

television market. In this respect, communities may be considered part of more than one television market.

(b) \* \* \*

(1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend or satellite carrier local receive facility locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(2) Noise-limited service contour maps (for digital stations) or Grade B contour maps (for analog stations) delineating the station's technical service area and showing the location of the cable system headends or satellite carrier local receive facilities and communities in relation to the service areas.

\* \* \* \* \*

(5) Cable system or satellite carrier channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.–1 a.m., or an equivalent time period) for both multichannel video programming distributor (MVPD) and non-MVPD households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.

\* \* \* \* \*

(d) A cable operator or satellite carrier shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this section.

(e) A market determination under this section shall not create additional carriage obligations for a satellite carrier if it is not technically and economically feasible for such carrier to accomplish such carriage by means of its satellites in operation at the time of the determination.

(f) No modification of a commercial television broadcast station's local market pursuant to this section shall have any effect on the eligibility of households in the community affected by such modification to receive distant signals from a satellite carrier pursuant to 47 U.S.C. 339.

■ 4. Section 76.66 is amended by adding a new paragraph (d)(6) and revising paragraph (e)(1) introductory text to read as follows:

**§ 76.66 Satellite broadcast signal carriage.**

\* \* \* \* \*

(d) \* \* \*

(6) *Carriage after a market modification.* Television broadcast stations that become eligible for mandatory carriage with respect to a satellite carrier (pursuant to § 76.66) due to a change in the market definition (by operation of a market modification pursuant to § 76.59) may, within 30 days of the effective date of the new definition, elect retransmission consent or mandatory carriage with respect to such carrier. A satellite carrier shall commence carriage within 90 days of receiving the carriage election from the television broadcast station. The election must be made in accordance with the requirements in paragraph (d)(1) of this section.

\* \* \* \* \*

(e) *Market definitions.* (1) A local market, in the case of both commercial and noncommercial television broadcast stations, is the designated market area in which a station is located, unless such market is amended pursuant to § 76.59, and

\* \* \* \* \*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of the Managing Director.*

[FR Doc. 2015-08435 Filed 4-10-15; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 300, 600, 660, and 665**

[Docket No. 070516126–5292–03]

**RIN 0648–AV12**

**International Affairs; High Seas Fishing Compliance Act; Permitting and Monitoring of U.S. High Seas Fishing Vessels**

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

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

**SUMMARY:** NMFS proposes regulatory changes to improve the administration of the High Seas Fishing Compliance Act program and the monitoring of U.S. fishing vessels operating on the high seas. The proposed rule includes, for all U.S. fishing vessels operating on the high seas, adjustments to permitting and

reporting procedures. It also includes requirements for the installation and operation of enhanced mobile transceiver units for vessel monitoring, carrying observers on vessels, reporting of transshipments taking place on the high seas, and protection of vulnerable marine ecosystems. This proposed rule has been prepared to minimize duplication and to be consistent with other established requirements.

**DATES:** Written comments must be received by May 13, 2015.

**ADDRESSES:** Written comments on this action, identified by NOAA–NMFS–2015–0052, may be submitted 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-2015-0052](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0052), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments. Mail: Mark Wildman, Trade and Marine Stewardship Division, Office for International Affairs and Seafood Inspection, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Mark Wildman, NMFS, Office for International Affairs and Seafood Inspection (see address above) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Mark Wildman, Trade and Marine Stewardship Division, Office for International Affairs and Seafood Inspection, NMFS (phone 301–427–8386 or email [mark.wildman@noaa.gov](mailto:mark.wildman@noaa.gov)).

**SUPPLEMENTARY INFORMATION:**

**Background**

The purposes of the High Seas Fishing Compliance Act (HSFCA; 16 U.S.C. 5501 *et seq.*) are (1) to implement the Food and Agriculture Organization of the United Nations (FAO) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement) and (2) to establish a system of permitting, reporting and regulation for vessels of the United States fishing on the high seas. 16 U.S.C. 5501. “High seas” is defined in the HSFCA and its implementing regulations as waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States. 16 U.S.C. 5502 (3); 50 CFR 300.11.

The HSFCA authorizes a system of permitting U.S. fishing vessels that operate on the high seas to satisfy the obligation of Parties to the Compliance Agreement (Parties) to require that fishing vessels flying their flags obtain specific authorization to operate on the high seas. The HSFCA requires the Secretary of Commerce (Secretary) to establish conditions and restrictions on each permit issued under HSFCA as necessary and appropriate to carry out the obligations of the United States under the Compliance Agreement. 16 U.S.C. 5503 (d). At a minimum, such conditions and restrictions must include the marking of the permitted vessel in accordance with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels, and reporting of fishing activities. Parties are also responsible for ensuring that their authorized vessels do not undermine conservation and management measures, including those adopted by international fisheries management organizations, or by treaties or other

international agreements. Accordingly, the HSFCA prohibits the use of fishing vessels on the high seas in contravention of international conservation and management measures recognized by the United States. 16 U.S.C. 5505 (1). A list of the international conservation and management measures recognized by the United States is published by NMFS in the **Federal Register** from time to time in consultation with the Secretary of State, as required by section 5504(e) of the HSFCA. The last such notice was published on May 19, 2011 (76 FR 28954). NMFS reinforces this prohibition by requiring a high seas fishing permit for any vessel operating on the high seas and, in that permit, authorizing only those activities that would not undermine international conservation and management measures recognized by the United States. The HSFCA also gives NMFS discretion to impose permit terms and requirements pursuant to other applicable law, such as the Endangered Species Act, the Marine Mammal Protection Act, in addition to international conservation and management measures recognized by the United States. *See Turtle Island Restoration Network v. National Marine Fisheries Service*, 340 F.3d 969 (9th Cir. 2003).

Finally, the HSFCA authorizes NMFS to promulgate regulations “as may be necessary to carry out the purposes of the Agreement and [the Act],” including its permitting authorities. In promulgating such regulations, NMFS shall ensure that “[t]o the extent practicable, such regulations shall also be consistent with regulations implementing fishery management plans under the Magnuson-Stevens Fishery Conservation and Management Act,” 16 U.S.C. 1801 *et seq.*, which provides broad authority to establish measures for the conservation and management of fisheries, *id.* 1853(b)(14).

Regulations implementing the HSFCA were first promulgated in 1996 (61 FR 11751, March 22, 1996). The initial regulations included application and issuance procedures for high seas fishing permits. Subsequent regulations promulgated in 1999 (64 FR 13, January 4, 1999) specified how high seas fishing vessels must be marked for identification purposes and required reporting by vessel owners and operators of catch and fishing effort when fishing on the high seas.

An objective of this rulemaking is to codify NMFS’ procedures for review of its high seas fishing authorizations under environmental laws, particularly the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA). Another objective of this proposed rule is to improve the monitoring of U.S. fishing vessels operating on the high seas. Improving such monitoring would enhance the U.S. government’s ability to ensure compliance with international conservation and management measures with respect to U.S. fishing vessels operating on the high seas. Furthermore, this proposed rule adds a section describing how NMFS will, through high seas permit conditions, address impacts to vulnerable marine ecosystems from bottom fishing consistent with international conservation and management measures recognized by the United States.

NMFS is proposing substantive changes to the HSFCA regulations at 50 CFR part 300, subpart B, and also redesignation of the regulations as Subpart Q. Table 1 shows how the sections currently in Subpart B would be redesignated in Subpart Q. The substance of the following sections would not be changed: § 300.10 (redesignated to 300.330) and § 300.13(a) (redesignated to 300.333(a)). Other sections are new or would be modified per this rulemaking, as explained below.

**TABLE 1—REDESIGNATION OF SECTIONS IN 50 CFR PART 300, SUBPART B TO SUBPART Q**

| Proposed subpart Q sections                                      | Current subpart B sections |
|--|----------------------------|
| 300.330 Purpose .....  | 300.10.                    |
| 300.331 Definitions .....  | 300.11.                    |
| 300.332 Issuing offices .....                                    | 300.12.                    |
| 300.333 Vessel permits .....                                     | 300.13.                    |
| 300.334 Fisheries authorized on the high seas .....              | New section.               |
| 300.335 Bottom fishing .....                                     | New section.               |
| 300.336 Vessel identification .....                              | 300.14.                    |
| 300.337 Requirements for Enhanced Mobile Transceiver Units ..... | New section.               |
| 300.338 Observers .....  | New section.               |
| 300.339 Transshipment on the high seas .....                     | New section.               |
| 300.340 Prohibitions .....                                       | 300.15.                    |
| 300.341 Reporting .....  | 300.17.                    |

### Coordination With Other Laws

U.S. vessels fishing on the high seas are subject to the requirements of multiple U.S. regulations and laws, depending on the geographic area of the fishing activity, gear used, target fish species, and other factors. Such vessels can be subject to regulations that implement fishery management plans (FMPs) adopted pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and laws and regulations implementing international fisheries agreements. Section 105 of the HSFCA specifies that regulations should minimize duplication of license application and reporting requirements contained in other regulations applicable to U.S. vessels used for fishing on the high seas and, to the extent practicable, such regulations must be consistent with regulations implementing FMPs under the Magnuson-Stevens Act. 16 U.S.C. 5504 (d). Recognizing that the HSFCA requirements can overlap with other requirements, this proposed rule has been prepared to minimize duplication and to be consistent with other applicable requirements.

In addition to the HSFCA, the following FMPs and laws, and their associated regulations, have provisions that may apply to U.S. vessels' fishing activities on the high seas:

- Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region and its amendments, 50 CFR part 665, subpart F,
- FMP for U.S. West Coast Fisheries for Highly Migratory Species and its amendments, 50 CFR part 660, subpart K,
- 2006 Consolidated Atlantic Highly Migratory Species FMP and its amendments, 50 CFR part 635,
- Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971 *et seq.*,
- Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431 *et seq.*,
- Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601 *et seq.*,
- South Pacific Tuna Act of 1988, 16 U.S.C. 973 *et seq.*,
- Tuna Conventions Act of 1950, 16 U.S.C. 951 *et seq.*,
- Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.*,
- Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and
- Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*

Any person subject to the jurisdiction of the United States must abide by the

take prohibitions of, and all applicable regulations implemented under, the ESA and the Marine Mammal Protection Act (MMPA) on U.S. territory, in U.S. waters, and on the high seas, which includes, for the purposes of the MMPA and ESA, waters within foreign nations' Exclusive Economic Zones (EEZ) up to the seaward boundaries of the territorial seas of such nations. For all authorized high seas fisheries, NMFS issues permits only after a determination, in accordance with section 7 of the ESA and in consultation within NMFS or with the U.S. Fish and Wildlife Service as appropriate, that the authorization of the fishery on the high seas is not likely to jeopardize the continued existence of endangered and threatened species. 16 U.S.C. 1536. Such consultations can result in permit conditions to minimize impacts on threatened and endangered species.

Since 2009, fisheries on the high seas have been included in the List of Fisheries published each year pursuant to the MMPA. 16 U.S.C. 1387(c)(1). The List of Fisheries classifies U.S. commercial fisheries into one of three categories based on an estimated level of mortality and serious injury of marine mammal stocks incidental to commercial fishing operations. See 50 CFR 229.2. Category I and II fisheries are those in which incidental injury or death of marine mammals is frequent or occasional, respectively. Category II fisheries may also include fisheries for which reliable information about the frequency of incidental injury or mortality is lacking. Eligible commercial fisheries not specifically identified in the list of fisheries are deemed to be Category II fisheries until the next list of fisheries is published. Category III fisheries are determined to have a remote likelihood of, or no known, incidental mortality or serious injury of marine mammals.

The majority of high seas fisheries are classified as Category II because of the lack of information on the frequency of incidental mortality and serious injury of marine mammals in the fisheries. Other high seas fisheries are classified as Category I, II or III because they are considered extensions of fisheries taking place within U.S. waters and therefore are classified in the same category as those fisheries. Owners of vessels with gear that fall within a Category I or II fishery are required under the MMPA regulations, as described in 50 CFR 229.4 to 229.7, to (1) register with NMFS and obtain a marine mammal authorization certificate to lawfully take a marine mammal incidental to commercial fishing and (2) carry an observer if requested by NMFS. MMPA

regulations do not require owners of vessels or gear engaged in a Category III fishery to register with NMFS, obtain a marine mammal authorization certificate, or, except in limited circumstances, carry an observer pursuant to MMPA regulations.

