published in the **Federal Register** notices listed above stated that NMFS must receive no less than 97 percent of all messages within 15 minutes or less of the EMTU/MTU timestamp, for 10 out of 11 consecutive days (24-hour time periods). Based on the NMFS OLE having reviewed several years of reports and input from NMFS OLE special agents and the USCG, NMFS believes that the requirements can be lowered slightly and still maintain the integrity of performance of the VMS program for providing near real-time data transmission. In light of these findings, NMFS proposes to revise this latency requirement to require that 90 percent of all pre-programmed or requested (e.g. manual poll request) GPS position reports during each 24-hour period must reach NMFS within 15 minutes or less of the EMTU/MTU timestamp, for 10 out of 11 consecutive days (24-hour time periods). This new latency requirement is less burdensome for all current type-approval holders. NMFS also considered whether the latency requirement could be reduced further to require that 50 percent of the above-described reports must reach NMFS within 15 minutes, for 10 out of 11 consecutive days. A 50 percent standard, however, does not achieve the objective of providing near real-time VMS data on a daily basis. Further considerations and alternatives for this revised latency requirement are discussed in the Classification section below.

As explained in 50 CFR 600.1504, NMFS will continually examine these

position reports by region and by type-approval holder. NMFS will select the exact dates to be used for calculation of latency, but will not use days in which isolated and documented system outages occur.

#### **Messaging (50 CFR 600.1505)**

An EMTU would be required to provide for the capabilities specified in 50 CFR 600.1505. These capabilities include a minimum supported message length; minimum message history for inbox, outbox and sent message displays; confirmation of delivery and notification or failed delivery; and an "address book," "reply" and review capabilities.

#### **Electronic Forms (50 CFR 600.1506)**

Pursuant to proposed 50 CFR 600.1506, an EMTU, and its forms software must support a minimum of 20 Electronic Forms and meet the following requirements. Section 600.1506(a)(1) requires that each field on a form must be capable of being validated (defined) as Optional, Mandatory, or Logic Driven and sets forth explanations of those terms. In addition, a user must be able to select forms from a menu on the EMTU, populate a form based on the last values used, and modify or update a prior submission without unnecessary re-entry of data. A user must be able to review a minimum of 20 past form submissions and ascertain for each form when the form was transmitted and whether delivery was successfully sent to the type-approval holder's VMS data processing center. In the case of a transmission failure, a user must be provided with details of the cause and have the opportunity to retry the form submission.

Section 600.1506(a)(4) would require that each form be capable of providing a position report with VMS position data, including latitude, longitude, date and time. Data to populate these fields must be automatically generated by the EMTU and be incapable of being manually entered or altered. Delivery of form data to NMFS must employ the same transport security and reliability as VMS position reports (§ 600.1506(a)(5)). The SMPT protocol is not permitted for the transmission of data that is delivered to NMFS. The field coding within the data must follow either CSV or XML formatting rules. For CSV format the form must contain an identifier and the version number, and then the fields in the order defined on the form. In the CSV format strings that may contain "," (comma) characters must be quoted. XML representations must use the field label to define the

XML element that contains each field value.

Section 600.1506(b) states that the EMTU and MCS must be capable of providing updates to forms or adding new form requirements via wireless transmission and without manual installation. From time to time, NMFS may provide type-approval holders with requirements for new forms or modifications to existing forms. NMFS would also provide notice of forms and form changes through the NMFS Work Order System. Type-approval holders would be given at least 60 calendar days to complete their implementation of new or changed forms. Type-approval holders would be capable of, and responsible for, translating the requirements into their EMTU-specific forms definitions and wirelessly transmitting the same to all EMTU terminals supplied to fishing vessels.

#### **Communications Security (50 CFR 600.1507)**

Section 600.1507 provides that communications between an EMTU and MCS must be secure from tampering or interception, including the reading of passwords and data. The EMTU and MCS would be required to have mechanisms to prevent, to the extent possible: Sniffing and/or interception during transmission from the EMTU to MCS and spoofing (see proposed definitions at 50 CFR 600.1500); false position reports sent from an EMTU; modification of EMTU identification; interference with GMDSS or other safety/distress functions; introduction of malware, spyware, keyloggers, or other software that may corrupt, disturb, or disrupt messages, transmission(s), and the VMS system. The EMTU would also be required to have mechanisms to prevent the EMTU terminal from communicating with, influencing or interfering with the GPS antenna or its functionality, position reports, or sending of position reports. The position reports must not be able to be altered, corrupted, degraded, or at all affected by the operation of the terminal or any of its peripherals or installed-software.

#### **Customer Service (50 CFR 600.1508)**

The type-approval holder would be responsible for ensuring that customer service includes: Diagnostic and troubleshooting support to NMFS and fishers, which is available 24 hours a day, seven days per week, and year-round; response times for customer service inquiries that do not exceed 24-hours; warranty, and maintenance agreements; escalation procedures for resolution of problems; established

facilities and procedures to assist fishers in maintaining and repairing their EMTU/MTUs; assistance to fishers in the diagnosis of the cause of communications anomalies; assistance in resolving communications anomalies that are traced to the EMTU/MTU; and assistance to NMFS OLE and its contractors, upon request, in VMS system operation, resolving technical issues, and data analyses related to the VMS Program or system. Such assistance will be provided free of charge unless otherwise specified in NMFS-authorized service or purchase agreements, work orders, or contracts.

**General Requirements (50 CFR 600.1509(a))**

Under proposed 50 CFR 600.1509, an EMTU would be required to have the durability and reliability necessary to meet all proposed requirements regardless of weather conditions, including when placed in a marine environment where the unit may be subjected to saltwater (spray) in smaller vessels, and in larger vessels where the unit may be maintained in a wheelhouse. The unit, cabling and antenna would be required to be resistant to salt, moisture, and shock associated with sea going vessels in the marine environment.

**Personally Identifiable Information (PII) (50 CFR 600.1509(b))**

PII and other protected information includes Magnuson-Stevens Act confidential information as provided at 16 U.S.C. 1881a and Business Identifiable Information (BII), as defined in the Department of Commerce Information Technology Privacy Policy (available at [http://ocio.os.doc.gov/ITPolicyandPrograms/IT\\_Privacy/DEV01\\_002682](http://ocio.os.doc.gov/ITPolicyandPrograms/IT_Privacy/DEV01_002682)). A type-approval holder would be responsible for ensuring that: All PII and other protected information must be handled in accordance with applicable state and federal law; all PII and other protected information provided to the type-approval holder by vessel owners or other authorized personnel for the purchase or activation of an MTU or EMTU or for the participation in any federal fishery are protected from disclosure not authorized by NMFS or the vessel owner or other authorized personnel; any release of PII or other protected information beyond authorized entities be requested and approved in writing, as appropriate, by the submitter of the data, or by NMFS; and any PII or other protected information sent electronically by the type-approval holder to the NMFS OLE be transmitted by a secure means that prevents

interception, spoofing, or viewing by unauthorized individuals.

**Changes or Modifications to Type-Approvals (50 CFR 600.1511)**

After an EMTU/MTU is type-approved, the type-approval holder would be required to notify NMFS OLE in writing no later than 2 calendar days following modification to or replacement of any functional component or piece of their type-approved EMTU/MTU configuration. Timely notification of such changes are needed in order to allow NMFS OLE to be aware of a problem or a change that would affect monitoring, and so that NMFS OLE may reserve troubleshooting resources for a known issue, to give notice of an issue to our stakeholders, and to be sure that the unit is still in a type-approved status. NMFS would notify the type-approval holder within 60 calendar days if an amended type-approval would be required, or if NMFS elects to revoke the original type-approval in light of the substantive changes to the original submission.

**Type-Approval Period (50 CFR 600.1512) and Renewal (50 CFR 600.1513)**

Under 50 CFR 600.1512, NMFS is proposing that a type-approval or type-approval renewal would be valid for a period of 3 years from the date of the **Federal Register** notice issued pursuant to 50 CFR 600.1510, subject to the revocation process at 50 CFR 600.1514. NMFS has considered three alternative periods of time for a renewal process: 1 Year, 3 years, and 10 years. NMFS believes that a 1-year interval renewal process would result in too short of a renewal cycle, because changes in technology are not rapid enough to warrant such a short renewal cycle, and 1-year renewals would not provide sufficient time for vendors to maintain a stable service environment. A 10-year renewal period would be too long an interval between the time an initial type-approval was issued and when NMFS would take an in-depth look at the type-approval holder's overall compliance record. Therefore, NMFS is proposing that at least 30 days, but no more than 6 months, prior to the end of each 3-year period, a type-approval holder may apply for renewal. To do so, the type-approval holder must submit a written renewal request letter and information and documentation required under 50 CFR 600.1513.

