

(2) Spiny lobster must be landed either all whole or all tailed on a single fishing trip.

■ 12. In § 640.22, paragraphs (a)(3) and (b)(3)(i) are revised to read as follows:

**§ 640.22 Gear and diving restrictions.**

(a) \* \* \*

(3) Poisons and explosives may not be used to take a spiny lobster in the EEZ as defined in § 640.1(b). For the purposes of this paragraph (a)(3), chlorine, bleach, and similar substances, which are used to flush a spiny lobster out of rocks or coral, are poisons. A vessel in the spiny lobster fishery may not possess on board in the EEZ any dynamite or similar explosive substance.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) For traps in the EEZ off Florida, by the Division of Law Enforcement, Florida Fish and Wildlife Conservation Commission, in accordance with the procedures in Rule 68B–24.006(7), Florida Administrative Code, in effect as of July 1, 2008 (incorporated by reference, see § 640.29).

\* \* \* \* \*

■ 13. Section 640.25 is revised to read as follows:

**§ 640.25 Adjustment of management measures.**

In accordance with the framework procedure of the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic, the Regional Administrator may establish or modify the following items: Reporting and monitoring requirements, permitting requirements, bag and possession limits, size limits, vessel trip limits, closed seasons, closed areas, reopening of sectors that have been prematurely closed, annual catch limits (ACLs), annual catch targets (ACTs), quotas, accountability measures (AMs), maximum sustainable yield (or proxy), optimum yield, total allowable catch (TAC), management parameters such as overfished and overfishing definitions, gear restrictions, gear markings and identification, vessel identification requirements, allowable biological catch (ABC) and ABC control rule, rebuilding plans, and restrictions relative to conditions of harvested fish (such as tailing lobster, undersized attractants, and use as bait).

■ 14. Add § 640.28 to read as follows:

**§ 640.28 Annual catch limits (ACLs) and accountability measures (AMs).**

For recreational and commercial spiny lobster landings combined, the

ACL is 7.32 million lb (3.32 million kg), whole weight. The ACT is 6.59 million lb, (2.99 million kg) whole weight.

■ 15. Add § 640.29 to read as follows:

**§ 640.29 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. All material incorporated by reference is available for inspection at the NMFS, Office of Sustainable Fisheries, Office of the Regional Administrator, 1315 East-West Highway, Silver Spring, MD; and the National Archives and Records Administration (NARA), Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. For more information on the availability of this material at NARA, call (202) 741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) F.A.C.: Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: (850) 488-4676; <http://laws.flrules.org>.

(1) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.002: Definitions, in effect as of July 1, 2008, IBR approved for § 640.4.

(2) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.005: Seasons, in effect as of June 1, 2004, IBR approved for § 640.20.

(3) F.A.C., Chapter 68B–24: Spiny lobster (crawfish) and slipper lobster, Rule 68B–24.006: Gear: Traps, Buoys, Identification Requirements, Prohibited Devices, in effect as of July 1, 2008, IBR approved for § 640.6 and § 640.22.

(4) F.A.C., Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.002: Retrieval of Trap Debris, in effect as of October 15, 2007, IBR approved for § 640.6 and § 640.20.

(5) F.A.C., Chapter 68B–55: Trap retrieval and trap debris removal, Rule 68B–55.004: Retrieval of Derelict and Traps Located in Areas Permanently Closed to Trapping, in effect as of

October 15, 2007, IBR approved for § 640.6 and § 640.20.

(c) Florida Statute: Florida Division of Marine Fisheries Management, 620 South Meridian Street, Tallahassee, FL 32399; telephone: (850) 488-4676; <http://www.leg.state.fl.us/Statutes/index.cfm>.

(1) Florida Statutes, Chapter 379: Fish and Wildlife Conservation, Part VII: Nonrecreational Licenses, Section 379.367: Spiny lobster; regulation, 379.367, in effect as of June 1, 1994, IBR approved for § 640.6.

(2) [Reserved]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 110520295–1659–02]

RIN 0648-BA64

**Atlantic Highly Migratory Species; Vessel Monitoring Systems**

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

**ACTION:** Final rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is finalizing requirements for fishermen to replace currently required Mobile Transmitting Unit (MTU) Vessel Monitoring System (VMS) units with Enhanced Mobile Transmitting Unit (E-MTU) VMS in Atlantic HMS fisheries. The key difference between MTU and E-MTU VMS units is that the E-MTU VMS units are capable of two-way communication. The purpose of this final action is to facilitate enhanced communication with HMS vessels at sea, provide HMS fishery participants with an additional means of sending and receiving information at sea, ensure that HMS VMS units are consistent with the current VMS technology and type approval requirements that apply to newly installed units, and to provide NMFS enforcement with additional information describing gear onboard and target species. This rule affects all HMS pelagic longline (PLL), bottom longline (BLL), and shark gillnet fishermen who are currently required to have VMS onboard their vessels.

**DATES:** This final rule is effective on January 1, 2012. *Implementation dates:* As of January 1, 2012, vessel owners

and/or operators must use a qualified marine electrician when installing an E-MTU VMS unit on a vessel. By March 1, 2012, vessel owners and/or operators must have an E-MTU VMS unit installed on their vessel and must use the unit to provide position reports, declare target species and fishing gear possessed onboard two hours prior to departing on a fishing trip, and provide notification of landing three hours in advance of returning to port.

**ADDRESSES:** Supporting documents, including the Regulatory Impact Review, Final Regulatory Flexibility Analysis (RIR/FRFA), and compliance guides are available from Michael Clark, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East West Highway, Silver Spring, MD 20910. These documents and others, such as the Fishery Management Plans described below, also may be downloaded from the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/>. A list of E-MTU VMS units that are currently type approved for use in Atlantic HMS fisheries is available on the NMFS Office of Law Enforcement Web site at [http://www.nmfs.noaa.gov/ole/docs/2011/07/noaa\\_fisheries\\_service\\_type\\_approved\\_vms\\_units.pdf](http://www.nmfs.noaa.gov/ole/docs/2011/07/noaa_fisheries_service_type_approved_vms_units.pdf). A current list of type approved units and other information may also be obtained by contacting the VMS Support Center at (phone) (888) 219-9228, (fax) (301) 427-0049, [ole.helpdesk@noaa.gov](mailto:ole.helpdesk@noaa.gov), or write to NMFS Office for Law Enforcement, VMS Support Center, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** For information on this rule and requirements for Atlantic HMS fisheries contact, Michael Clark (phone: (301) 427-8503; fax: (301) 713-1917).