The owner or operator of a vessel participating in a commercial fishery listed on the List of Fisheries, regardless of classification, is required to report any injury or death of a marine mammal incidental to commercial fishing operations to NMFS within 48 hours of returning from a fishing trip. 50 CFR 229.6.

### Proposed Requirements for High Seas Fishing Vessels

The following sections provide further detail regarding proposed requirements for the permit application process, enhanced mobile transceiver units for vessel monitoring, observer coverage, transshipment on the high seas, and protection of vulnerable marine ecosystems on the high seas. A reference to the HSFCA would also be added to 50 CFR parts 600 and 660, specifically § 600.705 and § 660.2, which list laws related to the Magnuson-Stevens Act, to alert fishers who may be interested in fishing on the high seas to the requirements in 50 CFR part 300. Also, a proposed revision of § 600.745(a) would encourage any person who intends to conduct scientific research on the high seas to obtain a Letter of Acknowledgement from NMFS, as is currently done for such activities in U.S. waters. Adjustments would also be made to other parts of CFR Title 50 because of the redesignation of Subpart B to Subpart Q.

### Definitions

Consistent with 16 U.S.C. 5502(4), NMFS proposes to revise the definition of "high seas fishing vessel" in 50 CFR 300.331 by adding the word "and" as underlined below to clarify that this term means any vessel of the United States used or intended for use: (1) On the high seas, (2) for the purpose of the commercial exploitation of living marine resources, *and* (3) as a harvesting vessel, mother ship, or any other support vessel directly engaged in a fishing operation. To clarify the meaning of support vessels directly engaged in a fishing operation, examples are included in the definition (vessels that transship fish on the high seas, provide supplies or fuel on the high seas to other fishing vessels, or conduct other activities in support of, or in preparation for, fishing).

This rule proposes to revise the regulatory definition of “international conservation and management measures” by adding the following sentence from the HSFCA definition: “Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements.” The change clarifies that commitments made by the United States at international fisheries management fora can be included in the term “international conservation and management measures” to the extent necessary and appropriate to carry out U.S. obligations under the Compliance Agreement or for purposes of the HSFCA.

Definitions of bottom fishing, enhanced mobile transceiver unit, transshipment, and vessel monitoring system would be added to the HSFCA regulations and are discussed in the relevant sections below.

#### *Issuing Offices*

Section 300.12, redesignated as § 300.332, would be revised to specify that the Director of the NMFS Office for International Affairs and Seafood Inspection, as well as Regional Administrators, may issue high seas fishing permits for any authorized high seas fishery.

#### *Vessel Permits*

The permitting requirement under the HSFCA for vessels operating on the high seas, currently set forth at § 300.13 (redesignated as § 300.333), has been in effect since 1996. In general, any U.S. vessel is eligible for a high seas fishing permit unless that vessel had a permit from a foreign nation that was suspended and the suspension has not expired or, during the 3 years prior to the application date, the permit was withdrawn due to the vessel undermining the effectiveness of an international conservation and management measure.

High seas fishing permits are issued at any time of the year and are valid for 5 years from the date of issuance, as provided in the HSFCA, 16 U.S.C. 5503(f). For a permit to remain valid until its expiration date, the vessel’s U.S. Coast Guard documentation or state registration must be kept current. A permit becomes immediately void when the name of the owner or vessel changes or, in the event the vessel is no longer eligible for U.S. documentation, such documentation lapses or is revoked or denied, or the vessel is removed from such documentation. § 300.333(d)(4).

In developing this proposed rule, NMFS evaluated an option to rely on fishery-specific permits for U.S. vessels operating on the high seas, other than the HSFCA permit program, to authorize high seas fishing activities. However, by continuing to require a separate high seas fishing permit, in addition to any permit required for the authorized high seas fishery in which the HSFCA permit applicant intends to fish, NMFS is able to maintain a separate and more precise record of vessels permitted to fish on the high seas and submit information from this record to the FAO as required in the Compliance Agreement. FAO compiles records of vessels authorized to fish on the high seas from the Parties to the Compliance Agreement. The separate high seas fishing permit, required under the existing regulations to be carried on board the vessel, is also useful in demonstrating to any domestic inspectors, any foreign inspectors operating under the authority of a high seas boarding and inspection scheme adopted by an RFMO to which the United States is party, or any foreign port inspectors, that a vessel is authorized to fish on the high seas.

The proposed rule (§ 300.333(b)) provides that any high seas fishing vessel engaging in fishing, as defined under § 300.2, on the high seas must have on board a valid permit issued under this subpart. Under this new paragraph and the revised definition of high seas fishing vessel, harvesting vessels, as well as vessels that are involved in processing or transshipment of fish on the high seas in fisheries where such activity is allowed, or providing supplies or fuel on the high seas to a fishing vessel, must obtain a high seas fishing permit prior to undertaking those activities.

Under proposed § 300.333(c)(3), applicants would also need to submit a color, bow-to-stern, side-view photograph of the vessel in its current form and appearance legibly showing vessel name and identification markings with each application. Vessel photographs would be made available for use by NMFS, other agencies, RFMOs, and other entities as an aid in identifying vessels authorized to fish on the high seas.

In proposed § 300.333(d), the existing timeframe for issuance of permits would be amended in light of changes in the technology now used to issue permits, which allow faster turnaround in permit processing. Specifically, NMFS will issue HSFCA permits within 15 days of receipt of a complete application and associated fees, rather than 30 days as provided in the existing HSFCA regulations. *See* § 300.13(e).

Proposed § 300.333(g) would clarify the need for high seas permit renewal applicants to comply with all applicable reporting requirements before a new permit would be issued.

The rule would also add, at § 300.333(h), a reference to MMPA requirements noting that high seas permits do not authorize vessels or persons subject to the jurisdiction of the United States to take marine mammals.

Section 300.333(i) of the proposed rule would allow NMFS to modify, suspend, or revoke high seas permits if permitted activities impact living marine resources in ways that were not foreseen or anticipated at the time of permit issuance or are in contravention of an international conservation and management measure or are in violation of any provision of domestic law. Such flexibility is needed because high seas fishing permits are valid by law for 5 years. In the event that NMFS determines that a permit must be modified, suspended or revoked, NMFS would provide written notification to the permit holder at its address of record. A permit modification, suspension or revocation under this section is not an enforcement-related permit modification, suspension or revocation subject to the process and procedures in subpart D of 15 CFR part 904.

#### *Fisheries Authorized on the High Seas*

NMFS issues high seas fishing permits only for fisheries where high seas fishing activities have been analyzed in accordance with the ESA, NEPA and other applicable law. Such analyses have been completed for the following fisheries:

- 50 CFR part 300, subpart C—Eastern Pacific Tuna Fisheries
- 50 CFR part 300, subpart D—South Pacific Tuna Fisheries
- 50 CFR part 300, subpart G—Antarctic Marine Living Resources
- 50 CFR part 635—Atlantic Highly Migratory Species Fisheries
- 50 CFR part 660, subpart K—U.S. West Coast Fisheries for Highly Migratory Species
- 50 CFR part 665, subpart F—Western Pacific Pelagic Fisheries
- South Pacific Albacore Troll Fishing
- Northwest Atlantic Fisheries

Under existing regulations at 50 CFR 300.212, vessels that fish on the high seas in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean must have a valid Western and Central Pacific Fisheries

Commission (WCPFC) Area Endorsement. Vessels must obtain or hold a valid high seas fishing permit to be eligible to receive the WCPFC Area Endorsement.

At the time of publication of this proposed rule, approximately 600 U.S. fishing vessels are permitted under the HSFCA to operate on the high seas. These vessels are authorized to operate in one or more of the above-authorized fisheries as specified on their high seas fishing permits.

NMFS proposes a new section 300.334 that lists the fisheries authorized on the high seas, provides for issuance of and changes to high seas fishing permits for fisheries on the list, and provides for changes to the list. Through these provisions, NMFS seeks to reinforce U.S. vessels' compliance with all domestic requirements when they are operating on the high seas.

Under proposed § 300.334(a), applicants for high seas fishing permits must identify in their application which of the authorized fisheries from the list they plan to fish in. In addition, prior to applying for a high seas permit, applicants would need to obtain any permits or other types of authorizations required to participate in an authorized fishery. As a condition of the HSFCA permit (once issued), the holder must abide by all applicable requirements associated with the underlying authorized fishery, as well as the terms and conditions of the high seas fishing permit, the HSFCA regulations, and any other applicable laws and regulations.

As noted earlier, high seas fishing permits are valid for five years from date of issuance (§ 300.333(d)), and this proposed rule would not alter the duration of validity. If, after receiving a permit, the owner or operator of the vessel seeks to change the authorized fisheries in which he or she operates on the high seas, he or she would need to request in writing such a change from NMFS and obtain any permits associated with the authorized fisheries. After confirming that the applicant has been issued any other necessary permits, and meets all other applicable criteria, NMFS would issue a new high seas fishing permit per the process in § 300.333(d) with the change in the authorized fisheries. The revised permit would be valid for the remainder of the original 5-year period.

Section 300.334(d) would provide that NMFS may add other fisheries to the list of authorized fisheries after completing any needed analyses under the ESA, NEPA, and other applicable law or policy. NMFS would add fisheries to the list through rulemaking. While NMFS may decide on its own to

propose to add a fishery to the list, this proposed rule would include procedures at § 300.334(e) for a person to request that NMFS consider adding a fishery. The request would need to be in writing with a description of the species (target and incidental) expected to be harvested, the anticipated amounts of harvest and incidental catch, the approximate times when and places where fishing would take place, approximate number and types of vessels participating, or expected to participate, in the fishing activity, and the type, size, and amount of gear to be used. The request would also need to describe the specific area(s) that may be affected by the fishing activities and any anticipated impacts on the environment, including impacts on fish stocks, marine mammals, and species listed as threatened or endangered under the ESA or their critical habitat. If requested by NMFS, the applicant would be required to submit additional supporting information for NMFS to make determinations under the ESA, NEPA, or other applicable law or policy. Given the transboundary nature of many high seas fisheries and the potential impact of newly authorized high seas fisheries on domestic fishery management programs, NMFS would work with relevant NMFS regional office(s) and consult with Regional Fishery Management Council(s) to evaluate requests to authorize new high seas fisheries and, as part of that process, would publish a proposed rule in the **Federal Register** to gather public comment on such requests. Information received during the comment period may be considered by NMFS, working in conjunction with the relevant NMFS regional office(s) and in consultation with Regional Fishery Management Council(s), in its analysis to determine whether to authorize the fishery. Based on the analysis and other relevant considerations, NMFS would publish its determination in the **Federal Register** whether to add the fishery to the list of authorized high seas fisheries.

Section 300.334 (d), describes several factors that would be taken into account when considering the deletion of a fishery from the list of authorized fisheries including whether continuation of the fishery would contravene international conservation and management measures recognized by the United States or U.S. laws or regulations. For example, NMFS would remove a fishery from the list if vessels of the United States are no longer authorized to catch fish in the area of competence of the relevant RFMO. Proposals to remove a fishery from the

list of authorized fisheries (*i.e.*, de-authorize the fishery), as well as any necessary changes to other regulations in this chapter and 50 CFR part 600, would be published in the **Federal Register** as a proposed rule with an opportunity for public comment. NMFS would then publish its final determination on deleting the fishery from the list of fisheries in the **Federal Register**. In addition, NMFS would provide notice of a deletion of an authorized fishery to those permit holders that have the authorized fishery specified on their high seas fishing permit and to the public via the NMFS Web site. Permit holders would no longer be able to fish in high seas fisheries that are no longer authorized, but may request authorization to fish in other, still authorized, high seas fisheries. If requested, and as appropriate, NMFS would void the original permit and issue the permit holder a revised permit, valid for the remainder of the original 5 year period, for operations in another authorized fishery.

#### *Protecting Vulnerable Marine Ecosystems From Significant Adverse Impacts of Bottom Fishing*

Many RFMOs recognize the need to protect vulnerable marine ecosystems (VMEs) located on the high seas from certain bottom fishing practices and are taking steps for their protection. Through this proposed rule, the United States would be similarly taking steps to protect VMEs. The characteristics of VMEs are described in the FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas. These FAO Guidelines give examples of species groups, communities and habitat forming species that may contribute to the formation of VMEs, such as certain coldwater corals and hydroids, some types of sponge dominated communities, and seep and vent communities comprised of invertebrate and microbial species found nowhere else. Examples of topographic, hydrophysical or geological features that potentially support these and other species include seamounts, guyots, banks, knolls, hills and hydrothermal vents.