Pursuant to proposed 50 CFR 600.1513, the type-approval holder would need to certify that the features, components, configuration and services of their type-approved EMTU, MCS or

bundle remain in compliance with the standards set out in 50 CFR 600.1502 through 600.1509 (or for an MTU, requirements applicable when the MTU was originally type-approved) and with applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries identified under paragraph (a)(1) that require use of VMS. The type-approval holder would also certify that, since the holder's type-approval or last renewal (whichever was later), there have been no modifications to or replacements of any functional component or piece of their type-approved configuration. Per § 600.1513(b), the renewal request letter must also include a table that lists in one column each requirement set out in this proposed rule. The subsequent columns would show for each requirement:

- (1) Whether the requirement applies to their type-approval;
- (2) Whether the requirement is still being met;
- (3) Whether any modifications or replacements were made to the type-approved configuration or process since type-approval or the last renewal;
- (4) An explanation of any modifications or replacements that were made since type-approval or the last renewal; and
- (5) The date that any modifications or replacements were made.

If the type-approval renewal is for an MCS or bundle, the renewal request letter would also be required under § 600.1513(c) to include vessel position report statistics regarding the processing and transmission of position reports from the onboard EMTUs and MTUs to the MCS or MCSP's VMS data processing center. The statistics would at a minimum include successful position report transmission and delivery rates, the rate of position report latencies, and the minimum/maximum/average lengths of time for those latencies. The showing would be demonstrated in graph form, would be divided out by each NMFS region and any relevant international agreement area and relevant high seas area, and would cover 6 full and consecutive months of data for all of the type-approval holder's U.S. federal fishery customers.

As explained in § 600.1513(d), within 30 days after receiving a complete renewal request letter, NMFS would notify the type-approval holder of approval or partial approval of the renewal request as provided in 50 CFR 600.1510, or send a letter to the type-approval holder that explains the reasons for denial or partial denial of the request.

Per § 600.1513(e), if NMFS denies or partially denies the renewal request, NMFS OLE will send a letter to the type-approval holder that explains the reason for the denial/partial denial. Within 21 days of the date of the NMFS OLE letter, the type-approval holder may respond to NMFS OLE in writing with additional information to address the reasons for denial/partial identified in the NMFS OLE letter.

If any additional information is submitted, and after reviewing such information, NMFS OLE may approve, partially approve, or continue to deny, or partially deny the request. In the latter case, the NMFS OLE Director will send a letter to the type-approval holder that explains the reasons for the denial/partial denial. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

#### *Type-Approval Period (50 CFR 600.1512)*

All MTUs, EMTUs, MCSPs, and bundles with valid type-approvals on the effective date of this rule, as finalized, would continue to be type-approved. However, if the type-approval date is more than 3 years old, the type-approval would expire 30 days after publication of the final rule.

As an example, if the most recent type-approval occurred on January 1, 2013, then the MTU, EMTU, MCS, or bundle, as appropriate, would need to be renewed by January 1, 2016. If a type-approval date is more than 3 years old, the type-approval will expire unless the type-approval holder submits a timely renewal request pursuant to § 600.1513.

#### *Revocation of Type-Approval (50 CFR 600.1514)*

If at any time a type-approved EMTU, MCS or bundle fails to meet requirements at 50 CFR 600.1502 through 600.1509, or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU or MCS is type-approved, or if an MTU fails to meet the requirements under which it was type-approved, NMFS OLE may issue a Notification Letter to the type-approval holder that would, among other things, provide information regarding the alleged failure(s), set a Response Date by which the type-approval holder would have to present a response (if any), and explain options for recourse if the type-approval holder believes the Notification Letter is in error.

Depending on the urgency and impact of the alleged failure, NMFS would establish a Response Date between 30 and 120 calendar days from the date

that NMFS issued the Notification Letter. The type-approval holder's response would be required to be received in writing by the Response Date. If the type-approval holder fails to respond by the Response Date, the type-approval would be revoked (see § 600.1514(b)), and NMFS would notify the owners of vessels using this specific EMTU/MTU, MCS, or bundle of the type-approval revocation. At its discretion and for good cause, NMFS may extend the Response Date to a maximum of 150 calendar days from the date of the NMFS Notification Letter.

A type-approval holder who has submitted a timely response to a Notification Letter may meet with NMFS to discuss a detailed and agreed-upon procedure for resolving the issue. The meeting between NMFS and the type-approval holder will take place within 21 calendar days of the date of the written response and may be in person, via conference call, or webcast.

If the type-approval holder disagrees with the Notification Letter for the reasons described in § 600.1514(d), then the type-approval holder should deliver its Objection, in writing, before the Response Date. Within 21 calendar days of the Objection Letter, the type-approval holder may meet with NMFS to discuss a resolution or redefinition of the alleged failure. If modifications to any part of the Notification Letter are required, then NMFS would deliver a revised Notification Letter to the type-approval holder; however, the Response Date or any other timeline in this process would not restart or be modified unless NMFS decides to do so, at its discretion.

The total process from the date of the Notification Letter to the date of final resolution should not exceed 180 calendar days, and may require a shorter time frame, to be determined by NMFS, depending on the urgency and impact of the alleged failure. In rare circumstances, NMFS, at its discretion, may extend the time for resolution of the alleged failure. In such a case, NMFS will provide a written notice to the type-approval holder informing him or her of the extension and the basis for the extension.

If the failure(s) to comply cannot be resolved through the above process within NMFS' specified timeframe, then the type-approval would be revoked. As provided in § 600.1514(f), the NMFS OLE Director would issue a Revocation Letter that, among other things: Identifies the MTU/EMTU, MCS, or bundle for which type-approval is being revoked; summarizes background of the failure(s) to comply with type-approval regulations and requirements, including

efforts to resolve the issue(s); summarizes any proposed plan, or attempts to produce such a plan, to resolve the failure; states that revocation of the MTU/EMTU, MCS or bundle's type-approval has occurred; states that no new installations of the relevant MTU/EMTU will be approved for use in the U.S. VMS Program; explains why resolution was not achieved; and provides information about the appeals process.

If the former type-approval holder, at a later date, brings an EMTU, MCS, or bundle with a revoked type-approval into compliance, the former type-approval holder may reapply for type-approval under the process established in 50 CFR 600.1501.

#### **Appeals Process (50 CFR 600.1515)**

A type-approval holder may file an appeal of a type-approval revocation with the NMFS Assistant Administrator at an address designated by NMFS. Under proposed § 600.1515(b), a petition must be filed within 14 calendar days of the date of the Revocation Letter. A type-approval holder would not be able to request an extension of time to file a petition to appeal.

An appeal must include a complete copy of the Revocation Letter and its attachments and a written statement detailing any facts or circumstances explaining and/or refuting the details contained in Revocation Letter (see § 600.1515(c)). Within 21 days of receipt of the appeal, the NMFS Assistant Administrator would affirm, vacate, or modify the Revocation Letter. The NMFS Assistant Administrator will send a letter to the type-approval holder explaining his or her determination. The Assistant Administrator's determination constitutes the final agency decision.

#### **Revocation Effective Date and Notification to Vessel Owners (50 CFR 600.1516)**

Following issuance of a Revocation Letter pursuant to 50 CFR 600.1514 and any appeal pursuant to 50 CFR 600.1515, NMFS would provide notice to affected vessel owners about the revocation via letter and **Federal Register** Notice. NMFS would provide information on the next steps vessel owners should take to remain in compliance with applicable VMS requirements and the effective date of the revocation. The effective date would be between 60–90 calendar days of the notice. This period of time would allow vessel owners to purchase and install a new type-approved VMS unit and avoid losing fishing opportunities. NMFS would also include information about

any reimbursement of the cost of a new type-approved EMTU should funding for reimbursement be available.

#### **Litigation Support (50 CFR 600.1517)**

Due to the use of VMS for law enforcement, all technical aspects of a type-approved EMTU/MTU, MCS, or bundle submission are subject to being admitted as evidence in a court of law, if needed. The reliability of all technologies utilized in the EMTU/MTU, MCS, or bundle may be analyzed in court for, among other things, testing procedures, error rates, peer review, technical processes, and general industry acceptance.

The type-approval holder would be required to provide technical and expert support for litigation to substantiate the EMTU/MTU, MCS, or bundle capabilities to establish NMFS OLE cases against violators, as needed, as a requirement of their type-approval. If the technologies have previously been subject to such scrutiny in a court of law, the vendor would be required to provide a brief summary of the litigation and any court finding on the reliability of the technology.