**SUPPLEMENTARY INFORMATION:** Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Convention Act (ATCA). Under the MSA, NMFS must ensure consistency with 10 National Standards and manage fisheries to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce is required to promulgate regulations, as necessary and appropriate, to implement measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

## Background

Prior to January 2008, NMFS approved for use several MTU Vessel Monitoring System (VMS) units for use in fisheries nationwide, including the HMS fishery (68 FR 11534; March 11, 2003). On January 31, 2008, NMFS published in the **Federal Register** (73 FR 5813) a type approval notice listing the specifications for approved MTU VMS, including a requirement for two-way communication. In that notice, NMFS stated that “[p]reviously installed MTUs approved under prior notices will continue to be approved for the remainder of their service life” and that new installations “must comply with all of the requirements” of the notice, including the requirement to have two-way communication capability.

On June 21, 2011, NMFS published a proposed rule (76 FR 36071) to require replacement of currently required Mobile Transmitting Unit (MTU) Vessel Monitoring System (VMS) units with Enhanced Mobile Transmitting Unit (E-MTU) VMS units in Atlantic HMS fisheries; implement a declaration system that requires vessels to declare target fishery and gear type(s) possessed on board; and require that a qualified marine electrician install all E-MTU VMS units.

NMFS considered two alternatives in the proposed rule. Alternative One, the no action alternative, would maintain the existing VMS requirements in Atlantic HMS fisheries. Under Alternative Two, vessels in the HMS fishery with an MTU (as opposed to an E-MTU) installed would not be allowed to wait until the end of the installed MTU's service life (as had been provided for in the January 31, 2008, **Federal Register** notice (73 FR 5813)) but instead, would be required to replace the MTU with a NMFS type approved E-MTU and to have the new unit installed by a qualified marine electrician. This alternative would also implement a fishery declaration system where vessels would declare their target species and gear type(s) possessed onboard, as well as require vessels to provide advanced notice of departure and landing. Vessels with type approved E-MTU units already installed would not need to take any action. The proposed rule contained details regarding the alternatives considered and a brief summary of the recent management history. Those details are not repeated here.

This final rule finalizes the provisions proposed in the June 21, 2011, rule. The purpose of this final action is to facilitate enhanced communication with HMS vessels at sea, provide HMS

fishery participants with a means of sending and receiving information at sea, ensure that HMS VMS units are consistent with the current VMS technology and type approval requirements that apply to newly installed units, and to provide NMFS enforcement with additional information describing gear onboard and target species.

As of January 1, 2012, all E-MTU VMS units must be installed by a qualified marine electrician. This is to ensure that E-MTU VMS units are installed properly.

As of March 1, 2012, vessel owners and/or operators must have an E-MTU VMS unit installed on their vessel and must use the unit to provide position reports, declare target species and fishing gear possessed onboard two hours prior to departing on a fishing trip, and provide notification of landing three hours in advance of returning to port. The March 1, 2012, effective date provides about 90 days to have E-MTU VMS units installed and operational. NMFS extended the standard 30-day delay in effectiveness here to provide sufficient time for coming into compliance with the E-MTU VMS requirements while still providing an opportunity to take advantage of reimbursement funds.

Under the requirements of this final rule, VMS units that are approved by NMFS as meeting the E-MTU type approval specifications (73 FR 5813; January 31, 2008), including two-way communication and the ability to send and receive free-form Internet email text messages and electronic forms, will meet the requirements of this rule. Further, VMS units that were approved by NMFS prior to January 2008, but that comply with all of the requirements of the E-MTU type approval specifications notice (73 FR 5813; January 31, 2008), including two-way communication and the ability to send and receive free-form Internet email text messages and electronic forms, will meet the requirements of this rule. See **ADDRESSES** above for information about viewing or obtaining a list of E-MTU VMS units that are currently type approved for use in Atlantic HMS fisheries. With this final rule, three MTU VMS units approved by NMFS prior to January 2008 for use in the HMS fishery—Trimble Galaxy 7001 and 7005 and Thrane & Thrane Sailor VMS Silver (68 FR 11534; March 11, 2003)—will not meet the requirements of this rule because these units do not possess the capability for two-way communications or the ability to send and receive free-form Internet email text messages and electronic forms. Vessels with one of

these three units installed will be required to replace the unit with one of the approved E-MTUs by March 1, 2012.

### Comments and Responses

NMFS received four written and numerous verbal comments from non-governmental organizations, fishermen, and other interested parties on the proposed rule. NMFS heard comments from constituents at five public hearings. A summary of the comments received on the proposed rule during the public comment period is provided below with NMFS' response. All written comments submitted during the comment period can be found at <http://www.regulations.gov/> by searching for RIN 0648-BA64.

#### *E-MTU VMS Comments*

*Comment 1:* The replacement of MTUs with E-MTUs will enhance enforcement by requiring the best available technologies for tracking and communicating with fishing vessels.

*Response:* Requiring that vessels use E-MTUs to provide information on the type of gear possessed onboard and the target species will provide valuable information to NMFS enforcement. This information will aid in determining which time/area closures and other regulations apply to a given vessel on a given trip and will reduce the need to send enforcement vessels or aircraft to discern an individual vessel's activity. Coupled with the hourly location reports and the ability to engage in two-way communication with vessels, E-MTU VMS will be a useful tool to track and communicate with vessels.

*Comment 2:* The proposed rule does not demonstrate a compelling need for requiring E-MTUs in the PLL fishery. E-MTUs are not needed as a safety tool because vessels already have electronic emergency communication equipment and MTUs already have the capability of sending distress messages. In contrast, NMFS also heard that the use of E-MTUs can increase safety and provide a way for owners to monitor what their boats are doing on the water.

*Response:* E-MTUs are needed to have reliable, enhanced communication with HMS vessels at sea, provide HMS fishery participants with a means of sending and receiving information at sea, ensure that all HMS VMS units are consistent with the current VMS technology and type approval requirements that apply to newly installed units, and provide NMFS enforcement with additional information describing gear onboard and target species onboard to support fishery management measures including

compliance with time/area closures. Furthermore, one of the issues with existing MTU VMS units is their elevated "failure" rates. The two-way communication capability and improved reliability of E-MTUs provide the added benefits of being capable of sending distress messages and/or providing context and additional information prior to sending a distress message. Additionally, the new E-MTU units provide a way for the vessel owner and/or operator to determine if the unit is working; the previously required MTU VMS units did not have this functionality.

The E-MTU VMS units are not intended as a replacement for existing electronic emergency communication equipment, such as Emergency Position Indicating Radio Beacons (EPIRBs) or other emergency equipment that have the capability of sending a distress message. While some of the existing MTUs have the capability of sending distress messages, most do not have this capability. The ability to engage in two-way communication between vessel owners on shore and their operators at sea could facilitate troubleshooting mechanical issues, allow updates on market conditions/prices for seafood products, and could provide owners with additional peace of mind.