The United Nations General Assembly (UNGA), through annual sustainable fisheries resolutions, calls upon States, both individually and cooperatively through RFMOs, to ensure that bottom fishing activities do not have significant adverse impacts on VMEs. The United States has strongly promoted the adoption of measures to protect VMEs by relevant RFMOs.

The UNGA resolutions call on RFMOs with competence over bottom fishing activities or flag States in areas where RFMOs have not taken action or areas where there are no relevant RFMOs to:

(1) Assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on VMEs, and to ensure that if significant adverse impact is likely to occur, such activities are managed to prevent such impacts or not authorized to proceed;

(2) Identify areas where VMEs occur or are likely to occur and assess bottom fishing impacts on such ecosystems;

(3) Close such areas to bottom fishing unless conservation and management measures have been established that prevent significant adverse impacts to VMEs; and

(4) Cease bottom fishing activities in areas where, in the course of fishing activities, VMEs are encountered and report these encounters to a relevant authority.

In its International Guidelines for the Management of Deep-sea Fisheries in the High Seas, the FAO identifies impacts as significantly adverse if they compromise ecosystem integrity, such as ecosystem structure or function, by impairing the ability of affected populations to replace themselves, degrading the long-term natural productivity of habitats, or causing, on a more than temporary basis, significant loss of species richness, habitat or community types.

Several RFMOs have competence over bottom fishing activities. Four of these RFMOs existed prior to the most recent publication in the **Federal Register** of international conservation and management measures recognized by the United States: Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), Northeast Atlantic Fisheries Commission (NEAFC), Northwest Atlantic Fisheries Organization (NAFO), and Southeast Atlantic Fisheries Organization (SEAFO). Each of these four bodies adopted conservation and management measures in accordance with UNGA resolutions 61/105 and 64/72 related to protection of VMEs. The United States is a member of CCAMLR and NAFO, and thus, is obligated to abide by their conservation and management measures. The United States recognizes the conservation and management measures adopted by NEAFC and SEAFO under the HSFCA, and thus prohibits U.S. fishing vessels from acting in contravention of them (76 FR 28954, May 19, 2011).

The UNGA resolutions call upon States to develop new RFMOs in areas where no organization or arrangement with the competence to manage bottom fisheries exists and to develop and agree to implement interim measures until binding conservation measures can be implemented. The United States participated in negotiations in the North and South Pacific for the establishment of two new RFMOs with such competency. In the North Pacific, a treaty, the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, has been negotiated but has not yet entered into force. The United States has signed the treaty and is undertaking the domestic process to ratify the treaty. The participants have developed two sets of interim measures for the protection of VMEs, one for the eastern and the other for the western portion of the area where the treaty would apply.

In the South Pacific, the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean entered into force on August 24, 2012, creating the South Pacific Regional Fisheries Management Organisation (SPRFMO). While the United States is not currently a party to the Convention, the United States participates in the SPRFMO as a Cooperating non-Contracting Party, has signed the treaty, and is undertaking the domestic process to ratify it. SPRFMO adopted a conservation and management measure in January 2014 in accordance with UNGA resolutions 61/105 and 64/72.

Under § 300.335 of this proposed rule, bottom fishing would only be permitted on the high seas in accordance with international conservation and management measures recognized by the United States. Currently, CCAMLR, NAFO, NEAFC and SEAFO have such measures, as discussed above. A person seeking to engage in bottom fishing not subject to international conservation and management measures recognized by the United States must request authorization of a new high seas fishery as described in § 300.334(e) and then, if the fishery is authorized, obtain a high seas permit authorizing participation in the fishery. See “Fisheries Authorized on the High Seas” section above. NMFS may specify conditions in the permit to mitigate adverse impacts on VMEs, which may include the types of conditions that have been adopted in relevant RFMO measures recognized by the United States. Procedures for permits under § 300.333 and changes to existing permits under § 300.334 would be used for bottom fishing permitting.

Consistent with the FAO’s International Guidelines for the Management of Deep-sea Fisheries in the High Seas, NMFS is proposing to define bottom fishing as fishing using gear that is likely to contact the seafloor during the normal course of fishing operations.

#### *Vessel Identification*

To clarify the type of vessel length used in determining the required sizing of vessel markings, the word “overall” would be added after “length,” in § 300.336(b)(2)(v) in the proposed rule (§ 300.14(b)(2)(v) in the existing regulations). This revision to the regulatory text is consistent with the FAO Standard Specifications for the Marking and Identification of Fishing Vessels. No other changes to this section are proposed.

#### *Requirements for Enhanced Mobile Transceiver Units (EMTUs)*

NMFS published a final rule for VMS type-approval on December 24, 2014. See 79 FR 77399. Those regulations are codified at 50 CFR part 600, subpart Q (national VMS regulations). As defined in the VMS type-approval regulations, vessel monitoring system, or VMS, refers to a satellite based surveillance system designed to monitor the location and movement of vessels using onboard transceiver units that send global positioning system location reports to a monitoring entity. An enhanced mobile transceiver unit (EMTU) is a transceiver or communications device, including antennae, dedicated message terminal and display, and an input device such as a keyboard which is installed on a fishing vessel, and is capable of supporting two-way communication, messaging, and electronic forms transmission, and is an example of the device that provides the vessel location reports as part of a VMS.

Under § 300.337 of this proposed rule, NMFS would require all vessels permitted to operate on the high seas, or subject to those permitting requirements, to have an installed and activated NMFS-type-approved EMTU on board. NMFS will not issue or renew a high seas fishing permit unless the vessel has an installed and activated NMFS-type-approved EMTU that reports automatically to NMFS (§ 300.333(d)(2) and (g)).

NOAA’s Office of Law Enforcement (OLE) currently type-approves EMTUs and mobile communication services (MCS) associated with the EMTUs based on requirements outlined in the national VMS regulations. OLE periodically publishes a list of type-approved EMTUs and MCS in the **Federal Register**. Vessel owners also would

need to comply with any other applicable VMS requirements set forth under applicable fishery- and region-specific regulations and the national VMS regulations. The owner or operator of the vessel would need to work with a divisional office of the NOAA Office of Law Enforcement, preferably the office in, or nearest, the NMFS Region that is issuing the high seas fishing permit, to ensure that their EMTU properly reports positions to NMFS.

This proposed rule would require the continuous operation of the EMTU, with hourly transmission of position reports whenever a U.S. vessel with a high seas permit is on the high seas. In addition, the vessel must comply with any other position reporting requirements applicable to the specific fisheries in which it is authorized to participate. The proposed requirement will strengthen NMFS' ability to ensure that U.S. high seas vessels do not undermine international conservation and management measures recognized by the United States.

A vessel would be exempt from these requirements and could power down the EMTU when the vessel remains at a dock or permanent mooring for more than 72 consecutive hours (referred to as the in-port exemption in the proposed rule) or when it participates in a domestic fishery within the U.S. EEZ, for 30 or more consecutive days, and there are no other applicable requirements for any EMTU or VMS unit operation for those activities or fishery (referred to as the long-term exemption in the proposed rule). Prior to powering down, the high seas permit holder would be required to notify the OLE divisional office, via email or other means as directed by the OLE divisional office, the following information: The vessel's name; the vessel's official number; the intent to power down the EMTU; the applicable exemption that allows for power-down; and full name, telephone, and email contact information for the vessel owner or operator. If the in-port exemption is being invoked, the high seas permit holder must also include in the above notification the name of the port where the vessel will be docked or at permanent mooring and the amount of time the vessel is expected to remain there. If the long-term exemption is being invoked, the high seas permit holder must include information in the above notification that describes the activities or fishery the vessel will be engaged in and estimated duration.

When powering up the EMTU after an in-port exemption, the vessel owner or operator would need to report to the OLE divisional office the following

information: That the EMTU has been powered up; the vessel's name; the vessel's official number; port name; fishery where the vessel intends to operate; and full name, telephone, and email contact information for the vessel owner or operator. The vessel owner or operator needs to make this report to the OLE divisional office, during office hours, at least 2 hours before leaving port or mooring. When powering up after a long-term exemption, the vessel owner or operator would need to notify the OLE divisional office with the previously described information, during office hours.

When powering up after either exemption, the vessel owner or operator would need to receive email confirmation from the OLE divisional office that EMTU transmissions are being properly received. This confirmation would need to be received before leaving port, after an in-port exemption, or before entering the high seas or a fishery that requires EMTU operation, after a long-term exemption.

Many HSFCA-permitted vessels are already required to operate EMTUs when at sea because they participate in fisheries with domestic EMTU requirements. Satisfying those requirements would satisfy the proposed HSFCA requirement, if the EMTU is operating at all times, providing hourly position reports while on the high seas, and the EMTU activation and power-down/power-up procedures are the same or are more restrictive than these proposed HSFCA requirements. VMS requirements that currently apply on the high seas include the following regulations:

- § 660.712(d) for longliners in the U.S. West Coast fisheries for highly migratory species (HMS) (these units are owned and installed by NMFS),
- § 665.19 for Western Pacific pelagic fisheries (these units are owned and installed by NMFS),
- § 300.219 for Western and Central Pacific fisheries for HMS,
- § 300.45 for South Pacific tuna fisheries,
- § 635.69 for Atlantic HMS fisheries, and
- § 300.116 for harvest of Antarctic marine living resources.

High seas fishing vessels that would need to purchase, install, activate, and operate EMTUs as a result of this proposed rule include vessels other than longliners participating in the U.S. West Coast fisheries for HMS, longline vessels less than 40 feet in length overall in the Western Pacific pelagic fisheries, vessels in the Atlantic HMS fisheries that do not use pelagic longline gear, and certain vessels in the Atlantic HMS

fisheries that use shark bottom longline and gillnet gear.

In the case of failure of the EMTU while at sea, the vessel operator, owner, or designee would be required to notify the OLE divisional office and follow instructions provided, which could include actions described under proposed § 300.337(e)(2). The EMTU would then need to be repaired or replaced and operating within 30 days or before starting the next trip, whichever is sooner.

For communicating with enforcement authorities about the functioning of the EMTU and other purposes, operators of vessels would be required to carry on board and continuously monitor a two-way communication device capable of real-time communication with the OLE divisional office. The device must be capable of transmitting position reports, or the vessel must have a separate device for transmitting position reports, in the event the EMTU fails.

The vessel owner or operator would be responsible for all costs associated with the purchase, installation and maintenance of the EMTU, and for all charges levied by the vendors as necessary to ensure the transmission of automatic position reports to NMFS. However, if the EMTU is being carried and operated in compliance with the requirements in 50 CFR part 300, 50 CFR part 660, or 50 CFR part 665 relating to the installation, carrying, and operation of VMS units, the vessel owner and operator would not be responsible for costs that are the responsibility of NMFS under those regulations.

Vessel owners or operators who purchase an EMTU for the purpose of complying with Federal VMS regulations such as those in this rule, if finalized, may be eligible for a one-time reimbursement per vessel. See 73 FR 24955, May 6, 2008, for details.

#### *Requirement for Observers*

Observers provide NMFS with information on fishing effort and catch of target species and non-target species, including protected species (such as marine mammals, sea turtles, and seabirds) pursuant to various legal authorities, including the Magnuson-Stevens Act, ESA, MMPA, the implementing legislation of international or regional treaties to which the United States is party, or regulations promulgated under those statutes. An observer under this proposed rule is defined as any person serving in the capacity of an observer employed by NMFS, either directly or under contract with a third party, or certified as an observer by NMFS

(§ 600.10). Under § 300.338 of this proposed rule, NMFS would require a vessel permitted pursuant to the HSFCA, if directed by NMFS, to carry an observer during a fishing trip with operations on the high seas. This requirement would not be invoked by NMFS if the vessel will already be carrying an observer pursuant to other legal authorities. While the vessel may be required to cover the costs of an observer under other applicable laws, NMFS would fund the cost of the observer's salary and benefits when placed on board pursuant to this rule. If and when a mechanism is established whereby the fishing vessel could pay these costs without any conflict of interest, the vessel could be responsible for all or a portion of these costs.