Additionally, to maintain the integrity of VMS for fisheries management, the type-approval holder would be required to sign a non-disclosure agreement limiting the release of certain information that might compromise the effectiveness of the VMS operations, such as details of anti-tampering safeguards.

#### **Reimbursement Options (50 CFR 600.1518)**

NMFS Policy Directive 06–102 outlines the guidelines for NMFS to reimburse fishers for their VMS equipment and is viewable at [www.nmfs.noaa.gov/op/pds/](http://www.nmfs.noaa.gov/op/pds/). Reimbursement opportunities may be available for the purpose of providing assistance to vessel owners for the purchase of a replacement EMTU if the vessel owner meets the eligibility and process requirements in NMFS Policy Directive 06–102, and NMFS revokes type-approval for the owner's existing EMTU or NMFS requires the vessel owner to purchase a new EMTU prior to the end of an existing EMTU's service life. Reimbursement payments are subject to available funding.

The current maximum for individual reimbursement payments is \$3,100.00 per unit. This amount is subject to change.

#### **Classification**

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the provisions of the

Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), to analyze the economic impacts that this proposed rule would have on small entities. A summary of the IRFA is included below.

Section 603(b)(1) of the RFA requires that the Agency describe the reasons the action is being considered. NMFS seeks to codify in regulations VMS type-approval standards, specifications, procedures, and responsibilities applicable to commercial EMTU vendors and/or MCSP so they are able to obtain and maintain VMS type-approval by NMFS for products and/or services. In addition, the proposed rule sets out NMFS procedures for VMS type-approval renewal and revocation. The purpose of this proposed rule is to codify the VMS type-approval process, improve enforceability of the type-approval standards and better ensure all EMTUs and MCS remain in compliance with NMFS type-approval standards.

Section 603(b)(2) of the RFA requires a succinct statement of the objectives of, and legal basis for, the proposed rule. NMFS aims to further promote reliable, robust, and secure VMS products. The objective of this proposed rule is to revise latency standards, improve the enforceability of the EMTU/MTU and MCS type-approval standards, and to establish type-approval renewal and revocation processes. The legal basis for this proposed rule stems from the Magnuson-Stevens Act (MSA). Reliable, robust, and secure VMS products are necessary for the effective implementation of various fishery management measures, such as closed areas, that are established by MSA fishery management plans throughout the country to reduce bycatch of undersized commercial fish species, sea turtles, and other species necessary to comply with the Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Standard 9 (bycatch and bycatch mortality reduction) of the MSA.

Under Section 603(b)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States. This proposed rule will impact EMTU vendors and MCSP, which fall within

the SBA's satellite telecommunications classification (North American Industry Classification System code 517410) that has a small business size standard of \$32.5 million. This proposed rule would directly apply to the existing six NMFS type-approved VMS equipment providers and any companies wishing to obtain VMS type-approval in the future. NMFS has received inquiries from three other companies possibly seeking type-approval in the past. Based on a review of company financial records, NMFS estimates approximately half of the current VMS equipment providers would not be considered small businesses under the SBA size standard for the satellite telecommunications industry. Of the remaining businesses, many of them are privately held businesses that do not publicly report annual revenues, so it is difficult for NMFS to definitively determine whether they are small businesses. NMFS therefore conservatively estimates that this proposed rule would impact three to six small entities.

Section 603(b)(4) of the RFA requires that the Agency provide a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. This proposed rule could involve reporting, record keeping, and other compliance requirements for the proposed application process, notifications for any substantive changes, litigation support, periodic renewal, and possibly responses to revocation notices.

The proposed application process would require a vendor requesting type-approval of an EMTU, MCS, or bundle to make a written request to the NMFS. The requestor would be required to certify that the EMTU, MCS or bundle meets the requirements set out in §§ 600.1502–600.1509 of the proposed rule and provide the following information pertaining to the EMTU, MCS, or bundle: Communication class; manufacturer; brand name; model name; model number; software version and date; firmware version number and date; hardware version number and date; antenna type; antenna model number and date; monitor or terminal model number and date; MCS to be used in conjunction with the EMTU; entity providing MCS to the end user; the vendor-approved business entities associated with the EMTU and its use; messaging functionality; position data formats and transmission standards; electronic form and messaging

capabilities; detail the customer service that would be provided to NMFS; general durability and reliability of the unit, ability of the unit to comply with any additional requirements specified in the regulations for the VMS implementation; and protection of personally identifying information and other protected information for the purchase or activation of an MTU or EMTU from disclosure. In addition, as part of its application, the requestor would be required to provide to NMFS OLE two EMTUs, with activated MCS, loaded with forms and software for each NMFS region or Federal fishery for which the application is made for a minimum of 90 calendar days for testing and evaluation. Two EMTUs are needed for testing in each NMFS region or Federal fishery in order to quickly conduct in-office and field trials simultaneously. The application must also include thorough documentation, including EMTU fact sheets, installation guides, user manuals, any necessary interfacing software, satellite coverage, performance specifications, and technical support information. This application process would likely require engineering and product manager expertise for preparation of the application.

The proposed rule would also require type-approval holders to notify NMFS within 2 calendar days of any substantive changes from the original submission for type-approval.

As a condition of type-approval, the type-approval holder would be required to provide technical and expert support for litigation to substantiate the EMTU, MCS, or bundle capabilities to establish NMFS OLE cases against potential violators, as needed. If the technology has been subject to prior scrutiny in a court of law, the type-approval applicant or holder would be required to provide a brief summary of the litigation and any court finding on the reliability of the technology.

Prior to the end of each 3 year type-approval period, a type-approval holder may request renewal of the type-approval. In a renewal request, the type-approval holder must demonstrate successful compliance with applicable type-approval standards and requirements. To do so, the type-approval holder would certify, and complete a table that documents, that the EMTU, MCS, or bundle remains in compliance with type-approval standards and requirements. This type-approval renewal process would likely require engineering and product manager expertise for preparation of the renewal request.

If NMFS issues a Notification Letter indicating intent to revoke a type-approval, the type-approval holder may respond, in writing, if the type-approval holder believes the Notification Letter is in error or can propose a solution to correct the issue. Any response would have to be submitted by a Response Date that NMFS will set between 30 to 120 calendar days from the date of the Notification Letter. This response would likely require engineering and product manager expertise to develop.

Section 603(b)(5) of the RFA requires an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule. An initial review of Federal rules indicated that there was the potential that this proposed rule would overlap with the NMFS Greater Atlantic Region (GARFO) VMS type approval regulations at 50 CFR 648.9. Currently, the GARFO Regional Administrator has the authority to issue type-approvals for that region. To eliminate this potential conflict in Federal regulations, this proposed rule would revise the GARFO regulations so that the NMFS OLE Director would issue type-approvals for all NMFS regions, including GARFO. Revising the GARFO regulations minimizes the possibility that the proposed rule would duplicate, overlap, or conflict with other codified Federal regulations.

Section 603(c) of the RFA requires a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Additionally, section 603(c) lists four general categories of "significant" alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this proposed rule, consistent with all legal requirements, NMFS cannot exempt small entities or change the VMS type-approval process and standards only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS has strived to clarify and

simplify the type-approval process by proposing to codify the type-approval standards, specifications, procedures, and responsibilities for EMTU, MCS and bundle type-approval applicants and holders in this proposed rule. In addition, NMFS is considering performance rather than design standard alternatives for messaging latency standards for EMTUs, MCSs or bundles.

NMFS analyzed several different alternatives in this proposed rulemaking and provides the rationale for identifying the preferred alternatives to achieve the desired objective. Requestors of type-approval must submit a written request to NMFS OLE and a statement that the unit for which approval is sought meets the NMFS OLE type-approval standards. The application process would likely require engineering and product manager expertise for preparation of the application. NMFS estimates that small entities would utilize up to approximately 40 hours engineering labor and 40 hours of product management labor to compile the written request and statement that details how the EMTU, MCS, or bundle meets the minimum national VMS standards and applicable VMS regulations and requirements for the regions and Federal fisheries for which type-approval is requested. This estimate would also include the amount of time it would take to compile the documentation and the packaging of the EMTUs to ship to each NOAA region or Federal fisheries for which an application is submitted. Based on the Bureau of Labor Statistics May 2012 National Occupational Employment and Wage Estimates, the mean hourly wage for engineers is approximately \$44 per hour, and for general and operations managers it is approximately \$55 per hour. Therefore, NMFS estimates the total wage costs to be approximately \$3,960 per type-approval application.