*Comment 3:* The proposed rule does not demonstrate a need for vessels to declare the target fishery and gears possessed onboard, and NMFS should not require these declarations because they are unnecessary and redundant with other reporting requirements.

*Response:* In HMS fisheries, many of the management measures, including closed areas, are applicable to certain gear types and some only apply at certain times of year. Providing a declaration that includes the gear possessed onboard prior to embarking on a fishing trip is useful for NMFS enforcement officials when they are evaluating which management measures apply to a particular vessel during a particular trip.

*Comment 4:* The need for requiring E-MTUs in the PLL fishery does not justify the financial expense and burden that the requirement will have on fishermen.

*Response:* The enhanced communication capability of E-MTUs will facilitate enhanced communication with HMS vessels at sea, provide HMS fishery participants with a means of sending and receiving information at sea, ensure that all HMS VMS units are consistent with the current VMS technology and type approval requirements that apply to newly installed units, and to provide NMFS

enforcement with additional information describing gear onboard and target species onboard to support fishery management measures including compliance with time/area closures.

Fishing vessels possessing pelagic longline gear onboard are already required to have a functioning VMS onboard. Older MTUs are not supported by the current NMFS VMS type requirements, thus when units are replaced, they must be replaced with E-MTUs regardless of this final rule. Experience using E-MTU VMS units in other fisheries indicates that they require less maintenance than MTU VMS units. Installing the E-MTU VMS units may reduce maintenance costs and lost fishing time because of system failure compared to MTU VMS units.

Currently, the Agency has reimbursement funds available that vessel owners may receive to offset the costs of purchasing an E-MTU VMS unit. Reimbursement funds are subject to availability. The additional cost of two-way reporting and installation of E-MTUs by a qualified marine electrician on average is expected to equal \$745/vessel (including \$400 for installation) in the first year. Installation costs will vary depending on proximity to a qualified marine electrician. Estimates for transmission costs (declaration and location reports) represent the maximum financial burden that could be incurred by vessels because it is based on the maximum amount of fishing time vessels could be active. However, vessels often fish less frequently depending on seasons, fish availability, moon phase, and opportunities in other fisheries so actual costs may be less. The Agency is mitigating the economic impacts to participants by making some reimbursement funds available for E-MTU units and by delaying the implementation date to provide fishermen with additional time to comply with the requirements. Vessel owners that participate in other fisheries deploying the same fishing gear may already be required to use E-MTU VMS; therefore, the economic impacts to some participants may be negligible.

*Comment 5:* The requirement to use E-MTUs in the PLL fishery disadvantages U.S. fishermen compared to foreign competitors. The cumulative effect of this and other regulations on the PLL fishery will result in a bankrupt fishery.

*Response:* VMS requirements are currently in place in many U.S. fisheries and are also required by Regional Fisheries Management Organizations. In the United States, requirements to use VMS for PLL vessels were implemented

in response to requirements of other domestic laws, including the MSA, Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). In addition, ICCAT has a VMS requirement for contracting parties. The Agency is reducing the economic impacts of this rule on fishermen by delaying the implementation date and by providing some reimbursement funds for the E-MTU units.

*Comment 6:* Civil liberties are violated by mandating the use of vessel tracking devices and requiring a separate line of communication using E-MTUs only compounds that violation.

*Response:* VMS units are required only of people who have sought out an HMS permit, the possession and use of which comes with certain obligations and responsibilities under law. Maintaining a valid HMS permit requires vessel owners and operators to comply with all applicable regulations for participation in HMS fisheries. VMS units are a tool to ensure compliance with regulations in HMS fisheries and have been required since 2003. The position and certain other data collected from VMS are subject to MSA confidentiality provisions and protections, which prevent inappropriate disclosure (see 18 U.S.C. 1881a(b)). VMS requirements are currently in place in many U.S. fisheries and are also required by Regional Fisheries Management Organizations.

*Comment 7:* Some small vessels may not have enough room to mount an E-MTU.

*Response:* The Agency is aware of this issue, particularly for shark vessels fishing with bottom longline or gillnet gear that are subject to VMS requirements. There are several models of E-MTU VMS units available that range in size, some of which are quite small. Often the largest or most bulky part of the E-MTU VMS system is the screen or messaging terminal; however, this depends on the model. It may be possible to find a screen that is smaller in size and may be more appropriate for mounting on smaller vessels.

*Comment 8:* NMFS should allow the declaration of target species and fishing gears possessed to be made by phone. Some small fishing vessels remain within cell phone range throughout their fishing trip. Allowing declaration by phone could remove the need for E-MTUs for these vessels and could result in less additional burden than requiring E-MTUs.

*Response:* E-MTU VMS terminals represent a more reliable means of communication than cellular phones because they use satellites rather than

cell towers as the principle means of transmitting data. Furthermore, vessels need to provide position reports every hour when they are away from port, and cell phones cannot consistently provide that capability. The E-MTU VMS units represent a more reliable means of providing position reports and also allow two-way communication in the event that NMFS enforcement needs to contact a vessel concerning an emergency closure, adverse weather, or other issue.

*Comment 9:* Gulf of Mexico reef fish vessels are already using E-MTUs; however, the Boatracs model is not authorized for use in HMS fisheries. Will vessels that also have shark permits need to replace these units? If so, the small businesses that own these vessels may have difficulty purchasing an additional E-MTU.

*Response:* NMFS administers a process for updating E-MTU type approval for specific fisheries. NMFS is investigating the possibility of Boatracs E-MTUs meeting NMFS type approval for Atlantic HMS fisheries. The Agency will provide updates regarding additional units being added to the list of type approved devices as necessary.

*Comment 10:* Will Gulf of Mexico vessels that have already been reimbursed for an E-MTU that is not type approved for Atlantic HMS fisheries be eligible for reimbursement when an E-MTU required for participation in Atlantic HMS fisheries is installed?

*Response:* Vessels currently are eligible to receive reimbursement for the costs of an E-MTU that satisfies the type approval requirements for the fishery. Some E-MTUs that are type approved for use in non-HMS Gulf of Mexico fisheries are also type approved for Atlantic HMS fisheries. Generally, the owner of a vessel is only eligible for reimbursement for one E-MTU per vessel. Vessel owners should contact NMFS enforcement if they have questions about VMS installation and reimbursement procedures.

*Comment 11:* The use of E-MTUs can increase safety and provide a way for owners to monitor what their boats are doing on the water.