Currently, there are different fishery-specific observer requirements. In some fisheries authorized on the high seas, an observer must be on board every fishing trip, such as on the Class 6 purse seine vessels (vessels with well volume carrying capacity in excess of 425 cubic meters) operating in the Pacific tuna fisheries. In others, such as the pelagic longline vessels in the Atlantic HMS fisheries, only a portion of vessel trips are selected for observer coverage. Certain fisheries on the high seas currently do not require carrying an at-sea observer, such as the South Pacific albacore troll fisheries, some Class 5 (vessels with well volume carrying capacity between 319 and 425 cubic meters) and all Class 1 to 4 purse seine vessels fishing in the U.S. West Coast Fisheries for Pacific HMS, some longliners in the Western Pacific pelagic fishery, and vessels less than 40 feet in length overall in the American Samoa longline fishery. However, these and any other commercial HMS vessels are subject to WCPFC observer deployment under WCPFC regulations for fishing trips during which the vessel at any time enters or is within the WCPFC Convention Area.

This proposed rule would allow NMFS to place an observer on board a high seas fishing vessel where observer coverage is not otherwise required by other regulations or relevant RFMO conservation and management measures. Such additional coverage would enhance NMFS' ability to collect fishery dependent data needed for fishery management. A vessel would be selected for observer deployment using a sampling scheme to be developed by NMFS, based on the need to obtain information on high seas activities.

The owner or operator of a vessel that is selected for observer deployment under this rule would be required to notify NMFS before commencing any

fishing trip that takes place on the high seas. In the letter to the vessel owner or operator informing him/her of the selection for observer deployment, NMFS would specify notification procedures and information requirements such as expected gear deployment, trip duration, and fishing area. Requirements pertaining to observer deployment, including the requirement to provide the observer access to, for example, vessel communications and navigation equipment and cooperate with observers are included in the proposed rule. Observer safety requirements set forth at § 600.746 would also apply, as well as the associated prohibitions in § 600.725(q) through (u). These sections require vessels carrying observers to have a valid U.S. Coast Guard Commercial Fishing Vessel Safety decal and take other steps to ensure safe conditions aboard the vessel.

#### *Transshipment on the High Seas*

At-sea transshipment, defined in this proposed rule at § 300.331 as offloading or receiving or otherwise transferring fish or fish products from one fishing vessel to another, allows harvesting vessels to continue operations for longer periods when they are in waters far from ports. At-sea transshipment can also be used to obscure the origin of illegally-caught fish so that the product can be placed into commerce in contravention of regulations designed to eliminate illegal, unreported and unregulated (IUU) fishing practices. Unreported and unregulated transshipments at sea can contribute to inaccurate reporting of catches and can support IUU fishing activities. Improved oversight of transshipment taking place on the high seas would promote compliance with international conservation and management measures and help deter IUU fishing.

The proposed definition of transship or transshipment would exclude "net sharing," that is, the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one fishing vessel to another fishing vessel. Fish would be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

In those instances where transshipment on the high seas is not prohibited under other legal authorities, this proposed rule requires that U.S. high seas fishing vessels involved in transshipment on the high seas have on board a high seas fishing permit (§ 300.333(b)). The permitting requirement applies to both the vessel offloading the fish or fish product and

the vessel receiving the fish or fish product. In addition to any other applicable requirements, under § 300.339(b), the owner or operator of a U.S. vessel receiving or offloading fish or fish product on the high seas must notify NMFS at least 36 hours prior to each transshipment event, and submit a report on the transshipment event within 15 days after the vessel first enters into port, using the form obtained from the Regional Administrator or Office Director who issued the high seas fishing permit.

The owner or operator of U.S. vessels receiving or offloading fish on the high seas would need to include the following information in the prior notification: The vessels participating in the transshipment (names, official numbers, and vessel types); the location (latitude and longitude to the nearest tenth of a degree) of transshipment, date and time that transshipment is expected to occur, and species, processed state, and quantities (in metric tons) expected to be transshipped. Each transshipment would require a separate notice and report. As some of the information might be known by only the receiving vessel operator and some of the information might be known only by the offloading vessel operator, the operators of both vessels may need to exchange information regarding transshipment activities. In authorized fisheries where equivalent or more restrictive domestic transshipment notification and reporting regulations apply, fulfillment of such regulations would satisfy the requirements under this proposed rule.

The following are examples of existing at-sea transshipment restrictions and reporting requirements that already apply to high seas fishing vessels (all citations are to 50 CFR):

- § 300.24(d) of the Eastern Pacific Tuna Fisheries regulations prohibits the transshipment of purse seine caught tuna in the Inter-American Tropical Tuna Commission (IATTC) Convention Area.

- § 300.112(k) requires U.S. flagged vessels that receive or attempt to receive *Dissostichus* species from a harvesting vessel at sea, regardless of whether such transshipment occurs in waters under the jurisdiction of CCAMLR, to obtain from NMFS a harvesting permit authorizing transshipment. CCAMLR conservation measures also require advance notification for transshipment of Antarctic marine living resources and other materials (e.g., bait, fuel) in the CAMLR Convention area. All transshipments of *Dissostichus* species must be reflected in the *Dissostichus* Catch Document regardless of where the transshipment occurs.



- § 635.29(a) prohibits at-sea and in port transshipment of any tuna or tuna-like species, or other highly migratory species, regardless of where the fish were harvested. However, an owner or operator of a vessel for which an Atlantic Tunas Purse Seine category permit has been issued under § 635.4 may transfer large, medium, and giant bluefin tuna at sea from the net of the catching vessel to another vessel for which an Atlantic Tunas Purse Seine category permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

- For U.S. West Coast fisheries for HMS, the operators of any commercial fishing vessel and any recreational charter vessel fishing for HMS in the management area must fill out information on the date, transshipper, and amount transshipped on report forms provided by the Western Regional Administrator or a state agency (§ 660.708(a)). Thus, the albacore trollers, pole and line vessels, and other vessels that fish for HMS on the high seas are subject to this reporting requirement.

- For Western Pacific pelagic fisheries, regulations set forth at § 665.14(c) require operators of vessels receiving transshipments to keep records and submit information on transshipments that occur in the EEZ. Specifically, any person subject to the requirements set forth in § 665.801(e)—which pertains to longline and other pelagic fishing within the EEZ or landing or transshipping pelagic species within the EEZ—must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Pacific Islands Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the day of transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook for each day of transshipment activity must be submitted to the Pacific Islands Regional Administrator within 72 hours of each landing of western Pacific pelagic species.

- For the WCPFC Convention Area, NMFS regulations prohibit transshipments at sea involving purse seine vessels in the WCPFC Convention Area as well as transshipments to and from purse seine vessels of fish caught in the WCPFC Convention Area and transshipped outside the WCPFC Convention Area. 50 CFR 300.216(b). However, net sharing between purse

seine vessels is allowed in the WCPFC Convention Area in limited circumstances. 50 CFR 300.216(c). For transshipments that are not prohibited, owners and operators of each vessel involved in a transshipment in the WCPFC Convention Area or a transshipment of fish caught in the Convention Area and transshipped anywhere are required to complete a specific report form and to submit that form to NMFS. 50 CFR 300.218(b). Vessels are required to notify the WCPFC when such transshipment occurs on the high seas or when an emergency transshipment that would otherwise be prohibited occurs. Notices for high seas transshipments need to be submitted to the WCPFC at least 36 hours before the transshipment and notices for emergency transshipments must be submitted within 12 hours after completion of the emergency transshipment.

#### *Prohibitions*

The proposed rule would redesignate the existing prohibitions in §§ 300.15 to 300.340, and would add prohibitions to clarify that a high seas vessel: Must have on board a valid permit; may not fish on the high seas unless any and all permits related to the authorized fisheries noted on the high seas permit are valid; must follow new requirements related to the use of an EMTU; must follow new requirements with respect to observers, must follow new reporting requirements with respect to transshipments; and must follow reporting requirements of the authorized fishery(ies) noted on the high seas permit.

#### *Penalties*

NMFS proposes to remove the penalties section in the existing regulations, as these penalties are adequately addressed in the HSFCA itself and do not need to be repeated in these regulations.

#### *Catch and Effort Reporting Requirements*

The proposed rule would modify the catch and effort reporting requirements to clarify the information that must be maintained on board a vessel and reported to NMFS.

Under the proposed rule, the references to the regulations in the existing version of § 300.17 would be removed. The references to the regulations of each authorized fishery would be provided in § 300.334 instead. The vessel owner and operator would be responsible for obtaining from their Regional Administrator the appropriate forms for their authorized fishing activities and submitting the reports

within the deadlines of the authorized fisheries or within 15 days following the end of a fishing trip, whichever is sooner. The reference in current regulations to MSA confidentiality provisions in § 300.17(c) would be deleted.

#### *Scientific Research Activities*

Existing regulations set forth at §§ 600.512(a) and 600.745(a) encourage persons planning scientific research activities in the U.S. EEZ using foreign vessels or U.S.-flagged vessels to submit their research plan to the appropriate Regional Administrator or Science Center Director and obtain a letter of acknowledgement. Under the proposed rule, the phrase “or on the high seas” would be added in § 600.745(a) so that any person who would use a U.S. vessel for research activities on the high seas would also be encouraged to submit their research plan and obtain a letter of acknowledgement. The scientific research plan should be submitted 60 days, or as soon as practicable, prior to the start of the research activities. This is not intended to inhibit or prevent any scientific research activity conducted on the high seas, and is in addition to any requirements that may apply to such research under RFMO conservation and management measures or other applicable law.

#### *Publication of International Conservation and Management Measures*

HSFCA section 105(e) (16 U.S.C. 5504(e)) requires the Secretary, in consultation with the Secretary of State, to periodically publish in the **Federal Register** a notice listing “international conservation and management measures recognized by the United States.” The latest listing was published on May 19, 2011 (76 FR 28954).

#### **Request for Comments**

NMFS is requesting comments on any of the requirements or analyses described in the proposed rule. Furthermore, NMFS requests comments on the following topics:

1. The time it takes to procure an EMTU and have it installed. Currently, NMFS is considering requiring that vessel owners have an EMTU installed and operational within 90 days of publication of the final rule;
2. The number of hours and costs associated with having the EMTU installed by a qualified marine electrician;
3. Current levels of transshipment on the high seas involving U.S. vessels and the areas where the transshipments occur; and

4. The fisheries in state waters, territorial seas, or within the EEZ in which high seas fishing vessels participate and details on how vessels transit from the high seas to those fisheries.

#### Classification

This proposed rule is published under the authority of the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*). The NMFS Assistant Administrator has determined that this proposed rule is consistent with this and other applicable laws, subject to further consideration after public comment.

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

#### Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained above in the first few paragraphs of the **SUPPLEMENTARY INFORMATION** section. The analysis follows. A copy of the analysis is available from NMFS (see **ADDRESSES**).

#### Description and Estimate of the Number of Small Entities

The proposed rule would apply to owners and operators of U.S. fishing vessels operating on the high seas, including harvesting vessels, refrigerated cargo vessels, and other vessels used to support fishing. There are approximately 600 U.S. vessels permitted under the HSFCA to fish on the high seas. The majority of these permitted vessels are longliners, purse seiners, trollers, or pole and line vessels that fish for highly migratory species. There are also small numbers of gillnetting, squid jigging, hand or other lining, multipurpose, and trawl vessels.

In this RFA analysis, an individual vessel is the proxy for each business entity. Although a single business entity may own multiple vessels, NMFS does not have a reliable means at this time to track ownership of multiple vessels to a single business entity. Based on limited financial information about the affected fishing vessels, NMFS believes that all the affected fish harvesting businesses, except for the Pacific tuna purse seine vessels, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have

annual receipts of no more than \$20.5 million.

#### Projecting Reporting, Record-Keeping, and Other Compliance Requirements

For each element of the proposed rule, the analysis of impacts to small entities is described below.

**Permit Application Process.** NMFS currently authorizes fisheries on the high seas only after appropriate reviews are completed pursuant to the ESA, MMPA, NEPA, and other applicable law. Applicants select from a list of such authorized fisheries when applying for a high seas fishing permit. The proposed rule would codify this procedure. Vessel owners and operators apply for a high seas fishing permit every 5 years, paying an application fee currently set at \$129 and completing the application form, which is estimated to take 30 minutes. The rule would not change these burdens.