Type-approval requestors would be required to send two EMTUs for testing to each NMFS region or Federal fishery for which type-approval is sought. NMFS estimates that type-approval requestors will likely spend between \$85 and \$220 per NMFS region for shipping two EMTUs, based on current ground shipping rates for a package of up to 30 pounds (\$77.50–\$210 depending on the region), box costs (\$2.50), and packaging materials (\$5.00). Some requestors may opt to use next day air delivery to expedite the process, which would increase the shipping costs to approximately \$250 per package, but that option is not as economical. NMFS estimates that a vendor would send units to five

different NOAA regional offices on average. Therefore, the total shipping cost per application is estimated to be \$695 based on ground delivery costs of approximately \$85 per region in the continental United States, and \$220 per region for the Alaska and the Pacific Islands offices.

The average cost of an EMTU unit is approximately \$3,000. The vendor would be unable to sell the EMTU units as new after providing them to NMFS for testing and evaluation for 90-days. They might only get 60 to 80 percent of the regular retail value on refurbished units. Based on NMFS' estimate that 10 EMTUs that regularly retail for \$3,000 new would be sent to 5 regional offices, the reduced retail revenue might total approximately \$6,000 to \$12,000 per type-approval application.

Alternatively, the vendor may opt to use these units as demo units for trade shows and other marketing purposes, and therefore considerably lower the costs of providing the evaluation units. It is difficult to estimate the exact costs associated with providing the units to NMFS given the uncertainty associated with what vendors would do with these EMTUs after the 90-day evaluation period.

As part of this proposed rule, NMFS is also considering three alternatives to the EMTU latency requirements. These alternatives include no change from the current requirement that 97-percent of each vendor's position reports during each specified 24-hour period must reach NMFS within 15 minutes, for ten out of eleven consecutive days; a 90-percent requirement; and a 50-percent requirement.

Based on NMFS OLE having reviewed several years of reports, NMFS believes that the current 97 percent latency standard is not necessary to meet the needs of NMFS OLE and the U.S. Coast Guard (USCG) for near-real-time data. See Latency Requirement section above (explaining need for near-real-time data). Also, the 97 percent latency standard requirement would be the most costly for vendors to achieve. Based on several years of reports, it is clear this latency requirement is difficult for type-approval holders to achieve consistently. Several of the current EMTU type-approval holders would have to take significant corrective actions, at likely significant costs, to achieve the 97-percent standard. The corrective actions could potentially include deploying new satellites, switching out antennas on all units in order to switch to a more reliable network, or reengineering the communication software or backend hardware to ensure more reliable and

efficient data transmission. These solutions would potentially require significant capital investments, which would be particularly challenging to small entities. Some vendors might instead opt out of this market given the potentially significant costs. While the 97-percent requirement would achieve the objective of collecting reliable real-time data for enforcement of Federal fisheries laws and regulations, it is not the most cost effective alternative.

NMFS determined that the latency requirement can be lowered to 90 percent and still maintain the integrity of the VMS program by providing near real-time data transmission. In light of these findings, NMFS proposes to revise this latency requirement to require that 90 percent of all pre-programmed or requested (e.g. manual poll request) GPS position reports during each 24-hour period must reach NMFS within 15 minutes or less of the EMTU/MTU timestamp, for 10 out of 11 consecutive days (24-hour time periods). This new latency requirement is less burdensome for all current type-approval holders. Also, the 90 percent latency standard requirement is a more cost effective alternative. NMFS, along with its USCG partner, believe that the 90-percent standard can meet the objective of providing near-real-time data on a consistent basis.

While the third alternative, a 50-percent requirement, would be the least burdensome alternative for VMS vendors to achieve, this standard does not meet the objective of providing near real-time VMS data on a consistent basis. VMS-reporting delays will result in less efficient use of government funds, personnel, and other assets. Delayed data delivery is detrimental to fishers as well. Fishers have been delayed in starting fishing trips because VMS latency prevented them from delivering notice to NMFS OLE via EMTU/MTU before leaving the dock, and fishers' days-at-sea have been miscalculated due to the delayed reporting of Demarcation-Line crossings. Delays may also result in confusing documentation regarding when a vessel reported the required information via their EMTU, leading to administrative or legal complications. Delayed data delivery may also allow illegal or non-compliant vessel activity to go undetected, which impedes the VMS program's utility in the enforcement of fisheries laws and regulations. Finally, in order for VMS data to carry its proper weight as admissible evidence, the VMS unit must be reliable. Long latency periods draw into question the reliability of the unit and its data, altogether. For these reasons, NMFS

does not prefer the 50-percent standard at this time.

After a type-approval is issued, the type-approval holder must notify NMFS OLE no later than 2 calendar days following any substantive change in the original submission, such as changes to firmware, software or hardware versions, MCS operations or performance, or customer support contacts. Within 60 calendar days of receiving such notice, NMFS OLE will notify the type-approval holder if an amended type-approval will be required, including additional testing, or provide notice that NMFS OLE will initiate the type-approval revocation process. NMFS estimates that small entities would utilize up to approximately four hours engineering labor and four hours of product management labor to notify NMFS of any substantive changes to the original type-approval submission and provide the agency with the details of those changes. Based on the National Occupational Employment and Wage Estimates, NMFS estimates the total wage costs to be approximately \$396 for the change notification process.

NMFS is considering three alternative periods of time for a type-approval renewal process: 1 year, 3 years, and 10 years. The renewal process would be identical for each of these alternatives, except for the frequency of type-approval renewal.

NMFS believes that a 1-year interval renewal process would result in too short of a renewal cycle because changes in technology are not rapid enough to warrant such a short renewal cycle and 1 year renewals would not provide sufficient time for vendors to maintain a stable service environment. A 1-year interval would also impose an undue burden on type-approval holders and NMFS OLE.

While a 10-year renewal period would minimize the economic impacts of preparing renewal applications, NMFS considers this to be too long an interval between the time when an initial type-approval was issued and when NMFS would take an in-depth look at the type-approval holder's overall compliance record with the regulations set forth in this proposed rule. Significant technological change might also occur over a 10-year period.

NMFS prefers, and the proposed rule provides, that a type-approval will be valid for a period of 3 years. As such, prior to the end of each 3-year period, an EMTU vendor may request renewal of a type-approval. The type-approval holder would be required to demonstrate successful compliance with

applicable type-approval standards and requirements.

NMFS estimates that this renewal process would involve up to 16 hours of engineering labor and 8 hours of product management labor to certify compliance with the type-approval standards and compile supporting materials. Based on the National Occupational Employment and Wage Estimates previously discussed, NMFS estimates the renewal process could result in up to \$1,144 in labor costs. If the type-approval is not renewed by NMFS, the economic costs would be the same as those described below for the revocation process.

If a type-approved EMTU/MTU, MCS, or bundle fails to meet applicable requirements and standards, NMFS will initiate the type-approval revocation process by issuing a Notification Letter to the type-approval holder that identifies the potential violation(s). NMFS will set a Response Date between 30 and 120 calendar days from the date of the Notification Letter. The type-approval holder may submit a response or an Objection Letter, but either must be submitted on or before the Response Date. NMFS estimates that this revocation process would potentially involve 16 hours of engineering labor and 8 hours of product management labor to investigate the issues raised by NMFS and prepare a written response. Based on the wage costs previously discussed, NMFS estimates the revocation process could result in approximately \$1,144 in labor costs. However, the actual amount of labor costs could vary considerably depending on the complexity of the issues causing the alleged failure NMFS identified. Some type-approval holders may decide not to challenge the revocation or may be unable to bring the issue to final resolution to NMFS' satisfaction and then face the revocation of the type-approval for their product. The type-approval holder would then be impacted by the loss of future EMTU sales and monthly data communication fees from vessels required to carry and operate a type-approved EMTU/MTU, MCS, or bundle.

The type-approval holder could also opt to appeal the type-approval revocation. In addition to the costs associated with the engineering and product management support provided during the revocation process, the type-approval holder may also decide to employ legal counsel to challenge the agency's decision. These costs could vary considerably depending on the complexity of the appeal arguments.

NMFS estimates that this proposed rule, if finalized, would impact three to

six entities, and as such this proposed rule does not contain a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA).

Public comment is sought on all aspects of this proposed rule. Send comments to NMFS, Headquarters at the ADDRESSES above.

#### List of Subjects

##### 50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

##### 50 CFR Part 648

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 2, 2014.

#### Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 600 and 648 as follows:

### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

- 1. The authority citation for part 600 is revised to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

- 2. Add Subpart Q to read as follows:

#### Subpart Q—Vessel Monitoring System Type-Approval

Sec.	
600.1500	Definitions and acronyms.
600.1501	Vessel Monitoring System type-approval process.
600.1502	Communications functionality.
600.1503	Position report data formats and transmission.
600.1504	Latency requirement.
600.1505	Messaging.
600.1506	Electronic forms.
600.1507	Communications security.
600.1508	Customer service.
600.1509	General.
600.1510	Notification of type-approval.
600.1511	Changes or modifications to type-approvals.
600.1512	Vessel Monitoring System type-approval period.
600.1513	Type-approval renewal.
600.1514	Type-approval revocation process.
600.1515	Type-approval revocation appeals process.
600.1516	Revocation effective date and notification to vessel owners.
600.1517	Litigation support.
600.1518	Reimbursement opportunities for revoked Vessel Monitoring System type-approval products.

#### § 600.1500 Definitions and acronyms.

In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, and the acronyms in § 600.15, the terms and acronyms in this subpart have the following meanings:

*Authorized entity* means a person, defined at 16 U.S.C. 1802(36), authorized to receive data transmitted by EMTU(s) or MTU(s).

*Bench configuration* means the EMTU's configuration after the manufactured unit has been customized to meet the federal VMS requirements.

*Bundle* means an MCS and EMTU sold as a package and considered one product. If a bundle is type-approved, the requestor will be the type-approval holder for the bundled MCS and EMTU.

*Communication class* means the satellite communications operator from which satellite communications services originate.

*Electronic form* means a pre-formatted message transmitted by an EMTU that is required for the collection of data for a specific fishery program (e.g.; declaration system, catch effort reporting).

*Enhanced Mobile Transceiver Unit (EMTU)* means a type of MTU that is capable of supporting two-way communication, messaging, and electronic forms transmission via satellite. An EMTU is a transceiver or communications device, including: antenna; dedicated message terminal and display; and an input device such as a tablet or keyboard installed on fishing vessels participating in fisheries with a VMS requirement.

*Latency* means the state of untimely delivery of Global Positioning System position reports and electronic forms to NMFS (i.e.; information is not delivered to NMFS consistent with timing requirements of this subpart).

*Mobile Communications Service (MCS)* means the satellite communications services affiliated with particular MTUs/EMTUs.

*Mobile Communications Service Provider (MCSP)* means the entity that sells VMS satellite communications services to end users.

*Mobile Transmitter Unit (MTU)* means a communication device capable of transmitting Global Positioning System position reports via satellite.

*Notification Letter* means a letter issued by NMFS to a type-approval holder identifying an alleged failure of an EMTU, MTU, MCS, or the type-approval holder to comply with requirements of this subpart.

*Position report* means the unique electronic Global Positioning System report generated by a vessel's EMTU or MTU, which identifies the vessel's

latitude/longitude position at a point in time. Position reports are sent from the EMTU or MTU, via MCS, to authorized entities.

*Requestor* means a vendor seeking type-approval.

*Service life* means the length of time during which an EMTU/MTU remains fully operational with reasonable repairs.

*Sniffing* means the unauthorized and illegitimate monitoring and capture, through use of a computer program or device, of data being transmitted over a computer network.

*Spoofing* means the reporting of a false Global Positioning System position and/or vessel identity.

*Time stamp* means the time, in hours, minutes, and seconds in a position report. Each position report is time stamped.

*Type-approval holder* means a vendor whose type-approval request has been approved pursuant to this subpart.

*Vendor* means a commercial provider of VMS hardware, software, and/or mobile communications services.

*Vessel Monitoring System (VMS)* means, for purposes of this subpart, a satellite based system designed to monitor the location and movement of vessels using onboard EMTU or MTU units that send Global Positioning System position reports to an authorized entity.

*Vessel Monitoring System (VMS) data* means the data transmitted to authorized entities by an EMTU or MTU.

*Vessel Monitoring System Program* means the federal program that manages the vessel monitoring system, data, and associated program-components, nationally and in each NOAA region; it is housed in the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service's Office of Law Enforcement.

#### **§ 600.1501 Vessel Monitoring System type-approval process.**

(a) *Application submission.* A requestor must submit a written type-approval request and electronic copies of supporting materials that include the information required under this section to the NMFS Office of Law Enforcement (OLE) at: U.S. Department of Commerce; National Oceanic and Atmospheric Administration; National Marine Fisheries Service; Office of Law Enforcement; Attention: Vessel Monitoring System Office; 1315 East West Highway, SSMC3, Suite 3301, Silver Spring, Maryland 20910.

(b) *Application requirements*—(1) *EMTU and MCS identifying*

*information.* In a type-approval request, the requestor should indicate whether the requestor is seeking approval for an EMTU, MCS, or bundle and must specify identifying characteristics of the EMTU and MCS, as applicable: Communication class; manufacturer; brand name; model name; model number; software version and date; firmware version number and date; hardware version number and date; antenna type; antenna model number and date; tablet, monitor or terminal model number and date; MCS to be used in conjunction with the EMTU; entity providing MCS to the end user; and current satellite coverage of the MCS.

(2) *Requestor-approved third party business entities.* The requestor must provide the business name, address, phone number, contact name(s), email address, specific services provided, and geographic region covered for the following third party business entities:

(i) Entities providing bench configuration for the EMTU at the warehouse or point of supply;

(ii) Entities distributing/selling the EMTU to end users;

(iii) Entities currently approved by the requestor to install the EMTU onboard vessels;

(iv) Entities currently approved by the requestor to offer a limited warranty;

(v) Entities approved by the requestor to offer a maintenance service agreement;

(vi) Entities approved by the requestor to repair or install new software on the EMTU;

(vii) Entities approved by the requestor to train end users;

(viii) Entities approved by the requestor to advertise the EMTU; and

(ix) Entities approved by the requestor to provide other customer services.

(3) *Regulatory requirements and documentation.* In a type-approval request, a requestor must:

(i) Identify the NOAA region(s) and/or Federal fisheries for which the requestor seeks type-approval;

(ii) Include copies of, or citation to, applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries identified under paragraph (b)(3)(i) of this section that require use of VMS;

(iii) Provide a table with the type-approval request that lists in one column each requirement set out in §§ 600.1502 through 600.1509 and regulations described under paragraph (b)(3)(ii) of this section. NMFS OLE will provide a template for the table upon request. The requestor must indicate in subsequent columns in the table:

(A) Whether the requirement applies to the type-approval; and

(B) Whether the EMTU, MCS or bundle meets the requirement.

(iv) Certify that the features, components, configuration and services of the requestor's MTU, EMTU, MCS or bundle comply with each requirement set out in §§ 600.1502 through 600.1509 and the regulations described under paragraph (b)(3)(ii) of this section;

(v) Certify that, if the request is approved, the requestor agrees to be responsible for ensuring compliance with each requirement set out in §§ 600.1502 through 600.1509 and the regulations described under paragraph (b)(3)(ii) of this section over the course of the type-approval period;

(vi) Provide NMFS OLE with two EMTUs loaded with forms and software for each NOAA region or Federal fishery, with activated MCS, for which a type-approval request is submitted for a minimum of 90 calendar days for testing and evaluation. Copies of forms currently used by NMFS are available upon request. As part of its review, NMFS OLE may perform field tests and at-sea trials that involve demonstrating every aspect of EMTU and communications operation. The requestor is responsible for all associated costs including paying for: shipping of the EMTU to the required NMFS regional offices or headquarters for testing; the MCS during the testing period; and shipping of the EMTU back to the vendor; and

(vii) Provide thorough documentation for the EMTU or MTU and MCS, including: EMTU fact sheets; installation guides; user manuals; any necessary interfacing software; satellite coverage; performance specifications; and technical support information.

(c) *Interoperability.* A requestor seeking type-approval of an EMTU within a communications class, as opposed to type-approval for use with a specific MCS, shall certify that the EMTU meets requirements under this subpart when using at least one qualified MCSP within the same communications class.

(d) *Notification.* No sooner than 90 days after receipt of a complete type-approval request, NMFS OLE will notify the requestor as follows:

(1) If a request is approved or partially approved, NMFS NMFS OLE will provide notice as described under § 600.1510.

(i) The type-approval letter would serve as official documentation and notice of type-approval.

(ii) NMFS would also publish a notice in the **Federal Register** documenting the type-approval and the dates for which it is effective.

(2) If a request is disapproved or partially disapproved:

(i) OLE will send a letter to the requestor that explains the reason for the disapproval/partial disapproval.

(ii) The requestor may respond to NMFS OLE in writing with additional information to address the reasons for disapproval identified in the NMFS OLE letter. The requestor must submit this response within 21 calendar days of the date of the OLE letter sent under paragraph (d)(2)(i) of this section.