*Response:* NMFS agrees for reasons outlined in the response to comment number 2 above, but reiterates that the E-MTU VMS units are not intended as a replacement for Emergency Position Indicating Radio Beacons (EPIRBs) or other emergency equipment that have the capability of sending a distress message.

*Comment 12:* NMFS should not have reporting requirements beyond those required by ICCAT.

*Response:* NMFS implements VMS requirements pursuant to federal laws, including the MSA, ESA, and MMPA, and also taking into consideration relevant ICCAT recommendations.

*Comment 13:* NMFS is displaying favoritism by requiring E-MTUs for the purpose of increasing safety if they do not implement similar requirements across all Atlantic HMS fisheries.

*Response:* NMFS is not requiring E-MTUs solely to increase safety. The purpose of this final rule is to enhance communication capability in the Atlantic HMS fisheries that are currently required to use VMS. When a vessel declares the type of gear possessed onboard and target species, useful information is provided to NMFS enforcement, which enables enforcement to determine which regulations apply. Other potential benefits of using E-MTU VMS at sea instead of MTUs include improved reliability, reduced maintenance costs, and two-way communication (email messages) if a vessel were experiencing conditions that may endanger the safety of the vessel or the crew during fishing activities. E-MTU VMS units are not intended to replace EPIRBs or other safety equipment that can be used to transmit a distress signal and vessel position information.

*Comment 14:* An upgrade to E-MTUs should only be required if the MTU on a vessel is old.

*Response:* E-MTUs provide enhanced communication that will support fishery management measures. When vessels declare the fishing gear onboard and target species using an E-MTU, NMFS enforcement officials will know which regulations apply to that particular vessel during that particular trip. MTUs do not provide this type of enhanced communication and are only capable of providing position information. The E-MTU VMS units also provide vessel operators with confirmation that the unit is functioning properly, which was not always possible with MTU VMS units.

*Comment 15:* The enhanced units have a level of complexity far exceeding the old systems. This may result in an increased rate of system failure. When E-MTUs fail, the cost of shipping them to service agents has been an economic and logistical burden. The lost fishing time while waiting for repairs has been costly.

*Response:* NMFS has not experienced increased system failures with the E-MTUs that are currently type approved in other fisheries. Rather, NMFS enforcement reports that the rate of system failure is less than that of MTUs. NMFS expects that there will be

a reduction in lost fishing time as a result of system failure at port or at sea by requiring that E-MTU VMS units be installed by a qualified marine electrician in HMS fisheries.

#### *Hail-Out and Hail-In Declaration Comments*

*Comment 16:* NMFS should require vessels in the Atlantic HMS fleet to declare their target fishery and gear two hours before leaving port and provide three hours of advanced notice of landing.

*Response:* NMFS agrees. Requiring the declaration of fishing gear possessed and target species facilitates enforcement and monitoring by allowing NMFS enforcement to know what fisheries regulations, such as closed areas, apply for the vessel during a given fishing trip. The final rule will require that vessels declare target species and fishing gear onboard two hours prior to leaving port and notify the Agency of their intended landing location three hours prior to returning to port.

*Comment 17:* Fishermen cannot declare their target catch two hours in advance of their fishing trip because they do not know what they are going to catch ahead of time. It should be sufficient that NMFS knows HMS are generally targeted by a PLL vessel that is permitted in Atlantic HMS fisheries when the vessel departs on a fishing trip. This basic information is known by the VMS track provided by a MTU.

*Response:* It is the Agency's intention for vessel operators to declare the type of fishing gear possessed and target catch by species groups to facilitate the effectiveness of fishery management measures through improved enforcement efforts. The Agency realizes that fishing is opportunistic and it may not be possible to list all species that may be encountered and retained on any particular trip. There may be instances where the vessel possesses multiple gear types and would target (and declare) multiple species groups, which would be acceptable. The E-MTU VMS units have the capability to report all of this information. This information will augment the location information provided by VMS units to discern which fisheries regulations are applicable.

*Comment 18:* It is not practical for fishing vessels that make trips less than three hours in length to hail in three hours in advance of landing.

*Response:* The hail-in requirement is necessary to facilitate enforcement of fishery regulations by providing adequate time for an enforcement agent to meet a vessel at the dock. Vessels that

anticipate a fishing trip less than three hours in length must, prior to departure, provide a hail-in declaration stating where they intend to return to port at least three hours in advance of landing. If the vessel's fishing trip deviates from the original declaration, then a subsequent hail-in message can be sent using the E-MTU unit.

*Comment 19:* NMFS should keep the amount of required text characters in a message to a minimum because of the expense of these messages.

*Response:* NMFS anticipates that text messages will be minimal in length. Most, if not all communications, will occur via electronic forms that are filled with the use of inexpensive drop-down menus. Costs for transmitting information using the E-MTU are minimal and are approximately \$0.06 per message (both sent and received). Messaging cost varies slightly by service provider.

*Comment 20:* If NMFS requires hail-in notification, any confirmation from NMFS back to the vessel needs to occur quickly. NMFS should not expect boats to sit at idle while waiting for a confirmation code before they can tie up to the dock. This situation currently occurs in southeast reef fish fisheries.

*Response:* This final rule does not require that vessels obtain a hail-in confirmation number from NMFS prior to landing and the vTrack system does not contain a mechanism to send back a specific confirmation number. Rather, vessels will receive an on-screen confirmation from the vendor that the prelanding notice was successfully transmitted, which should occur without delay.

*Comment 21:* NMFS should allow changes to the declaration because fishermen sometimes have incidental catches of species not listed on their initial declaration.

*Response:* Declaration of target species will be for species groups and is not intended to capture all species that a vessel lands. If the vessel switches to a gear type or species group not reported on the initial declaration, another declaration must be submitted before fishing begins.

#### *E-MTU Reimbursement Comments*

*Comment 22:* Requiring vessel owners to outlay the cost of an E-MTU (up to \$3,100) before the money is reimbursed is a real hardship.

*Response:* NMFS understands that the initial outlay of the cost of an E-MTU and installation by a qualified marine electrician is burdensome for fishermen. In order to mitigate the economic impacts, NMFS is delaying implementation of the requirement to

purchase and install an E-MTU until March 1, 2012, in order to provide time for fishermen to save for this initial outlay of money.

*Comment 23:* The allowable reimbursement amount of \$3,100 is not enough money to reimburse fishermen fully for the total cost of this requirement. NMFS should make reimbursement funds available for any fees incurred by breaking existing contracts.