The proposed rule would be explicit about the requirement that vessels harvesting or participating in operations on the high seas in support of harvesting, such as transshipment and provision of supplies or fuel, have on board a valid high seas fishing permit. NMFS expects this aspect of the proposed rule to result in few additional applications for high seas permits, if any, because transshipment of fish on the high seas is prohibited in some fisheries and where it is not prohibited, records show few instances of transshipment. NMFS is not aware of any U.S. vessels that provide supplies or fuel to harvesting vessels on the high seas.

The rule would require a photograph of the high seas fishing vessel to be submitted with the permit application. The time necessary to photograph the vessel, print or scan the photograph, and attach it to the application is estimated to take 30 minutes per application.

The proposed rule would allow a person, which could include an organization or a group of persons, to request NMFS add a fishery authorized on the high seas. A request would need to include the following information:

(a) The species (target and incidental) expected to be harvested and the anticipated amounts of harvest and bycatch.

(b) The approximate times and places fishing will take place, approximate number of vessels participating, and the type, size, and amount of gear to be used.

(c) A description of the specific area that may be affected by the fishing activities.

(d) A description of any anticipated impacts on the environment, including impacts on fish stocks, marine mammals, species listed as threatened or endangered under the ESA or their critical habitat.

(e) If requested by NMFS, any additional information necessary for NMFS to conduct analyses under ESA, MMPA and NEPA.

Making the request to add an authorized fishery is expected to take approximately 110 hours. This time would be spent gathering and compiling the required information. NMFS does not expect such requests on a regular basis. For the purposes of this IRFA, NMFS estimates that one request might be submitted every 5 years. The impact from this aspect of the proposed rule is not expected to be significant because this is not a requirement, but an option for the public, and such requests are expected to be made infrequently.

**Installation and Operation of EMTUs.** The proposed rule would require the installation of EMTUs on all high seas fishing vessels. The EMTU would need to be operated at all times, except when the vessel will be at a dock or permanent mooring for more than 72 consecutive hours, or when the vessel will not operate on the high seas or in any fishery that requires EMTU operation for more than 30 consecutive days. Notices prior to EMTU power-down and power-up would need to be provided to NMFS.

Under the proposed rule, approximately 200 of the currently permitted high seas fishing vessels would need to install an EMTU. The remaining 400 or so vessels currently holding high seas fishing permits are already subject to EMTU requirements and would not bear any additional compliance costs as a result of this proposed rule.

The majority of the approximately 200 affected vessels would likely be albacore trollers operating in the Pacific Ocean. These vessels have generally not been subject to VMS requirements contained in other regulations. The cost of compliance with this requirement includes the cost of purchase, installation, maintenance, and operation of the EMTU. The costs of purchase and installation are treated as one-time costs because this analysis shows costs just in the near-term future. Table 2 summarizes the costs associated with the EMTU requirement in the proposed rule. A description of the estimates and calculations used in Table 2 is provided below the table.

TABLE 2—ESTIMATED COSTS OF COMPLIANCE WITH EMTU REQUIREMENTS

| Description  | Cost                                  |
|--|---------------------------------------|
| EMTU purchase .....  | Up to \$3,100.                        |
| Installation cost (one-time) .....   | \$50–400 (\$400 used for estimation). |
| Daily position report costs (Hourly, 24/day; \$0.06/report *24 reports/day) .....                  | \$1.44.                               |
| Annual position report cost per vessel .....   | \$525/vessel.                         |
| (\$1.44/day * 365 days/year) .....   |                                       |
| Annual EMTU maintenance cost .....   | \$50–100 (\$100 used for estimation). |
| Total cost per vessel (Year 1; unit + installation + position reports) .....                       | \$4025.                               |
| Total cost per vessel after reimbursement of EMTU cost (for eligible vessels only) .....           | \$925.                                |
| Cost per vessel (Year 2 and beyond; position reports and EMTU maintenance) .....                   | \$625/vessel.                         |
| Number of affected vessels .....   | 200.                                  |
| Total cost (Year 1; total cost per vessel before reimbursement * number of affected vessels) ..... | \$805,000.                            |
| Total cost (Year 2 and beyond; total cost per vessel * number of affected vessels) .....           | \$125,000.                            |

Units would need to be installed by a qualified marine electrician. Based on experience in other fisheries with EMTU requirements, NMFS suggests that installation cost can range from \$50 to \$400, depending on the vessel, proximity to the installer, and the difficulty of the installation. For estimation purposes, \$400 was used to calculate the costs of compliance with this proposed rule. NMFS is interested in receiving public comment on these values to refine estimates of the economic impacts on the affected vessels.

The cost of transmitting data through the EMTU depends on the type of EMTU installed and the communication service provider selected. For the purposes of this rulemaking, NMFS is assuming the cost of EMTU position data transmissions is approximately \$0.06 per transmission. This equates to \$1.44 per day for the location reports, at a rate of one transmission per hour. Providing position reports throughout the year could cost a high seas fishing vessel \$525 (365 days per year \* 24 position reports per day \* \$0.06 = \$525).

The EMTU may be powered down if the vessel would be at the dock or mooring for more than 72 consecutive hours or if the vessel, for 30 or more consecutive days, would not be operating on the high seas or participating in a fishery that requires EMTU operation. A message notifying NMFS of the power-down must be sent to NMFS prior to powering down the unit and again when the EMTU will be powered back up. If an EMTU is powered down for portions of the year, the actual annual cost of transmitting position data would be less. Thus the annual costs of EMTU operation could vary among individual vessels depending on the number of days an EMTU may be powered down.

The cost of compliance for vessel owners is estimated to be \$4,025 per vessel in the first year (Table 2). This is the cost of compliance prior to receiving

reimbursement for the cost of the EMTU. Reimbursement funds of up to \$3,100 per VMS unit would reduce the cost to \$925 per vessel, on average, for reimbursement-eligible vessels. The cost of operating the EMTU in year two and beyond would include the cost of sending position reports and maintenance and is estimated to be \$625.

Aside from the costs of purchase, installation, and operation of EMTUs, vessel owners or operators would need to spend time purchasing a unit, having it installed, and submitting an installation and activation report form. These steps are estimated to take an average of 4 hours. The notices prior to power-down and powering back up the EMTU are estimated to take 10 minutes each.

The compliance cost of obtaining, carrying on board, and monitoring the required communication devices is expected to be zero, as NMFS believes all affected small entities already carry and monitor such devices.

*Requirement to Carry an Observer.* Under the proposed rule, a high seas fishing vessel would be required to carry an observer for the duration of a fishing trip, if so selected by NMFS. When an observer is deployed pursuant to the proposed rule, NMFS would pay the cost of the observer's salary and benefits. If and when a mechanism is established, through a future rulemaking, whereby the fishing vessel could pay these costs without any conflict of interest, the vessel could be responsible for all or a portion of these costs. Most high seas fishing vessels are already subject to requirements for carrying an observer. For example, in the shallow-set and deep-set longline sectors of the Hawaii longline fleet, 100 percent and approximately 20 percent of fishing trips, respectively, are covered by observers. In authorized fisheries where observers are placed on all participating vessels pursuant to other

regulations, the compliance cost of the proposed rule would be nil.

In high seas fisheries where only a portion of the high seas fishing vessels are selected for observer coverage, the possibility of being selected to carry an observer would increase under this proposed rule. Vessels that are not already subject to any other observer requirements could be selected to carry observers under the proposed rule. This includes, but is not limited to, South Pacific albacore trollers, purse seine vessels of Class 5 or smaller participating in the Eastern Pacific tuna fisheries, and some longline vessels in Western Pacific pelagic fisheries.

If a vessel is selected for observer coverage under this rule, the vessel owner or operator would be required to provide NMFS a notice of their next fishing trip. This notification is estimated to take 5 minutes and cost \$1 in communication costs.

For trips on which an observer is deployed under this new requirement, the affected entity would be at least responsible for the costs associated with providing the observer with food, accommodations, and medical facilities. These costs are expected to be \$20 to \$50 per day. If the affected entity is also responsible for the cost of the observer's salary and benefits because a mechanism is established whereby the fishing vessel pays these costs, the range would be \$250 to \$500 per day. Assuming a high seas fishing trip averages 20 days in duration, the estimated cost of compliance for accommodating an observer on a vessel would be between \$400 and \$1,000 if the entity is responsible for only food, accommodations, and medical facilities, or between \$5,000 and \$10,000 if the entity will also bear the cost of the observer's salary and benefits.

*Transshipment Notices and Reports.* For owners and operators of vessels involved in offloading or receiving a transshipment of fish or fish product on the high seas, the proposed rule would

require vessel owners or operators to provide to NMFS notice of transshipments at least 36 hours prior to any transshipment on the high seas and to submit to NMFS reports of transshipment following the transshipment events.

Transshipment is also regulated under other applicable law. For example, in the Atlantic Ocean, transshipments are generally prohibited, with some exceptions. In the Pacific Ocean, purse seine vessels are prohibited from transshipping in some instances. NMFS is aware that during 2006 to 2009, four to eight vessels offloaded longline-caught fish each year and four to eight vessels received longline-caught fish each year. It is likely that most of these transshipments took place at sea by the Hawaii-based longline fleet, but it is unknown how many of these transshipments took place on the high seas. NMFS also has data on past transshipments on the high seas involving a few U.S. albacore troll vessels.

Each transshipment notice is estimated to take about 15 minutes and no more than \$1 in communication costs to prepare and submit to NMFS.

Each transshipment report is estimated to take about 60 minutes and \$1 in communication costs for submitting each report to NMFS. Thus, for each transshipment event on the high seas, the time burden is estimated to be 1 hour and 15 minutes and cost \$2 for each U.S. flagged vessel involved in the transshipment.

**Reporting Requirements.** Existing regulations require submission of high seas fishing logbooks. This proposed rule deletes that requirement under the HSFCA, and instead, provides that owners and operators of high seas fishing vessels would use the reporting forms developed for their authorized fisheries to report high seas catch and effort information. Given that the former reporting requirements would not be changed in a substantive way, the associated compliance cost would be unchanged.

The reporting requirements described above would amend an existing collection of information, (OMB Control No. 0648-0304) and these amendments are subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Summary.** The proposed rule would increase the cost of operating on the high seas for all affected entities. Fulfillment of these requirements is not expected to require any professional skills that the vessel owners and operators do not already possess.

#### Significant Alternatives Considered

NMFS attempted to identify alternatives that would accomplish the objectives of the rulemaking and minimize any significant economic impact of the proposed rule on small entities.

The alternative of taking no action was rejected because it would fail to achieve the objectives of the rulemaking.

NMFS evaluated an option to rely on existing permit programs, other than the HSFCA permit program, to authorize high seas fishing activities. However, by continuing to require the separate HSFCA permit, NMFS is able to maintain a separate record of vessels permitted to fish on the high seas, facilitating NMFS' ability to submit information regarding U.S. high seas vessels to the FAO as required in the Compliance Agreement. FAO compiles from the Parties to the Compliance Agreement records of vessels authorized to fish on the high seas. The separate HSFCA permit, required under the existing regulations to be carried on board the vessel, is also useful in demonstrating to any domestic inspectors, foreign inspectors operating under the authority of a high seas boarding and inspection scheme adopted by an RFMO to which the United States is party, or foreign port inspectors, that a vessel is permitted to fish on the high seas.

With respect to the EMTU requirement, one alternative would be to require EMTU operation at all times, which would provide NMFS the ability to monitor a vessel's location at any time. However, NMFS is aware that some vessels holding high seas fishing permits may remain in the EEZ for extended periods and are not currently subject to EMTU operation requirements while in the EEZ. Some of these vessels may also dock their vessels and not engage in fishing for portions of the year. This alternative is not preferred because the regulatory burden could be minimized by providing some exemptions to the EMTU operation requirement, such as exemptions to address the two circumstances described above. The preferred alternative would maintain the ability to monitor high seas fishing vessels yet minimize the regulatory burden.

Another alternative would be to require EMTU operation only on the high seas. However, allowing units to be powered down while a vessel is in the EEZ of the U.S. or of another country would weaken the effectiveness of using EMTU position information to monitor the locations of high seas fishing

vessels. For vessels that are highly mobile and could operate at any time of the year, such as many high seas fishing vessels, EMTUs are more effective if they remain in operation at all times. Allowing power-downs whenever in the EEZ, aside from the in-port and long-term exemptions provided in the proposed rule, could also encourage non-compliance and result in large gaps in NMFS' ability to monitor high seas fishing vessels. Thus, this alternative is not preferred.