(iii) If any additional information is submitted under paragraph (d)(2)(ii) of this section, NMFS OLE, after reviewing such information, may either take action under paragraph (d)(1) of this section or determine that the request should continue to be disapproved or partially disapproved. In the latter case, the NMFS OLE Director will send a letter to the requestor that explains the reasons for the continued disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

#### **§ 600.1502 Communications functionality.**

(a) An EMTU must comply with the following requirements:

(1) Be able to transmit all automatically-generated position reports;

(2) Provide visible or audible alarms onboard the vessel to indicate malfunctioning of the EMTU;

(3) Be able to disable non-essential alarms in non-Global Maritime Distress and Safety System (GMDSS) installations;

(4) Be able to send communications that function uniformly throughout the geographic area(s) covered by the type-approval;

(5) Have two-way communications between authorized entities and EMTU via MCS;

(6) Have the capacity to send and receive electronic forms and Internet email messages; and

(7) Have messaging and communications that are completely compatible with NMFS vessel monitoring software.

(b) Messages and communications from an EMTU must be able to be parsed out for separate billing when necessary. The costs associated with position reporting and the costs associated with other communications (for example, personal email or communications/reports to non-NMFS Office of Law Enforcement entities) must be parsed out and billed to separate parties, as appropriate.

#### **§ 600.1503 Position report data formats and transmission.**

An EMTU, MCSP, or bundle must comply with the following requirements, in addition to providing position information as required by the applicable VMS regulations and requirements in effect for each fishery or region for which the type-approval applies:

(a) An EMTU must be able to transmit all automatically-generated position reports, for vessels managed individually or grouped by fleet, that meet the latency requirement under § 600.1504.

(b) When an EMTU is powered up, it must automatically re-establish its position reporting function without manual intervention.

(c) Position reports must contain all of the following:

(1) Unique identification of an EMTU within the communications class;

(2) Date (year/month/day with century in the year) and time stamp (GMT) of the position fix; and

(3) Position fixed latitude and longitude, including the hemisphere of each, which comply with the following requirements:

(A) The position fix precision must be to the decimal minute hundredths; and

(B) Accuracy of the reported position must be within 100 meters.

(d) An EMTU must have the ability to:

(1) Store 1000 position fixes in local, non-volatile memory;

(2) Allow for defining variable reporting intervals between 5 minutes and 24 hours; and

(3) Allow for changes in reporting intervals remotely and only by authorized users.

(e) An EMTU must generate specially identified position reports upon:

(1) Antenna disconnection;

(2) Loss of positioning reference signals;

(3) Loss of the mobile communications signals;

(4) Security events, power-up, power down, and other status data;

(5) The vessel crossing a pre-defined geographic boundary; or

(6) A request for EMTU status information such as configuration of programming and reporting intervals.

#### **§ 600.1504 Latency requirement.**

(a) Ninety percent of all pre-programmed or requested Global Positioning System position reports during each 24-hour period must reach NMFS within 15 minutes or less of the EMTU/MTU timestamp, for 10 out of 11 consecutive days (24-hour time periods).

(b) NMFS will continually examine position reports by region and by type-approval holder.

(c) Exact dates for calculation of latency will be chosen by NMFS. Days in which isolated and documented system outages occur will not be used by NMFS to calculate a type-approval holder's latency.

#### **§ 600.1505 Messaging.**

An EMTU must provide for the following capabilities:

(a) Messaging from vessel to shore, and from shore to vessel by authorized entities, must have a minimum supported message length of 1kb.

(b) There must be a confirmation of delivery function that allows a user to ascertain whether a specific message was successfully transmitted to the MCS email server(s).

(c) Notification of failed delivery to the EMTU must be sent to the sender of the message. The failed delivery notification must include sufficient information to identify the specific message that failed and the cause of failure (e.g.; invalid address, EMTU switched off, etc.).

(d) The EMTU must have an automatic retry feature in the event that a message fails to be delivered.

(e) The EMTU user interface must:

(1) Support an "address book" capability and a function permitting a "reply" to a received message without re-entering the sender's address;

(2) Provide the ability to review by date order, or by recipient, messages that were previously sent. The EMTU terminal must support a minimum message history of 50 sent messages—commonly referred to as an "Outbox" or "Sent" message display; and

(3) Provide the ability to review by date order, or by sender, all messages received. The EMTU terminal must support a minimum message history of at least 50 messages in an inbox.

#### **§ 600.1506 Electronic forms.**

(a) An EMTU and its forms software must support a minimum of 20 Electronic Forms, and meet the following requirements:

(1) *Form validation.* Each field on a form must be capable of being defined as Optional, Mandatory, or Logic Driven. Mandatory fields are those fields that must be entered by the user before the form is complete. Optional fields are those fields that do not require data entry. Logic driven fields have their attributes determined by earlier form selections. Specifically, a logic driven field must allow for selection of options in that field to change the values available as menu selections on a subsequent field within the same form;

(2) *Form selection.* A user must be able to select forms from a menu on the EMTU;

(3) *Data entry, form review, and transmission failure.* A user must be able to populate a form based on the last values used and “modify” or “update” a prior submission without unnecessary re-entry of data. A user must be able to review a minimum of 20 past form submissions and ascertain for each form when the form was transmitted and whether delivery was successfully sent to the type-approval holder’s VMS data processing center. In the case of a transmission failure, a user must be provided with details of the cause and have the opportunity to retry the form submission;

(4) *VMS position report.* Each form must be capable of including VMS position data, including latitude, longitude, date and time. Data to populate these fields must be automatically generated by the EMTU and unable to be manually entered or altered; and

(5) *Delivery format for form data.* Delivery of form data to NMFS must employ the same transport security and reliability as VMS position and declaration reports. The SMTP protocol is not permitted for the transmission of data that is delivered to NMFS. The field coding within the data must follow either CSV or XML formatting rules. For CSV format the form must contain an identifier and the version number, and then the fields in the order defined on the form. In the CSV format strings that may contain “,” (comma) characters must be quoted. XML representations must use the field label to define the XML element that contains each field value.

(b) *Updates to forms.* (1) The EMTU and MCS must be capable of providing updates to forms or adding new form requirements via wireless transmission and without manual installation.

(2) From time to time, NMFS may provide type-approved vendors with requirements for new forms or modifications to existing forms. NMFS may also provide notice of forms and form changes through the NMFS Work Order System. Type-approved vendors will be given at least 60 calendar days to complete their implementation of new or changed forms. Vendors will be capable of, and responsible for translating the requirements into their EMTU-specific forms definitions and wirelessly transmitting the same to all EMTU terminals supplied to fishing vessels.

#### **§ 600.1507 Communications security.**

Communications between an EMTU and MCS must be secure from

tampering or interception, including the reading of passwords and data. The EMTU and MCS must have mechanisms to prevent to the extent possible:

- (a) Sniffing and/or interception during transmission from the EMTU to MCS;
- (b) Spoofing;
- (c) False position reports sent from an EMTU;
- (d) Modification of EMTU identification;
- (e) Interference with GMDSS or other safety/distress functions;
- (f) Introduction of malware, spyware, keyloggers, or other software that may corrupt, disturb, or disrupt messages, transmission, and the VMS system; and
- (g) The EMTU terminal from communicating with, influencing, or interfering with the Global Positioning System antenna or its functionality, position reports, or sending of position reports. The position reports must not be altered, corrupted, degraded, or at all affected by the operation of the terminal or any of its peripherals or installed software.

#### **§ 600.1508 Customer service.**

The type-approval holder is responsible for ensuring that customer service includes:

- (a) Diagnostic and troubleshooting support to NMFS and fishers, which is available 24 hours a day, seven days per week, and year-round;
- (b) Response times for customer service inquiries that shall not exceed 24 hours;
- (c) Warranty and maintenance agreements;
- (d) Escalation procedures for resolution of problems;
- (e) Established facilities and procedures to assist fishers in maintaining and repairing their EMTU/MTUs;
- (f) Assistance to fishers in the diagnosis of the cause of communications anomalies;
- (g) Assistance in resolving communications anomalies that are traced to the EMTU/MTU; and
- (h) Assistance to NMFS Office of Law Enforcement and its contractors, upon request, in VMS system operation, resolving technical issues, and data analyses related to the VMS Program or system. Such assistance will be provided free of charge unless otherwise specified in NMFS-authorized service or purchase agreements, work orders or contracts.

#### **§ 600.1509 General.**

(a) An EMTU must have the durability and reliability necessary to meet all requirements of §§ 600.1502 through 600.1507 regardless of weather

conditions, including when placed in a marine environment where the unit may be subjected to saltwater (spray) in smaller vessels, and in larger vessels where the unit may be maintained in a wheelhouse. The unit, cabling and antenna must be resistant to salt, moisture, and shock associated with sea going vessels in the marine environment.