*Response:* The reimbursement amount of up to \$3,100 should cover the cost of the least expensive E-MTU that meets the NMFS type approval. All of the costs associated with existing MTU units were incurred by PLL fishermen. Consistent with existing policy, NMFS will not pay for installation or any subsequent transmission costs. Reimbursement of the cost of an E-MTU will help fishermen with the rule's financial burden. Reimbursement is not available to cover any cost related to changes to contracts incurred by vessels transitioning to E-MTU VMS. NMFS is not aware of any fees being incurred by participants as a result of switching from MTU to E-MTU VMS units.

*Comment 24:* NMFS should ensure that sufficient funding is available to reimburse all eligible fishery participants for an E-MTU.

*Response:* Reimbursement funds are available on a first-come, first-served basis as long as the funds last. In recent years, the reimbursement fund has been adequately funded to cover all eligible requests; however, this funding level is not guaranteed.

#### *Delayed Implementation of E-MTU Requirement*

*Comment 25:* NMFS should make the rule effective at a time when fishing activity is slowest so the burden on fishermen is the least.

*Response:* This final rule is expected to publish and be implemented during the winter of 2012, which coincides with a period of reduced fishing activity for most Atlantic HMS fisheries affected by the regulation.

*Comment 26:* NMFS should allow up to 6-months for a phased-in period of implementation. Delayed implementation of the E-MTU requirement would ease the economic burden by allowing fishermen more time to save money for the unit and could prevent manufacturer's inventories of E-MTUs from becoming depleted and the filling of orders from being delayed. Delayed implementation would also allow existing MTU service contracts to expire.

*Response:* NMFS is issuing this final rule with a delayed effective date of

about 90-days in order to minimize the financial burden to fishermen as a result of compliance with the new regulation. The selected delayed effective dates coincide with a period of reduced fishing activity for many HMS participants affected by the new requirement. A delayed effective date balances the need for fishermen to save money for the initial outlay to procure the unit with the need to expedite the requirement so fishermen are ensured access to the reimbursement. A 6-month phase in period, as suggested by the public comment, would increase the likelihood that reimbursement funds are not available to fishermen, thus was not chosen. The delayed implementation date would also allow vendors of type approved E-MTUs to ensure they have an adequate supply of units in stock. NMFS has contacted vendors of type approved E-MTUs and an adequate supply exists for Atlantic HMS participants affected by this requirement.

#### *Installation by a Qualified Marine Electrician Comments*

*Comment 27:* Installation by a qualified marine electrician will minimize the chance of equipment failure at sea.

*Response:* NMFS agrees. One purpose of requiring installation by a qualified marine electrician is to ensure the reliability of E-MTUs and the information they provide to NMFS.

*Comment 28:* It is difficult to believe that self-installation has been a frequent cause of VMS unit failure instead of mechanical malfunction of the unit.

*Response:* NMFS enforcement has documented instances of VMS unit failure due to improper installation by an unqualified person. Not all persons associated with a vessel that might install an E-MTU are familiar with the specific electronic and mechanical requirements of E-MTU installation. Installation of E-MTUs by a qualified marine electrician is necessary to ensure the units function properly. Units that fail at sea may impact fishing activities and result in lost revenues because vessels may need to return to port during a fishing trip to deal with VMS issues.

*Comment 29:* Requiring that the enhanced units be installed by a qualified marine electrician is not practical because there are a limited number of qualified marine electricians with experience installing E-MTUs and because of the long distance that a qualified marine electrician would have to travel in some areas. The cost of travel for the installer will be more than the \$200.00 estimated in the proposed

rule. NMFS should consider having VMS units installed by a capable, but unspecified, technician.

*Response:* By requiring E-MTU installation by a qualified marine electrician, NMFS intends to provide some flexibility for fishermen in choosing a business that is relatively convenient while ensuring that it is someone qualified to install E-MTU VMS units. It is important that someone familiar with these units and marine electronics complete the installation and fill out the VMS installation checklist because the checklist provides NMFS enforcement with important information concerning the installation and results in improved troubleshooting capability should problems occur. NMFS revised the estimate for an average E-MTU installation by a qualified marine electrician to \$400.00 instead of \$200.00, which was originally analyzed in the Initial Regulatory Flexibility Analysis and proposed rule based on public comment.

#### *General VMS Comments*

*Comment 30:* Fishermen should not be held responsible for any VMS equipment failure because of the complexity of the units.

*Response:* NMFS disagrees. Fishermen that are required to use VMS are responsible for ensuring that their units are functioning properly during fishing activities just as they would be for any other fishing equipment on their vessels. Because of the complexity of the units and the problems that may occur subsequent to installation by an inexperienced person, NMFS is requiring that E-MTU units be installed by a qualified marine electrician.

*Comment 31:* NMFS should not increase use of electronics to enforce regulations.

*Response:* Enforcement of fisheries regulations using electronic tools such as VMS is a proven, cost effective method. The requirements of this final rule will enhance communication between fishing vessels and NMFS to strengthen VMS as an enforcement tool with benefits to both NMFS, through improved data availability, and fishermen, through increased reliability and increased ability to communicate with enforcement, thereby avoiding compliance issues. The enhanced reliability and two-way communication capabilities of E-MTU VMS may also be an effective tool for improving safety at sea because communication between fishing vessels and NMFS enforcement/ and Coast Guard (describing the vessels' circumstances) can be initiated prior to the need to send a distress signal. However, E-MTU VMS units are not

intended as a replacement for Emergency Position Indicating Radio Beacons (EPIRBs) or other emergency equipment that have the capability of sending a distress message.

*Comment 32:* VMS equipment is not made for boats and regularly fails at sea.

*Response:* The E-MTU units that are type approved for use in Atlantic HMS fisheries are designed and marketed exclusively for use in the marine environment. VMS has proven to be an effective tool for monitoring vessel position and two-way communication. VMS is used in many other federally managed fisheries in the United States and throughout the world. NMFS enforcement has documented numerous instances where the MTU VMS currently being used in HMS fisheries have failed at sea. The E-MTU units themselves have demonstrated that they are more reliable at sea than the MTU units. Furthermore, requiring that installation is conducted by a qualified marine electrician is also expected to improve performance.

*Comment 33:* Who is authorized to repair E-MTUs? Nearly all of the type approved units are manufactured abroad (Norway, Denmark, and Canada). Will fishermen be burdened by having to get their E-MTUs serviced at foreign locations?

*Response:* Specific information concerning E-MTU service and repair should be attained through the authorized dealer from which the original unit was purchased. The location and availability of service and repair companies varies by VMS manufacturer; however, the experience in other federally managed fisheries is that some units can be repaired by technicians within the United States without the need to send units to foreign locations. In some cases, E-MTUs may have software repairs conducted remotely via two-way communication, which can reduce cost and repair time. The Agency is preparing a compliance guide that will provide additional information on the locations of authorized dealers and service providers.