With respect to the requirement for prior notice of high seas transshipments, one alternative would be to allow affected entities to provide the notice of high seas transshipment to NMFS at least one business day in advance of the transshipment, rather than 36 hours as proposed. However, a shorter advance notice would reduce opportunities for NMFS or the U.S. Coast Guard to observe transshipments in the event they are able to meet the transshipping vessels at sea. For this reason, this alternative is not preferred.

With respect to the transshipment reporting requirements, one alternative would be to impose a different timeframe for submission of the report. The report could be submitted more than 15 days after completion of the transshipment. However, NMFS believes 15 days is a reasonable timeframe, and that extending it further could lead to NMFS not receiving transshipment reports in a timely manner and would not support collection of complete information regarding authorized fisheries.

#### Duplicative, Overlapping, and Conflicting Rules

The proposed rule has been prepared to be consistent with a number of regulations. These include the following:

- 50 CFR part 300, subpart C—Eastern Pacific Tuna Fisheries
- 50 CFR part 300, subpart D—South Pacific Tuna Fisheries
- 50 CFR part 300, subpart G—Antarctic Marine Living Resources
- 50 CFR part 300, subpart O—Western and Central Pacific Fisheries for Highly Migratory Species
- 50 CFR part 635—Atlantic Highly Migratory Species Fisheries
- 50 CFR part 660, subpart K—Pacific Highly Migratory Species Fisheries
- 50 CFR part 665, subpart F—Western Pacific Pelagic Fisheries

Below are some NMFS regulations that have the same or similar regulatory goals and regulate the same classes of industry as the proposed rule. Although the regulations and the proposed rule contain the same or similar elements,

the proposed rule has been drafted so that an entity would need to follow the more restrictive set of requirements with respect to EMTUs, observers, and transshipment where applicable.

VMS EMTU requirements:

- § 300.45 (South Pacific Tuna Fisheries)
- § 300.116 (Antarctic Marine Living Resources)
- § 300.219 (Western and Central Pacific Fisheries for HMS)
- § 635.69 (Atlantic HMS)
- § 660.359 (Pacific Coast Groundfish Fisheries)
- § 660.712(d) (U.S. West Coast Fisheries for HMS)
- § 665.19 (Western Pacific Pelagic Fisheries)
- § 679.28 (Fisheries of the EEZ off Alaska)

Observer requirements:

- § 300.22 (Eastern Pacific Tuna Fisheries)
- § 300.43 (South Pacific Tuna Fisheries)
- § 300.113 (Antarctic Marine Living Resources)
- § 300.215 (Western and Central Pacific Fisheries for HMS)
- § 635.7 (Atlantic HMS)
- § 660.719 (U.S. West Coast Fisheries for HMS)
- § 665.808 (Western Pacific Pelagic Fisheries)

Transshipment notices and reporting requirements:

- § 300.46 (South Pacific Tuna Fisheries)
- § 300.112(k) (Antarctic Marine Living Resources)
- § 300.218 (Western and Central Pacific Fisheries for HMS)
- § 665.801 (Western Pacific Pelagic Fisheries)
- Final rule (77 FR 71501, January 2, 2013) for the Western and Central Pacific Fisheries for Highly Migratory Species

#### *National Environmental Policy Act*

As stated in NOAA's Administrative Order (NAO) 216-6 5.05b, an action should be evaluated to determine whether it falls into a category of actions that do not individually or cumulatively have a significant impact on the quality of the human environment, and thus, is exempt from further environmental review under NEPA. That analysis should determine if (1) a prior NEPA analysis for the "same" action demonstrated that the action will not have significant impacts on the quality of the human environment (considerations in determining whether the action is the "same" as a prior

action may include, among other things, the nature of the action, the geographic area of the action, the species affected, the season, the size of the area, etc.) or (2) the action is likely to result in significant impacts, as defined in 40 CFR 1508.27 and NAO 216-6 Section 6.01b. NMFS analyzed the proposed rule using these criteria and has preliminarily determined that this proposed rule can be categorically excluded under 6.03c.3(i) of NAO 216-6. The provisions of the rule are administrative in nature and facilitate monitoring of all high seas fishing vessels. The requirements for the installation of VMS EMTUs on vessels, the carrying of observers, and the prior notice and reporting of transshipments on the high seas would facilitate monitoring of vessels and would not have any impacts on the human environment. Moreover, the proposed rule also includes procedures that incorporate reviews under ESA and NEPA prior to any authorization of activities on the high seas.

#### *Paperwork Reduction Act*

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The current collection of information, under OMB Control No. 0648-0304, includes a permit application, vessel marking requirements, and high seas fishing effort and catch reporting. In addition to this collection of information, the proposed rule includes new requirements listed below.

The public reporting burden for each proposed requirement has been estimated, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information per response. The estimates are as follows:

- Inclusion of a vessel photograph in the permit application: 30 minutes.
  - Request for a fishery to be authorized on the high seas: 110 hours.
  - EMTU purchase and installation: 4 hour for purchase, installation, and activation of the EMTU and submittal of the installation and activation report.
  - Position reports: Automatically sent by the EMTU.
  - Notices of EMTU power-down and power-up: 10 minutes each.
  - Prior notice for high seas transshipments: 15 minutes.
  - Transshipment reporting: 1 hour.
- Public comment is sought regarding: Whether this proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Mark Wildman, Office for International Affairs and Seafood Inspection at the **ADDRESSES** above, and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### **List of Subjects**

##### *50 CFR Part 300*

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

##### *50 CFR Part 600*

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

##### *50 CFR Part 660*

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

##### *50 CFR Part 665*

Accountability measures, Annual catch limits, Fisheries, Fishing, Western and central Pacific.

Dated: April 8, 2015.

**Samuel D. Rauch, III,**

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

For the reasons set out in the preamble, 50 CFR parts 300, 600, 660 and 665 are proposed to be amended as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

### Subpart B—[Removed and Reserved]

■ 2. Remove and reserve subpart B, consisting of § 300.10 through 300.17.

■ 3. Add subpart Q to read as follows:

### Subpart Q—High Seas Fisheries

Sec.

- 300.330 Purpose.
- 300.331 Definitions.
- 300.332 Issuing offices.
- 300.333 Vessel permits.
- 300.334 Fisheries authorized on the high seas.
- 300.335 Bottom fishing.
- 300.336 Vessel identification.
- 300.337 Requirements for Enhanced Mobile Transceiver Units (EMTUs).
- 300.338 Observers.
- 300.339 Transshipment on the high seas.
- 300.340 Prohibitions.
- 300.341 Reporting.

### Subpart Q—High Seas Fisheries

**Authority:** 16 U.S.C. 5501 *et seq.*

#### § 300.330 Purpose.

This subpart implements the High Seas Fishing Compliance Act of 1995 (Act), which requires the Secretary to license U.S. vessels fishing on the high seas and to ensure that such vessels do not operate in contravention of international conservation and management measures recognized by the United States.

#### § 300.331 Definitions.

In addition to the terms defined in section 300.2 and those in the Act and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993 (Agreement), the terms used in this subpart have the following meanings. If a term is defined differently in section 300.2, the Act, or the Agreement, the definition in this section shall apply.

*Bottom fishing* means fishing using gear that is likely to contact the seafloor during the normal course of fishing operations.

*Enhanced mobile transceiver unit (EMTU)* is defined in § 600.1500 of this chapter.

*High seas* means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any Nation,

to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

*High seas fishing permit* means a permit issued under this subpart.

*High seas fishing vessel* means any vessel of the United States used or intended for use on the high seas for the purpose of the commercial exploitation of living marine resources and as a harvesting vessel, mothership, or any other support vessel directly engaged in a fishing operation. Support vessels include vessels that process or transship fish on the high seas; provide supplies, personnel or fuel on the high seas to other fishing vessels; or conduct other activities in support of, or in preparation for fishing.

*International conservation and management measures* means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States. Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements.

*Observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract with a third party, or certified as an observer by NMFS.

*Office Director* means the director of the NMFS Office for International Affairs and Seafood Inspection.

*Regional Administrator* means any one of the Directors of a NMFS regional office, defined under § 300.2.

*Transship or transshipment* means offloading or receiving or otherwise transferring fish or fish products from one fishing vessel to another. Excluded from this definition is net sharing, which means the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

*Vessel monitoring system (VMS)* is defined in § 600.1500 of this title.

#### § 300.332 Issuing offices.

Any Regional Administrator or the Office Director may issue permits required under this subpart. While applicants for permits may submit an application to any Regional Administrator or the Office Director,

applicants are encouraged to submit their applications (with envelopes marked “Attn: HSFCA Permits”) to the Regional Administrator or the Office Director with whom they normally interact on fisheries matters.

#### § 300.333 Vessel permits.

(a) *Eligibility.* (1) Any vessel owner or operator of a high seas fishing vessel is eligible to receive a permit for a fishery authorized on the high seas under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and—

(i) The foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(ii) The foreign nation, within the 3 years preceding application for a permit under this section, withdrew such authorization, because the vessel undermined the effectiveness of international conservation and management measures.

(2) The restrictions in paragraphs (a)(1)(i) and (ii) of this section do not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Regional Administrator or Office Director demonstrating that the owner and operator at the time the vessel undermined the effectiveness of such measures have no further legal, beneficial, or financial interest in, or control of, the vessel.

(3) The restrictions in paragraphs (a)(1)(i) and (ii) of this section do not apply if it is determined by the Regional Administrator or Office Director that issuing a permit would not subvert the purposes of the Agreement.

(b) *Applicability.* Any high seas fishing vessel used for fishing, as defined under § 300.2, on the high seas must have on board a valid permit issued under this subpart.

(c) *Application.* Permit application forms are available from the NMFS Web site or from any Regional Administrator or the Office Director. Failure to submit a complete and accurate application, along with all other required documentation and the specified fee will preclude issuance of a permit. To apply for a permit under this subpart, the owner or operator of a high seas fishing vessel must submit the following to a Regional Administrator or Office Director:

(1) A complete, accurate application form signed by the vessel owner or operator.

(2) Information required under this section and § 300.334(a).

(3) A color photograph showing an entire bow-to-stern side-view of the vessel in its current form and appearance. The photograph must clearly and legibly display the vessel name and identification markings. If the vessel's form or appearance materially changes (such as the vessel is painted another color, the vessel's identification markings change, or the vessel undergoes a structural modification) the vessel owner and operator must submit a new photograph of the vessel within 15 days of the change.

(4) For vessels with state registration instead of U.S. Coast Guard documentation, the applicant must supply additional vessel information that NMFS may request.

(5) The fee specified in the application form. Payment by a commercial instrument later determined to be insufficiently funded will invalidate any permit. NMFS charges this fee to recover the administrative expenses of permit issuance, and the amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook.

(d) *Permit issuance and validity.* (1) Except as provided for in subpart D of 15 CFR part 904, and subject to paragraphs (a), (c), and (d)(2) and (3), the Regional Administrator or Office Director will issue a permit, which will include applicable conditions or restrictions, within 15 days of receipt of a completed application and payment of the appropriate fee.

(2) The Regional Administrator or Office Director will not issue a permit unless an EMTU has been installed and activated on the vessel in accordance with § 300.337(c)(2).

(3) The Regional Administrator or Office Director will not issue a permit unless the applicant holds a valid permit for the subject vessel for U.S. domestic fisheries related to the authorized high seas fishery.

(4) Except as otherwise provided, permits issued under this subpart are valid for 5 years from the date of issuance. For a permit to remain valid to its expiration date, the vessel's U.S. Coast Guard documentation or state registration must be kept current. A permit issued under this subpart is void when the vessel owner or the name of the vessel changes, or in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

(5) A permit issued under this subpart is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(e) *Display.* A valid permit, or a copy thereof, issued under this subpart must be on board any high seas fishing vessel while operating on the high seas and available for inspection by an authorized officer.

(f) *Change in application information.* Any changes in vessel documentation status or other permit application information must be reported in writing to the Regional Administrator or Office Director who issued the permit within 15 days of such changes.