(b) PII and Other Protected Information. Personally identifying information (PII) and other protected information includes Magnuson-Stevens Act confidential information as provided at 16 U.S.C. 1881a and Business Identifiable Information (BII). A type-approval holder is responsible for ensuring that:

(1) All PII and other protected information is handled in accordance with applicable state and federal law;

(2) All PII and other protected information provided to the type-approval holder by vessel owners or other authorized personnel for the purchase or activation of an MTU or EMTU or arising from participation in any federal fishery are protected from disclosure not authorized by NMFS or the vessel owner or other authorized personnel;

(3) Any release of PII or other protected information beyond authorized entities must be requested and approved in writing, as appropriate, by the submitter of the data in accordance with 16 U.S.C. 1881a, or by NMFS; and

(4) Any PII or other protected information sent electronically by the type-approval holder to the NMFS Office of Law Enforcement must be transmitted by a secure means that prevents interception, spoofing, or viewing by unauthorized individuals.

#### **§ 600.1510 Notification of type-approval.**

(a) If a request made pursuant to § 600.1501 (type-approval) or § 600.1513 (renewal) is approved or partially approved, NMFS will issue a type-approval letter and publish a notice in the **Federal Register** to indicate the specific EMTU model, MCSP, or bundle that is approved for use, the MCS or class of MCSs permitted for use with the type-approved EMTU, and the regions or fisheries in which the EMTU, MCSP, or bundle is approved for use.

(b) The NMFS Office of Law Enforcement will maintain a list of type-approved EMTUs, MCSPs, and bundles on a publicly available Web site and provide copies of the list upon request.

**§ 600.1511 Changes or modifications to type-approvals.**

Type-approval holders must notify NMFS Office of Law Enforcement (OLE) in writing no later than 2 days following modification to or replacement of any functional component or piece of their type-approved EMTU/MTU configuration, MCS or bundle. If the changes are substantial, NMFS OLE will notify the type-approval holder in writing within 60 calendar days that an amended type-approval is required or that NMFS will initiate the type-approval revocation process.

**§ 600.1512 Vessel Monitoring System type-approval period.**

A type-approval or type-approval renewal is valid for a period of 3 years from the date of the **Federal Register** notice issued pursuant to § 600.1510, subject to the revocation process at § 600.1514. All MTUs, EMTUs, MCSs, and bundles with valid type-approvals on the effective date of this rule will continue to be type-approved. However, if the type-approval date is more than 3 years old, the type-approval will expire [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]. The type-approval holder may request a type-approval renewal as provided in § 600.1513.

**§ 600.1513 Type-approval renewal.**

At least 30 days, but no more than six months, prior to the end of the type-approval period, a type-approval holder may seek a type-approval renewal by sending a written renewal request letter and information and documentation required under this section to: U.S. Department of Commerce; National Oceanic and Atmospheric Administration; National Marine Fisheries Service; Office of Law Enforcement; Attention: Vessel Monitoring System Office; 1315 East West Highway, Silver Spring, Maryland 20910.

(a) In a type-approval renewal request letter, the type-approval holder should indicate whether the holder is seeking renewal of an MTU, EMTU, MSC, or bundle and must:

(1) Identify the NOAA region(s) or Federal fisheries for which renewal is sought;

(2) Certify that the features, components, configuration and services of the type-approved MTU, EMTU, MCS or bundle remain in compliance with the standards set out in §§ 600.1502 through 600.1509 (or for an MTU, requirements applicable when the MTU was originally type-approved) and with applicable VMS regulations and

requirements in effect for the region(s) and/or Federal fisheries identified under paragraph (a)(1) of this section that require use of VMS; and

(3) Certify that, since the type-approval or last renewal (whichever was later), there have been no modifications to or replacements of any functional component or piece of the type-approved configuration.

(b) The type-approval holder must include a table with the renewal request letter that lists in one column, each requirement set out in §§ 600.1502 through 600.1509 and regulations described under paragraph (a)(2) of this section. For an MTU, instead of the requirements at §§ 600.1502 through 600.1509, the table must list any requirements applicable when the MTU was originally type-approved. NMFS' Office of Law Enforcement (OLE) will provide a template for the table upon request. The type-approval holder must indicate in subsequent columns in the table:

(1) Whether the requirement applies to the type-approval;

(2) Whether the requirement is still being met;

(3) Whether any modifications or replacements were made to the type-approved configuration or process since type-approval or the last renewal;

(4) An explanation of any modifications or replacements that were made since type-approval or the last renewal; and

(5) The date that any modifications or replacements were made.

(c) If the type-approval renewal is for an MCS or bundle, the type-approval holder seeking renewal must also provide the following statistical information on the transmission and processing of vessel position reports from onboard EMTUs and MTUs to the MCS or MCSP's VMS data processing center.

(1) The statistical information will, at a minimum, show:

(i) Successful position report transmission and delivery rates;

(ii) The rate of position report latencies; and

(iii) The minimum/maximum/average lengths of time for those latencies.

(2) The statistical information will be demonstrated:

(i) In graph form;

(ii) For each NMFS region and any relevant international agreement area and relevant high seas area; and

(iii) Using data from six full and consecutive months for all of the type-approval holder's U.S. federal fishery customers.

(d) Within 30 days after receipt of a complete renewal request letter, NMFS

OLE will notify the type-approval holder of its decision to approve or partially approve the request as provided in § 600.1510, or send a letter to the type-approval holder that explains the reasons for denial or partial denial of the request.

(e) The type-approval holder may respond to NMFS OLE in writing with additional information to address the reasons for denial or partial denial of the renewal request. The type approval holder must submit this response within 21 calendar days of the date of the NMFS OLE letter sent under paragraph (d) of this section.

(f) If any additional information is submitted under paragraph (e) of this section, NMFS OLE, after reviewing such information, may either notify the type-approval holder of its decision to approve or partially approve the renewal request as provided in § 600.1510 or determine that the renewal request should continue to be disapproved or partially disapproved. In the latter case, the NMFS OLE Director will send a letter to the type-approval holder that explains the reasons for the disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

**§ 600.1514 Type-approval revocation process.**

(a) If at any time, a type-approved EMTU, MCS or bundle fails to meet requirements at §§ 600.1502 through 600.1509 or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU or MCS is type-approved, or if an MTU fails to meet the requirements under which it was type-approved, the NMFS Office of Law Enforcement (OLE) may issue a Notification Letter to the type-approval holder that:

(1) Identifies the MTU, EMTU, MCS or bundle that allegedly fails to comply with type-approval regulations and requirements;

(2) Identifies the alleged failure to comply with type-approval regulations and requirements, and the urgency and impact of the alleged failure;

(3) Cites relevant regulations and requirements under this subpart;

(4) Describes the indications and evidence of the alleged failure;

(5) Provides documentation and data demonstrating the alleged failure;

(6) Sets a Response Date by which the type-approval holder must submit to NMFS OLE a written response to the Notification Letter, including, if applicable, a proposed solution; and

(7) Explains the type-approval holder's options if the type-approval

holder believes the Notification Letter is in error.

(b) NMFS will establish a Response Date between 30 and 120 calendar days from the date of the Notification Letter. The type-approval holder's response must be received in writing by NMFS on or before the Response Date. If the type-approval holder fails to respond by the Response Date, the type-approval will be revoked. At its discretion and for good cause, NMFS may extend the Response Date to a maximum of 150 calendar days from the date of the Notification Letter.

(c) A type-approval holder who has submitted a timely response may meet with NMFS within 21 calendar days of the date of that response to discuss a detailed and agreed-upon procedure for resolving the alleged failure. The meeting may be in person, conference call, or webcast.

(d) If the type-approval holder disagrees with the Notification Letter and believes that there is no failure to comply with the type-approval regulations and requirements, NMFS has incorrectly defined or described the failure or its urgency and impact, or NMFS is otherwise in error, the type-approval holder may submit a written Objection Letter to NMFS on or before the Response Date. Within 21 calendar days of the date of the Objection Letter, the type-approval holder may meet with NMFS to discuss a resolution or redefinition of the issue. The meeting may be in person, conference call, or webcast. If modifications to any part of the Notification Letter are required, then NMFS will issue a revised Notification Letter to the type-approval holder; however, the Response Date or any other timeline in this process would not restart or be modified unless NMFS decides to do so, at its discretion.