#### *Comments Outside the Scope of the Rule*

*Comment 34:* NMFS needs to re-examine the rationale for prohibiting fishing when a vessel's VMS unit is not working and the vessel is far from a closed area.

*Response:* A properly operating VMS is required and necessary to verify the location of a vessel, regardless of its location, to ensure that it is not fishing in closed areas.

*Comment 35:* NMFS should expand this rule to implement reporting requirements, observer coverage, increased enforcement, and VMS requirements in the Atlantic Tunas General category fishery commensurate with requirements and level of enforcement in the PLL fishery.

*Response:* Regulations are in place for the Atlantic Tunas General permit fishery including, but not limited to, permitting, authorized gears, retention and size limits, and reporting requirements. In the Gulf of Mexico, Atlantic Tunas General permit holders cannot engage in directed fishing for bluefin tuna and possession of bluefin tuna is not authorized. Therefore, NMFS determined that additional requirements for Atlantic Tunas General Category permitted vessels within the scope of this final rule are not necessary at this time.

*Comment 36:* ICCAT recommendations require VMS on vessels greater than 24 m Length Overall (LOA), yet NMFS requires VMS on vessels according to the gear they possess and not vessel length. Implementing VMS requirements in this way excludes the largest percentage of U.S. Atlantic HMS vessels and selectively enforces ICCAT VMS requirements on a small percentage of commercial HMS permit holders.

*Response:* VMS requirements, implemented under the authority of the MSA, facilitate enforcement of closed areas in the U.S. EEZ for certain gear types (PLL, BLL, and gillnet) at certain times of year (specific to gear type and location). These closed areas apply to vessels in possession of a certain gear type regardless of the vessel size or length. NMFS may consider additional monitoring requirements for Atlantic HMS fisheries in the future.

*Comment 37:* NMFS should require E-MTUs to be used by Atlantic HMS-permitted vessels that use gears other than PLL, BLL, and gillnet so that two-way communications and the ability for real-time reporting of landings will be in place throughout Atlantic HMS fisheries.

*Response:* NMFS is considering alternative methods for improving the timeliness and quality of information collected throughout Atlantic HMS fisheries.

*Comment 38:* In order to increase safety at sea, NMFS should allow PLL vessels to fish in closed areas along the east coast during winter months when sea conditions make fishing farther from shore more dangerous. NMFS should also make the PLL closed areas smaller so that they are easier to enforce.

*Response:* This comment is not germane to this rulemaking. However, NMFS continues to evaluate the effectiveness of time/area closures and their impacts, and may make changes, if appropriate.

*Comment 39:* NMFS should consider using E-MTUs in lieu of observer coverage in order to get better scientific data.

*Response:* VMS units and observers are both important tools in fisheries management; however, they provide different information to fishery managers and enforcement officials. VMS units are primarily an enforcement tool and provide important information about location and allow self-reported fisheries data from vessels to fisheries enforcement officers. Observers are not used for enforcement of fisheries regulations; rather, they provide valuable information about catch, discards, effort, and fishing gear (among other things) to fisheries managers. NMFS may consider options for using E-MTU VMS to report landings or discards in a future rulemaking.

*Comment 40:* NMFS should not have comment periods shorter than 60 days, with the exception of emergency actions, to allow fishermen ample time to participate in the regulatory process.

*Response:* NMFS strives to provide adequate time for fishermen to provide public comments consistent with legal obligations. Public hearings are scheduled at locations that are designed to be accessible to members of the public, including fishermen, who are interested in the subject matter. Comments may be submitted in person at public hearings, electronically via <http://www.regulations.gov>, via fax, or by mail.

*Comment 41:* NMFS should reduce the frequency of VMS reports from 24 to no more than six per day.

*Response:* The current frequency of VMS reports (1 per hour) has been implemented to monitor closed or gear-restricted areas. The required frequency is necessary to provide NMFS enforcement with enough information to substantiate what fishing gear is being used based on vessel track, location of the fishing gear, and location of the vessel in relation to closed areas. If the frequency of reporting is reduced, then it may limit NMFS enforcement's ability to monitor fishing activities adjacent to closed areas, thus compromising the effectiveness of closed areas.

#### Changes From the Proposed Rule

The estimates of costs associated with installation of E-MTU VMS units increased from \$200 to \$400 based on public comment on the Initial

Regulatory Flexibility Analysis. A minor change to the paragraph at § 635.69(a) has been made to better describe what a NMFS-approved E-MTU VMS is and to reference the type approval requirements that were published in the **Federal Register**. A minor change to the paragraph at § 635.69 (a) has been made to clarify the implementation dates of this final rule.

#### Classification

The NMFS AA has determined that this final action is consistent with the Magnuson-Stevens Act, 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

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

This final rule would modify a collection-of-information requirement associated with VMS use in Atlantic HMS fisheries subject to the Paperwork Reduction Act (PRA), and that has been approved by the Office of Management and Budget (OMB) under control number (0648-0372). The modifications are subject to review and approval by OMB under the Paperwork Reduction Act (PRA). There would be 329 vessel owners (respondents) that may be affected by this collection. Public reporting burden for having the E-MTU VMS units installed by a qualified marine electrician (4 hours, one-time), submitting a checklist (completed by a qualified marine electrician) (5 minutes, one-time), and providing declaration reports before and after leaving port (5 minutes/declaration, ongoing) is estimated to result in an estimated total annual burden of 4,452 hours in the first year. A total of 48,358 responses (checklists and declaration reports) would be collected in the first year. The annual burden would decrease in subsequent years because the installation and submission of a completed checklist would be one-time burdens. Table 1 provides estimates of the number of participants affected by this collection and the financial burden associated with this action in year one and subsequent years.

Environmental impacts are not expected and the action is within the scope of that previously analyzed when existing VMS requirements were implemented (64 FR 29090; May 28, 1999; and 68 FR 74746; December 24, 2003). This action would not directly affect fishing effort, quotas, fishing gear, authorized species, or interactions with threatened or endangered species.

NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA), as required by 5 U.S.C. Section 604 of

the Regulatory Flexibility Act, to analyze the economic impacts that this final rule will have on small entities. A description of the final action, why it is being implemented, and the legal basis for this action are contained in the preamble to this proposed rule. A summary of the analysis follows. A copy of the complete analysis is available from NMFS (see **ADDRESSES**).