(g) *Renewal.* Application for renewal of a permit prior to its expiration is the responsibility of the permit holder and may be completed per § 300.333(c). The Regional Administrator or Office Director will not consider a permit renewal application to be complete until the permit holder satisfies all required fishing activity report requirements under the permit and § 300.342. The Regional Administrator or Office Director will not issue a renewed permit unless an EMTU has been activated on the vessel in accordance with § 300.337(c)(2) and the applicant holds a valid permit for the subject vessel for U.S. domestic fisheries related to the authorized high seas fishery.

(h) *Marine mammals and ESA-listed species.* Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to take marine mammals or ESA-listed species. No marine mammals or ESA-listed species may be taken in the course of fishing operations unless the taking is allowed under the Marine Mammal Protection Act or the Endangered Species Act (ESA), pursuant to regulations, an authorization, or permit granted by NMFS or the U.S. Fish and Wildlife Service.

(i) *Permit status changes.* NMFS may modify, suspend, or revoke a permit issued under this subpart if permitted activities may impact living marine resources in ways that were not foreseen or anticipated at the time of permit issuance; are in contravention of an international conservation and management measure; or violate any applicable law. NMFS will notify an affected permit holder of any change in permit status by contacting the permit holder at the address of record provided on the permit application or as updated pursuant to paragraph (f) of this subsection.

### § 300.334 Fisheries authorized on the high seas.

(a) When applying for a permit under § 300.333, the owner or operator of a high seas fishing vessel must identify in the application the authorized fisheries in which he or she intends to fish. More than one authorized fishery may be selected. The following fisheries are authorized on the high seas:

- (1) 50 CFR part 300, Subpart C—Eastern Pacific Tuna Fisheries
- (2) 50 CFR part 300, Subpart D—South Pacific Tuna Fisheries
- (3) 50 CFR part 300, Subpart G—Antarctic Marine Living Resources
- (4) 50 CFR part 635—Atlantic Highly Migratory Species Fisheries
- (5) 50 CFR part 660, Subpart K—U.S. West Coast Fisheries for Highly Migratory Species
- (6) 50 CFR part 665, Subpart F—Western Pacific Pelagic Fisheries
- (7) South Pacific Albacore Troll Fishery
- (8) Northwest Atlantic Fishery

(b) For each of the authorized fisheries specified on the high seas fishing permit, the owner or operator of the high seas fishing vessel must:

(1) Abide by the regulations, set forth in other parts of this chapter and Chapter VI, governing those authorized fisheries while operating on the high seas;

(2) Obtain and renew any appropriate permits or authorizations; and

(3) Notify the Regional Administrator or Office Director who issued the permit immediately in the event that a species listed as threatened or endangered under the ESA is taken incidental to the fishing activities without authorization under a relevant incidental take statement.

(c) *Change in authorized fisheries.* If a high seas fishing permit holder elects to change the authorized fisheries specified on the permit, he or she shall notify the Regional Administrator or Office Director who issued the permit of the change(s) and shall obtain the underlying permits for the authorized fisheries prior to engaging in the fishery on the high seas. Per the process under § 300.333(d), the Regional Administrator or Office Director will then issue a revised high seas fishing permit which will expire 5 years from the original effective date.

(d) *Revision of authorized fisheries list.* Through rulemaking, NMFS will add a fishery to, or delete a fishery from, the list in paragraph (a) of this section. NMFS may add or delete fisheries from the list after completing any analyses required under the Endangered Species Act, Marine Mammal Protection Act, National Environmental Policy Act, and

other applicable laws. In taking such action, NMFS, in consultation with the relevant Regional Fishery Management Council(s) where appropriate, will consider, among other things, whether:

(1) The proposed fishing activities would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or species listed as threatened or endangered under the Endangered Species Act;

(2) The proposed fishing activities would be inconsistent with relevant fishery management plans and their implementing regulations or other applicable law;

(3) Insufficient mechanisms exist to effectively monitor the activities of vessels engaged in the proposed fishing activities; or

(4) The proposed fishing activities would contravene international conservation and management measures recognized by the United States.

(e) *Request for revision of authorized fisheries list.* A person may submit a written request to the Office Director to add a fishery to or delete a fishery from the list. A request to delete a fishery from the list of authorized fisheries must include the name of the fishery; information that addresses considerations under paragraph (d) of this section; and, if requested by NMFS, any additional information necessary for NMFS to conduct analyses required under applicable laws. A request to add a fishery to the list of authorized fisheries must include the following information:

(1) The species (target and incidental) expected to be harvested and the anticipated amounts of such harvest and bycatch;

(2) The approximate times and places when fishing is expected to take place, the number and type of vessels expected to participate, and the type, size, and amount of gear expected to be used;

(3) A description of the specific area that may be affected by the fishing activities;

(4) A description of any anticipated impacts on the environment, including impacts on fisheries, marine mammals, and species listed as threatened or endangered under the ESA or their critical habitat;

(5) Other information that addresses considerations under paragraph (d); and

(6) If requested by NMFS, any additional information necessary for NMFS to conduct analyses required under applicable laws.

(7) Once all required information is received to proceed with consideration of a request, NMFS will publish in the **Federal Register** a proposed rule, noting

receipt of the request to add an authorized fishery, and inviting information and comments. Relevant information received during the comment period may be considered by NMFS and, where appropriate, the relevant Regional Fishery Management Council(s) to analyze potential environmental impacts of the fisheries and develop any conditions or restrictions. Based on its analysis, considerations under paragraph (d) of this section, and other relevant considerations, NMFS would publish its decision on the request in the **Federal Register**.

(f) *Deletion of a fishery from the authorized fisheries list.* NMFS will delete (*i.e.*, deauthorize) a fishery under paragraph (d) or (e) of this section through publication of a final rule. NMFS will also provide notice to affected permit holders by email at the address provided to NMFS in the high seas permit application and by Registered Mail. When a fishery is deleted from the list, any activities on the high seas related to that fishery are prohibited as of the effective date of the final rule. In addition, the high seas permit will be voided unless the permit holder notifies NMFS that he or she elects to change to another authorized high seas fishery or continue in any other authorized fisheries noted on the permit. Once the applicant so notifies NMFS and, if necessary, secures any underlying permits necessary for participation in another authorized high seas fishery, the Regional Administrator or Office Director will then issue a revised high seas fishing permit per the process under § 300.333(d). The revised permit will expire 5 years from the original effective date.

#### **§ 300.335 Bottom fishing.**

(a) Bottom fishing may be permitted on the high seas when authorized by international conservation and management measures recognized by the United States. For bottom fishing activity not subject to international conservation measures recognized by the United States, a person who seeks to engage in such fishing must request authorization of a new high seas fishery as described in § 300.334(e), then if the fishery is authorized, must obtain all applicable permits including a high seas fishing permit issued under § 300.333. NMFS may specify conditions in the permit to mitigate adverse impacts on VMEs, which may include the types of conditions that have been adopted in relevant RFMO measures recognized by the United States.

(b) *Permit.* To be permitted under this section, the owner or operator of a high

seas fishing vessel must follow the procedures under § 300.334(e), or if he or she seeks to change an existing permit, must follow the procedures under § 300.334(c).

#### **§ 300.336 Vessel identification.**

(a) *General.* A vessel permitted under this subpart must be marked for identification purposes in accordance with this section.

(b) *Marking.* Vessels must be marked either:

(1) In accordance with vessel identification requirements specified in Federal fishery regulations issued under the Magnuson-Stevens Act or under other Federal fishery management statutes; or

(2) In accordance with the following identification requirements:

(i) A vessel must be marked with its international radio call sign (IRCS), or, if not assigned an IRCS, must be marked (in order of priority) with its Federal, state, or other documentation number appearing on its high seas fishing permit and, if a WCPFC Area Endorsement has been issued for the vessel under § 300.212, that documentation number must be preceded by the characters "USA" and a hyphen (that is, "USA-");

(ii) The markings must be displayed at all times on the vessel's side or superstructure, port and starboard, as well as on a deck;

(iii) The markings must be placed so that they do not extend below the waterline, are not obscured by fishing gear, whether stowed or in use, and are clear of flow from scuppers or overboard discharges that might damage or discolor the markings;

(iv) Block lettering and numbering must be used;

(v) The height of the letters and numbers must be in proportion to the size of the vessel as follows: For vessels 25 meters (m) and over in length overall, the height of letters and numbers must be no less than 1.0 m; for vessels 20 m but less than 25 m in length overall, the height of letters and numbers must be no less than 0.8 m; for vessels 15 m but less than 20 m in length overall, the height of letters and numbers must be no less than 0.6 m; for vessels 12 m but less than 15 m in length overall, the height of letters and numbers must be no less than 0.4 m; for vessels 5 m but less than 12 m in length overall, the height of letters and numbers must be no less than 0.3 m; and for vessels under 5 m in length overall, the height of letters and numbers must be no less than 0.1 m;

(vi) The height of the letters and numbers to be placed on decks must be no less than 0.3 m;



(vii) The length of the hyphen(s), if any, must be half the height (h) of the letters and numbers;

(viii) The width of the stroke for all letters, numbers, and hyphens must be h/6;

(ix) The space between letters and/or numbers must not exceed h/4 nor be less than h/6;

(x) The space between adjacent letters having sloping sides must not exceed h/8 nor be less than h/10;

(xi) The marks must be white on a black background, or black on a white background;

(xii) The background must extend to provide a border around the mark of no less than h/6; and

(xiii) The marks and the background must be maintained in good condition at all times.

### § 300.337 Requirements for Enhanced Mobile Transceiver Units (EMTUs).

(a) *Vessel position information.* The owner or operator of a vessel issued a permit under this subpart, or for which such permit is required, must have installed on board the vessel a NMFS type-approved enhanced mobile transceiver unit (EMTU). The operator or owner of the vessel must ensure that the EMTU is operational and properly reporting positions to NMFS as required by this section, except when exempt under paragraph (d)(1) or (d)(2) of this section. If the vessel is also subject to EMTU requirements in other parts of this title, the more restrictive requirements apply.

(b) *Contact information and business hours.* With respect to the requirements in this section, vessel owners and operators should consult with the divisional office of the NOAA Office of Law Enforcement (OLE) in, or nearest, the Region issuing the permit under this subpart. The OLE VMS Helpdesk in OLE headquarters office may also be contacted.

(c) *EMTU installation and activation*—(1) *EMTU installation.* The vessel owner or operator shall obtain and have installed on the fishing vessel, by a qualified marine electrician and in accordance with any instructions provided by the VMS Helpdesk or OLE divisional office, a NMFS type-approved EMTU. The vessel owner and operator shall authorize NMFS to receive and relay transmissions from the EMTU. The vessel owner and operator shall arrange for a type-approved mobile communications service to receive and transmit position reports and email communications from the EMTU to NMFS. NMFS makes available lists of type-approved EMTUs and mobile communications service providers.

Vessel owners must ensure that the EMTU and communications service hardware purchased is type-approved for all fisheries and regions in which their vessel will be operating.

(2) *EMTU activation.* When an EMTU is installed or reinstalled or the mobile communications service provider changes, or if directed by NMFS, the vessel owner and operator shall prior to leaving port:

(i) Turn on the EMTU to make it operational;

(ii) Submit a VMS Installation and Activation Certification form, or an activation report as directed by OLE, to the OLE divisional office within or nearest to the region issuing the permit under this subpart; and

(iii) Receive verbal or written confirmation from NMFS that transmissions are being received properly from the EMTU.

(d) *EMTU operation.* Unless otherwise provided below, and subject to more restrictive requirements where applicable, the vessel owner or operator shall continuously operate the EMTU so that it provides to NMFS position information automatically transmitted, every hour or as directed by OLE.

(1) *In-port exemption:* The EMTU may be powered down when the vessel will remain at a dock or permanent mooring for more than 72 consecutive hours and after the notice required in paragraph (d)(3) of this section is submitted. When powering up the EMTU after the in-port exemption, the vessel owner or operator must submit the report required in paragraph (d)(4) of this section at least 2 hours before leaving port or mooring.

(2) *Long-term exemption:* The EMTU may be powered down if the vessel will not operate on the high seas or in any fishery that requires EMTU operation for more than 30 consecutive days and after the notice required in paragraph (d)(3) of this section is submitted. When powering up the EMTU from the long-term exemption, the vessel owner or operator must submit the report required in paragraph (d)(4) of this section.

(3) Prior to each power-down of the EMTU, under paragraph (d)(1) or (2) of this section, the vessel owner or operator must report to the OLE divisional office during business hours, via email or other means as directed by OLE: The vessel's name; the vessel's official number; the intent to power down the EMTU; the reason for power-down; the port where the vessel is docked or area where it will be operating; and the full name, telephone, and email contact information for the vessel owner or operator.