(e) The total process from the date of the Notification Letter to the date of final resolution should not exceed 180 calendar days, and may require a shorter time frame, to be determined by NMFS, depending on the urgency and impact of the alleged failure. In rare circumstances, NMFS, at its discretion, may extend the time for resolution of the alleged failure. In such a case, NMFS will provide a written notice to the type-approval holder informing him or her of the extension and the basis for the extension.

(f) If the failure to comply with type-approval regulations and requirements cannot be resolved through this process, the NMFS OLE Director will issue a Revocation Letter to the type-approval holder that:

(1) Identifies the MTU, EMTU, MCS, or bundle for which type-approval is being revoked;

(2) Summarizes the failure to comply with type-approval regulations and requirements, including describing its urgency and impact;

(3) Summarizes any proposed plan, or attempts to produce such a plan, to resolve the failure;

(4) States that revocation of the MTU/EMTU, MCS or bundle's type-approval has occurred;

(5) States that no new installations of the revoked unit will be permitted in any NMFS-managed fishery requiring the use of VMS;

(6) Cites relevant regulations and requirements under this subpart;

(7) Explains why resolution was not achieved;

(8) Advises the type-approval holder that:

(i) The type-approval holder may reapply for a type-approval under the process set forth in § 600.1501, and

(ii) A revocation may be appealed pursuant to the process under § 600.1515.

#### **§ 600.1515 Type-approval revocation appeals process.**

(a) If a type-approval holder receives a Revocation Letter pursuant to § 600.1514, the type-approval holder may file an appeal of the revocation to the NMFS Assistant Administrator.

(b) An appeal must be filed within 14 calendar days of the date of the Revocation Letter. A type-approval holder may not request an extension of time to file an appeal.

(c) An appeal must include a complete copy of the Revocation Letter and its attachments and a written statement detailing any facts or circumstances explaining and refuting the failures summarized in the Revocation Letter.

(d) The NMFS Assistant Administrator may, in his or her discretion, affirm, vacate, or modify the Revocation Letter and will send a letter to the type-approval holder explaining his or her determination, within 21 calendar days of receipt of the appeal. The NMFS Assistant Administrator's determination constitutes the final agency decision.

#### **§ 600.1516 Revocation effective date and notification to vessel owners.**

(a) Following issuance of a Revocation Letter pursuant to § 600.1514 and any appeal pursuant to § 600.1515, NMFS will provide notice to all vessel owners impacted by the type-approval revocation via letter and **Federal Register** notice. NMFS will provide

information to impacted vessel owners on:

(1) The next steps vessel owners should take to remain in compliance with regional and/or national VMS requirements;

(2) The date, 60–90 calendar days from the notice date, on which the type-approval revocation will become effective;

(3) Reimbursement of the cost of a new type-approved EMTU, should funding for reimbursement be available pursuant to § 600.1518.

#### **§ 600.1517 Litigation support.**

(a) All technical aspects of a type-approved EMTU/MTU, MCS or bundle are subject to being admitted as evidence in a court of law, if needed. The reliability of all technologies utilized in the EMTU/MTU, MCS, or bundle may be analyzed in court for, inter alia, testing procedures, error rates, peer review, technical processes and general industry acceptance.

(b) The type-approval holder must, as a requirement of the holder's type-approval, provide technical and expert support for litigation to substantiate the EMTU, MCS or bundle capabilities to establish NMFS Office of Law Enforcement cases against violators, as needed. If the technologies have previously been subject to such scrutiny in a court of law, the type-approval holder must provide NMFS with a brief summary of the litigation and any court findings on the reliability of the technology.

(c) The type-approval holder will be required to sign a non-disclosure agreement limiting the release of certain information that might compromise the effectiveness of the VMS operations.

#### **§ 600.1518 Reimbursement opportunities for revoked vessel Monitoring System Type-approved products.**

(a) Subject to the availability of funds, vessel owners may be eligible for reimbursement payments for a replacement EMTU if:

(1) All eligibility and process requirements specified by NMFS are met as described in NMFS Policy Directive 06–102; and

(2) The replacement type-approved EMTU is installed on the vessel, and reporting to NMFS Office of Law Enforcement; and

(3) The type-approval for the previously installed EMTU has been revoked by NMFS; or

(4) NMFS requires the vessel owner to purchase a new EMTU prior to the end of an existing unit's service life.

(b) The cap for individual reimbursement payments is subject to

change. If this occurs, NMFS Office of Law Enforcement will publish a notice in the Federal Register announcing the change.

#### **PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

■ 3. The authority citation for part 648 continues to read as follows:

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

■ 4. In § 648.9, revise paragraph (a) and paragraph (d) to read as follows:

##### **§ 648.9 VMS vendor and unit requirements.**

(a) *Approval.* The type-approval requirements for VMS MTUs and MCSPs for the Greater Atlantic Region are those as published by the NMFS Office of Law Enforcement (OLE) in the **Federal Register**, and are available upon request. Both the national type-approval requirements at 50 CFR subpart Q and any established regional standards must be met in order to receive approval for use in the Greater Atlantic Region. The NMFS OLE Director shall approve all MTUs, MCSPs, and bundles including those operating in the Greater Atlantic Region.

\* \* \* \* \*

(d) *Revocations.* Revocation procedures for type-approvals are at 50 CFR 600.1514. In the event of a revocation, NMFS will provide information to affected vessel owners as explained at 50 CFR 600.1516. In these instances, vessel owners may be eligible for the reimbursement of the cost of a new type-approved EMTU should funding for reimbursement be available.

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 660**

[Docket No. 140214140–4140–01]

RIN 0648–BD92

##### **Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Seabird Avoidance Measures**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would implement a Seabird Avoidance Program in the Pacific Coast Groundfish

Fishery. The proposed rule was recommended by the Pacific Fishery Management Council (Council) in November 2013 and is specifically designed to minimize the take of ESA-listed short-tailed albatross (*Phoebastria albatrus*). A 2012 U.S. Fish and Wildlife Service Biological Opinion required NMFS to initiate implementation of regulations within 2 years mandating the use of seabird avoidance measures by vessels greater than or equal to 55 feet length overall (LOA) using bottom longline gear to harvest groundfish. The seabird avoidance measures, including streamer lines that deter birds from ingesting baited hooks, are modeled after a similar regulatory program in effect for the Alaskan groundfish fishery.

**DATES:** Comments on this proposed rule must be received on or before October 9, 2014.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2014–0099, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2014-0099](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2014-0099) click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Steve Copps.
- **Fax:** 206–526–6736; Attn: Steve Copps.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Steve Copps, 206–526–6158; (fax) 206–526–6736; [steve.copps@noaa.gov](mailto:steve.copps@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### **Background**

The purpose of the proposed rule is to reduce interactions between ESA-listed seabirds and groundfish longline gear. Many seabirds attack baited hooks as the longline is being set and become lethally hooked and drowned. The proposed rule would amend the regulations governing the Pacific Coast Groundfish Fishery (fishery) to require seabird avoidance measures—specifically the use of streamer lines and related provisions similar to those currently mandated in the Alaskan groundfish fishery—by vessels 55 ft LOA or greater in the bottom longline fishery.

The proposed rule is needed to minimize takes of endangered short-tailed albatross and comply with a 2012 Biological Opinion (Opinion) issued by the U.S. Fish and Wildlife Service. The 2012 Opinion evaluated the risks of continued operation of the Pacific Coast Groundfish Fishery on ESA-listed seabirds, including short-tailed albatross. The 2012 Opinion included a Term and Condition requiring NMFS to promulgate regulations mandating the use of streamer lines by certain longline vessels 55 feet LOA or greater, patterned on the Alaska streamer line regulations. Accordingly, for the fishery to be exempt from ESA section 9 prohibition regarding the take of a listed species, NMFS must initiate implementation of streamer line regulations by November 21, 2014. The 2012 Opinion anticipates the yearly average take of one short-tailed albatross killed from longline hooks or trawl cables. As the short-tailed albatross population is expanding, it is expected to result in more interactions with the Pacific Coast Groundfish Fisheries. This action would implement one of the Terms and Conditions of the 2012 Opinion and reduce the risk of exceeding the take limits of short-tailed albatross contained in the Opinion, which in turn would reduce the risk of economic harm to the fishing industry that could result from the incidental take limit being exceeded.

The proposed rule would require streamer lines, sometimes referred to as tori or bird-scaring lines, to be deployed as the longline gear is being set. A streamer line effectively fences off the longline from seabird interactions. The streamer line is a line (typically 50-fathoms or 90-meters long) that extends from a high point near the stern of the vessel to a drogue (usually a buoy with a weight). As the vessel moves forward the drogue creates tension in the line producing a span from the stern where the streamer line is aloft. The aloft section includes streamers made of UV