Section 604(a)(1) of the Regulatory Flexibility Act requires that the Agency describe the need for, and objectives, of the final rule. The purpose of this final rule is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to aid NMFS in monitoring and enforcing fisheries regulations, including those implemented at 50 CFR part 635. Specifically, this final action will facilitate enhanced communication with HMS vessels at sea, provide HMS fishery participants with a means of sending and receiving information at sea, ensure that HMS VMS units are consistent with the current VMS technology and requirements used in other U.S. VMS monitored fisheries, and to provide NMFS enforcement with additional information describing gear onboard and target species.

Section 604(a)(2) requires a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA) and a statement of any changes made in the proposed rule as a result of such comments. The Agency received comments concerning the Initial Regulatory Flexibility Analysis stating that the Agency's estimate of \$200 for installation of E-MTU VMS units by a qualified marine electrician was not appropriate for vessels that may be docked at remote ports far from larger population centers because of the travel time necessary for a qualified marine electrician. As a result, the estimate for installation of E-MTU VMS units by a qualified marine electrician has been increased from \$200 to \$400 in response to these comments. Estimates of the economic impacts of compliance with the final regulations have been updated in the FRFA and final rule.

Comments were also received on the delayed implementation date discussed in the IRFA and proposed rule. The Agency is implementing a delayed implementation date to mitigate economic impacts and provide stakeholders with some additional time to get new E-MTU units installed and operating. Commenters asked for additional time, up to six months, to comply with the new requirements and for the effective date to coincide with a period of low fishing activity. NMFS is

implementing this final rule with two effective dates. As of January 1, 2012, all E-MTU VMS units must be installed by a qualified marine electrician. As of March 1, 2012, vessel owners and/or operators must have an E-MTU VMS unit installed on their vessel and must use the unit to provide position reports, declare target species and fishing gear possessed onboard two hours prior to departing on a fishing trip, and provide notification of landing three hours in advance of returning to port. The selected delayed effective dates coincide with a period of reduced fishing activity for many HMS participants affected by the new requirement. This date also balances the need for fishermen to save money for the initial costs of buying the unit with the need to expedite the requirement so fishermen are ensured access to the reimbursement. A 6-month phase in period, as suggested by the public comment, would increase the likelihood that reimbursement funds are not available to fishermen, thus was not chosen. The delayed implementation date would also allow vendors of type approved E-MTUs to ensure they have an adequate supply of units in stock.

Under section 604(a)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) standards for a "small" versus "large" business entity are entities that have average annual receipts less than \$4.0 million for fish-harvesting; average annual receipts less than \$6.5 million for charter/party boats; 100 or fewer employees for wholesale dealers; or 500 or fewer employees for seafood processors. Under these standards, NMFS considers all HMS permit holders subject to this rulemaking to be small entities. This action would apply to all 249 participants in the Atlantic HMS pelagic PLL fishery, 50 participants in the shark bottom longline (BLL) fishery, and 30 participants in the shark gillnet fishery. These permit estimates are based on October 2010 permit data and fishery-specific assumptions to determine the potential affected universe of participants. Atlantic HMS PLL vessels are required to use VMS year-round whenever they are away from port. The number of vessels was determined by adding the number of swordfish directed (177) and incidental (72) permit holders. One of these permits is required to retain swordfish with PLL gear and the majority of swordfish fishermen with those permits use PLL gear. The estimate for BLL participants was derived by adding the number of shark incidental and directed permit

holders residing in states adjacent to the Mid-Atlantic closed areas, including: Virginia (3), North Carolina (28), and South Carolina (19). The estimate for shark gillnet vessels was based on recent analysis conducted in Amendment 3 to the Consolidated Atlantic HMS FMP, which determined that there were 30 directed permit holders fishing with shark gillnet gear. All of these vessel owners are commercial fishermen and considered small entities. Depending on the fishing gear possessed on board, vessels will continue to use VMS units when away from port to provide location reports consistent with existing regulations. These vessels will also be required to declare target species and gear types possessed on board to NMFS enforcement prior to leaving port and then provide NMFS enforcement advanced notice of landing. The position reports, fishery declaration, and return reports must be sent via an E-MTU VMS unit.

Under section 604(a)(4), Federal agencies must provide a description of the projected reporting, recordkeeping, and other compliance requirements of the rule. The final action will require that the small entities (commercial fishermen) procure an approved E-MTU VMS unit and have the new units installed by a qualified marine electrician. A form describing the technical specifications of the unit will be filled out by the qualified marine electrician and then submitted to NMFS enforcement by the vessel owner. This represents a slight deviation from existing protocols for installation of VMS units. Currently, vessel owners themselves are able to complete the installation and then submit the checklist.

The E-MTU VMS units allow for two-way communication, including the ability to send and receive electronic messages. Consistent with existing regulations, fishermen would be required to send hourly location reports while they are away from port using the VMS units. Additionally, the final rule contains some new reporting and compliance requirements using the E-MTU VMS units in addition to providing location reports. Vessels will be required to send an electronic message to NMFS enforcement two hours prior to departing the dock and describe target species and what fishing gear(s) will be possessed on board the vessel. Creating a fishery declaration system will allow NMFS enforcement officials to more accurately track and monitor vessels for compliance in specific fisheries. The new declaration system will be compatible with the

capabilities of newly required E-MTU VMS units. Additionally, the requirement to notify NMFS enforcement at least three hours prior to returning to port provides notification that fishing activities are being completed, and the vessel is transiting back to port.

Under section 604(a)(5), agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. Economic impacts are discussed below and in the Environmental Assessment for the actions that initially established VMS requirements. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c)(1)-(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. The requirements to have an updated E-MTU VMS unit installed by a qualified marine technician and expand reporting requirements to include a declaration system is expected to improve the reliability of VMS transmissions and provide NMFS enforcement with additional information to accurately monitor fishing activities. NMFS does not specify a particular manufacturer or model of VMS unit that vessel owners would need to procure to comply with the final action. As noted above, there are several models available that meet the specifications described in the latest type approval notice (73 FR 5813; January 31, 2008). A list of E-MTU VMS units that are currently type approved for use in Atlantic HMS fisheries is available on the NMFS Office of Law Enforcement Web site at [http://www.nmfs.noaa.gov/ole/docs/2011/07/noaa\\_fisheries\\_service\\_type\\_approved\\_vms\\_units.pdf](http://www.nmfs.noaa.gov/ole/docs/2011/07/noaa_fisheries_service_type_approved_vms_units.pdf). Copies of this list and other information may be obtained by contacting the VMS Support Center at (phone) (888) 219-9228, (fax) (301) 427-0049, [ole.helpdesk@noaa.gov](mailto:ole.helpdesk@noaa.gov), or write

to NMFS Office for Law Enforcement, VMS Support Center, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

NMFS considered two alternatives in compliance with the Regulatory Flexibility Act. Alternative one, the no action alternative, would maintain the existing VMS requirements in Atlantic HMS fisheries. Alternative two, the preferred alternative, would mandate that Atlantic HMS vessels that are required to use VMS replace their MTU VMS unit with an E-MTU VMS by March 1, 2012, and have the new unit installed by a qualified marine electrician. This alternative would also implement a fishery declaration system where vessels would declare their target species and gear type(s) possessed onboard, as well as require vessels to provide advanced notice of departure and landing. Alternative two is the preferred alternative.