(4) When powering up the EMTU, the vessel owner or operator must report to the OLE divisional office during business hours, via email or other means as directed by OLE: The fact that the EMTU has been powered up; the vessel's name; the vessel's official number; port name; intended fishery; and full name, telephone, and email contact information for the vessel owner or operator.

(5) If the EMTU is powered up after a long-term or in-port exemption, the vessel owner must receive email confirmation from the OLE divisional office that EMTU transmissions are being received properly before leaving port, entering the high seas, or entering a fishery that requires EMTU operation.

(e) *Failure of EMTU.* If the vessel owner or operator becomes aware that the EMTU has become inoperable or that transmission of automatic position reports from the EMTU has been interrupted, or if notified by NMFS or the U.S. Coast Guard that automatic position reports are not being received from the EMTU or that an inspection of the EMTU has revealed a problem with the performance of the EMTU, the vessel owner or operator shall comply with the following requirements:

(1) If the vessel is at port, the vessel owner or operator shall repair or replace the EMTU and comply with the requirements in paragraph (c)(2) of this section before the vessel leaves port.

(2) If the vessel is at sea, the vessel owner, operator, or designee shall contact the OLE divisional office by telephone or email at the earliest opportunity during business hours and identify the caller, vessel name, vessel location, and the type of fishing permit(s). The vessel operator shall follow the instructions provided by the OLE divisional office, which could include: Ceasing fishing, stowing fishing gear, returning to port, or submitting periodic position reports at specified intervals by other means. The vessel owner or operator must repair or replace the EMTU and comply with the requirements in paragraph (c)(2) of this section within 30 days or before the vessel leaves port, whichever is sooner.

(f) *Related VMS requirements.* Unless specified otherwise in the high seas fishing permit, a vessel owner's and operator's compliance with requirements in part 300, 635, 660, or 665 of this title relating to the installation, carrying, and operation of EMTUs will satisfy the requirements of this section, if the requirements are the same or more restrictive than those in this section and provided that:

(1) On the high seas, the EMTU is operated continuously and position

information is automatically transmitted every hour;

(2) The EMTU is type-approved by NMFS;

(3) The vessel owner or operator has authorized NMFS to receive and relay transmissions from the EMTU; and

(4) The requirements of paragraph (d) of this section are complied with. If the EMTU is owned by NMFS, the requirement under paragraph (e) of this section to repair or replace the EMTU will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the EMTU complies with the requirements specified in paragraph (c)(2) of this section before the vessel leaves port.

(g) *Costs.* The vessel owner and operator shall be responsible for all costs associated with the purchase, installation, operation, and maintenance of the EMTU and for all charges levied by vendors as necessary to ensure the transmission of automatic position reports to NMFS as required in paragraph (c) of this section. However, if the EMTU is being carried and operated in compliance with the requirements in part 300, 635, 660, or 665 of this title relating to the installation, carrying, and operation of EMTUs, the vessel owner and operator shall not be responsible for any costs that are the responsibility of NMFS under those regulations.

(h) *Tampering.* The vessel owner and operator shall ensure that the EMTU is not tampered with, disabled, destroyed, damaged or operated improperly, and that its operation is not impeded or interfered with.

(i) *Inspection.* The vessel owner and operator shall make the EMTU, including its antenna, connectors and antenna cable, available for inspection by authorized officers or by officers conducting boarding and inspection under a scheme adopted by an RFMO of which the United States is a member.

(j) *Access to data.* As required under fishery-specific regulations in other parts of this title, the vessel owner and operator shall make the vessel's position data, obtained from the EMTU or other means, available to authorized officers and to any inspector conducting a high seas boarding and inspection pursuant to a scheme adopted by an RFMO of which the United States is a member.

(k) *Communication devices.* (1) In cases of EMTU failure as specified under paragraph (e) of this section, and to facilitate communication with management and enforcement authorities regarding the functioning of the EMTU and other purposes, the vessel operator shall, while the vessel is at sea, carry on board and continuously

monitor a two-way communication device, in addition to the EMTU, that is capable of real-time communication with the OLE divisional office.

#### § 300.338 Observers.

(a) Where observer coverage is not otherwise required by other regulations or relevant RFMO conservation and management measures, NMFS may select for at-sea observer coverage any vessel that has been issued a high seas fishing permit. A vessel so selected by NMFS must carry an observer when directed to do so.

(b) NMFS will contact a vessel owner, in writing, when his or her vessel is selected for observer coverage under this section.

(c) A vessel shall not fish on the high seas without taking an observer if NMFS contacted the vessel owner under paragraph (b) of this section, or if so required as a condition of a permit issued under this subpart or pursuant to other legal authorities, unless the requirement to carry an observer has been waived under paragraph (d) of this section.

(d) The vessel owner that NMFS contacts under paragraph (b) of this section must notify NMFS of his or her next fishing trip that may take place on the high seas before commencing the fishing trip. NMFS will specify the notification procedures and information requirements, such as expected gear deployment, trip duration and fishing area, in its selection letter. Once notified of a trip by the vessel owner, NMFS will assign an observer for that trip or notify the vessel owner that coverage pursuant to this subpart is not required, given the existing requirement for observer coverage under other legal authorities.

(e) The owner, operator, and crew of a vessel on which a NMFS-approved observer is assigned must comply with safety regulations at §§ 600.725 and 600.746 of this title and—

(1) Facilitate the safe embarkation and debarkation of the observer.

(2) Provide the observer with accommodations, food, and amenities that are equivalent of those provided to vessel officers.

(3) Allow the observer access to all areas of the vessel necessary to conduct observer duties.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer access to EMTUs, communications equipment, and navigation equipment to verify operation, obtain data, and use the

communication capabilities of the units for official purposes.

(6) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and disposition of fish for that trip.

(7) Provide accurate vessel locations by latitude and longitude upon request by the observer.

(8) Provide access to sea turtle, marine mammal, sea bird, or other specimens as requested by the observer.

(9) Notify the observer in a timely fashion when commercial fishing activity is to begin and end.

(f) The permit holder, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties.

(g) The permit holder, vessel operator, and crew must comply with other terms and conditions to ensure the effective deployment and use of observers that the Regional Administrator or Office Director imposes by written notice.

#### § 300.339 Transshipment on the high seas.

(a) In addition to any other applicable restrictions on transshipment, including those under parts 300 and 635 of this title, the following requirements apply to transshipments taking place on the high seas:

(1) The owner or operator of a U.S. vessel receiving or offloading fish on the high seas shall provide a notice by fax or email to the Regional Administrator or the Office Director at least 36 hours prior to any intended transshipment on the high seas with the following information: The vessels offloading and receiving the transshipment (names, official numbers, and vessel types); the location (latitude and longitude to the nearest tenth of a degree) of transshipment; date and time that transshipment is expected to occur; and species, processed state, and quantities (in metric tons) expected to be transshipped. If another requirement for prior notice applies, the more restrictive requirement (*i.e.* a requirement for greater advance notice and/or more specific information regarding vessels, location etc.) must be followed.

(2) U.S. high seas fishing vessels shall report transshipments on the high seas to the Regional Administrator or Office Director within 15 calendar days after the vessel first enters into port, using the form obtained from the Regional Administrator or Office Director. If there are applicable transshipment reporting requirements in other parts of this title, the more restrictive requirement (*e.g.*, a reporting requirement of fewer than 15 calendar days) must be followed.

(b) [Reserved]

**§ 300.340 Prohibitions.**

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Use a high seas fishing vessel on the high seas in contravention of international conservation and management measures.

(b) Fish on the high seas unless the vessel has been issued, and has on board, a valid permit issued under § 300.333(d).

(c) Fish on the high seas unless the vessel has been issued, and has on board, valid permits related to the authorized fisheries noted on the high seas fishing permit, as required under § 300.334(b).

(d) Operate a high seas fishing vessel on the high seas that is not marked in accordance with § 300.336.

(e) With respect to the EMTU,

(1) Fail to install, activate, or continuously operate a properly functioning and type-approved EMTU as required in § 300.337;

(2) Power-down or power-up the EMTU without following the procedures required in § 300.337;

(3) In the event of EMTU failure or interruption, fail to repair or replace an EMTU, fail to notify the appropriate OLE divisional office and follow the instructions provided, or otherwise fail to act as required in § 300.337;

(4) Disable, destroy, damage or operate improperly an EMTU installed under § 300.337, attempt to do any of the same, or fail to ensure that its operation is not impeded or interfered with, as provided in § 300.337;

(5) Fail to make an EMTU installed under § 300.337 or the position data obtained from it available for inspection, as provided in § 300.337; or

(6) Fail to carry on board and monitor communication devices as required in § 300.337(l);

(f) With respect to observers,

(1) Fail to provide to an observer, a NMFS employee, or a designated observer provider, information that has been requested pursuant to § 300.338 or § 600.746 of this title, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 300.338 or § 600.746 of this title;

(2) Fish without an observer when the vessel is required to carry an observer pursuant to § 300.338(c);

(3) Assault, oppose, impede, intimidate, or interfere with an observer;

(4) Prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, an observer from conducting his or her duties as an observer; or

(5) Tamper with or destroy samples or equipment.

(g) Fail to submit a prior notice or a report of a transshipment as provided in § 300.339(b) of this title.

(h) Fail to comply with reporting requirements as provided in § 300.341.

**§ 300.341 Reporting.**

(a) *General.* The operator of any vessel permitted under this subpart must accurately maintain on board the vessel a complete record of fishing activities, such as catch, effort, and other data and report high seas catch and effort information to NMFS in a manner consistent with the reporting requirements of the authorized fishery(ies) noted on the high seas permit. Reports must include: Identification information for vessel and operator; operator signature; crew size; whether an observer is aboard; target species; gear used; dates, times, locations, and conditions under which fishing was conducted; species and amounts of fish retained and discarded; and details of any interactions with sea turtles, marine mammals, or birds.

(1) The vessel owner and operator are responsible for obtaining and completing the reporting forms from the Regional Administrator or Office Director who issued the permit holder's high seas fishing permit. The completed forms must be submitted to the same Regional Administrator or Office Director or, if directed by NMFS, to a Science Center.

(2) Reports must be submitted within the deadline provided for in the authorized fishery or within 15 days following the end of a fishing trip, whichever is sooner. Contact information for the Regional Administrators and Science Center Directors can be found on the NMFS Web site.

(b) [Reserved].

**PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

■ 4. The authority citation for part 600 continues to read as follows:

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

■ 5. In § 600.705, add paragraph (g) to read as follows:

**§ 600.705 Relation to other laws.**

\* \* \* \* \*

(g) *High seas fishing activities.* Regulations governing permits and requirements for fishing activities on the high seas are set forth in 50 CFR part 300, subparts A and Q. Any vessel

operating on the high seas must obtain a permit issued pursuant to the High Seas Fishing Compliance Act.

■ 5. In § 600.745, revise the first two sentences in paragraph (a) to read as follows:

**§ 600.745 Scientific research activity, exempted fishing, and exempted educational activity.**

(a) *Scientific research activity.* Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities on board a scientific research vessel in the EEZ or on the high seas are encouraged to submit to the appropriate Regional Administrator or Director, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific activity. \* \* \*

\* \* \* \* \*

**PART 660—FISHERIES OFF WEST COAST STATES**

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

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

■ 7. In § 660.2, add paragraph (c) to read as follows:

**§ 660.2 Relation to other laws.**

\* \* \* \* \*

(c) Fishing activities on the high seas are governed by regulations of the High Seas Fishing Compliance Act set forth in 50 CFR part 300, subparts A and Q.

**§ 660.708 [Amended]**

■ 8. In § 660.708, remove paragraph (a)(1)(iii) and redesignate paragraph (a)(1)(iv) as paragraph (a)(1)(iii).

**PART 665—FISHERIES IN THE WESTERN PACIFIC**

■ 9. The authority citation for part 665 continues to read as follows:

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

■ 10. In § 665.1, revise paragraph (b) to read as follows:

**§ 665.1 Purpose and scope.**

\* \* \* \* \*

(b) General regulations governing fishing by all vessels of the United States and by fishing vessels other than vessels of the United States are contained in 50 CFR parts 300 and 600.

\* \* \* \* \*

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