Under the no action alternative, vessels that are required to use VMS would be able to continue to use the MTU VMS units currently being employed in the PLL, BLL, and gillnet fisheries or access reimbursement funds (\$3,100 per VMS unit) to voluntarily replace these units with E-MTU VMS units. The decision to replace existing units with E-MTU VMS units would be at the discretion of individual vessel owners. In the event that existing units failed beyond repair, E-MTU VMS units would need to be installed, and owners would be eligible for reimbursement funds (\$3,100 per VMS unit) to offset the initial costs of the unit. Costs for individual E-MTU VMS units that meet the type approval specifications start at approximately \$3,100 per unit depending on the manufacturer, model, and additional features of the unit. NMFS expects that any vessel owner who applies for reimbursement funds will receive those funds; however, reimbursement funds are not guaranteed and are subject to limitations and distributed on a first-come, first-serve basis. In the event of necessary replacement, the E-MTU VMS units would need to be procured by vessel owners before returning to fishing activities, consistent with existing regulations, depending on the gear possessed onboard the vessel, timing, and location of the fishing activity. This alternative would not require that the new units be installed by a qualified marine electrician. Rather, the new units could be installed by vessel owners/operators and an installation checklist would need to be completed and sent to NMFS enforcement per existing requirements.

Under the no action alternative, vessel owners or operators would not be required to provide NMFS enforcement with information concerning target species and gear possessed on board prior to leaving port to engage in fishing activities. Furthermore, vessel owners or operators would not be required to provide NMFS enforcement with advanced notice of departure and landing. Vessels would still be required to provide hourly position reports, starting two hours before leaving port, when away from port. It is estimated that these reports would continue to cost \$1.00 per day assuming 24 reports are sent. Maintenance costs for these units are estimated at \$500 per vessel per year. Some vessels may be committed to long-term service contracts with communication service providers and maintaining the status quo would not require vessels to break these contracts, avoiding any early termination fees. Unlike the MTU VMS units, which could have maintenance costs of approximately \$500 per year, E-MTU VMS units have very low to no maintenance costs.

Under the preferred alternative, fishery participants would be required to replace by March 1, 2012, MTU VMS units with E-MTU VMS units (including approximately 80 to 100 fishery participants that would replace MTUs with E-MTUs), however they would be able to access reimbursement funds (\$3,100 per VMS unit) to offset the initial costs of the units. Reimbursement funds would be subject to limitations and distributed on a first-come, first-serve basis. Furthermore, individuals that have previously received reimbursement funds for an E-MTU VMS unit required in another fishery would not be eligible for additional funds. In the IRFA, the Agency estimated that the proposed action require that the units be installed by a qualified marine electrician (\$200 per installation) to ensure that units are installed and operating properly to avoid transmission failures that may occur when vessels are away from port and subject to VMS requirements. The Agency received several public comments indicating that an estimate of \$200 for installation may not be appropriate for vessels that are docked in remote ports that are far from large population centers. Therefore, the Agency has revised its estimate for installation by a qualified marine electrician from \$200 to \$400 consistent with public comments received. Marine electricians are also capable of providing information on E-MTU VMS

use and troubleshooting during the installation process.

NMFS is also planning on delaying the implementation date in order to allow vessel owners time to procure and have an E-MTU. The Agency received comments requesting that the effective date be delayed even further, to six months after publication of the final rule. The effective date also coincides with a period of reduced fishing activity for many HMS participants affected by the new requirement. A delayed effective date balances the need for fishermen to save money for the initial outlay to procure the unit with the need

to expedite the requirement so fishermen may access the reimbursement funds. The extended implementation period would also allow vendors of type approved E-MTUs to ensure they have an adequate supply of units in stock.

Costs of compliance with the preferred alternative for vessel owners are estimated to be \$3,971; \$3,830; \$3,737 per vessel for PLL, BLL, and shark gillnet vessels, respectively, in the first year (Table 1). These are the costs of compliance, pre-reimbursement. Reimbursement funds of \$3,100 per VMS unit would reduce the costs to

\$745 per vessel, on average, across all fisheries. Costs in year two (and beyond) would be limited to the costs of sending/receiving declaration reports (\$0.06 per report) and providing vessel location information on an hourly basis (\$1.56 per vessel per day) and is estimated to be \$471; \$331; and \$237 per vessel for PLL, BLL, and shark gillnet vessels, respectively.

Table 1 summarizes some of the costs associated with the final rule. A description of the figures and calculations used in Table 1 is provided below the table.

TABLE 1—COSTS OF COMPLIANCE EXPECTED AS A RESULT OF REQUIRING E-MTU VMS UNITS IN AFFECTED HMS FISHERIES

|  | Pelagic longline vessels                       | Shark bottom longline vessels                  | Shark gillnet vessels                          |
|--|--|--|--|
| E-MTU VMS Unit .....   | \$3,100 .....                                  | \$3,100 .....                                  | \$3,100.                                       |
| Estimated Installation Costs (one-time) .....  | \$50–400 (\$400 used for estimation purposes). | \$50–400 (\$400 used for estimation purposes). | \$50–400 (\$400 used for estimation purposes). |
| Daily Position Report Costs (Hourly, 24/day) (\$0.06/report * 24 reports/day) .....                            | \$1.44 .....                                   | \$1.44 .....                                   | \$1.44.  |
| Estimated Days Fishing/Year .....  | 324 .....                                      | 212 .....                                      | 152.   |
| Annual Position Report Costs/Vessel (\$1.44/day * days fishing/year) .....                                     | \$466.56/vessel .....                          | \$305.28/vessel .....                          | \$218.88/vessel.                               |
| Annual Number of Fishing Trips .....   | 36 .....                                       | 212 .....                                      | 152.   |
| Annual Gear/Sp. Declaration Costs (\$0.12/trip)/Vessel (\$0.12/trip * trips/year) ** .....                     | \$4.32 .....                                   | \$25.44 .....                                  | \$18.24.                                       |
| Total Estimated Costs/Vessel (Year 1) (VMS unit + installation + position reports + declaration reports) ..... | \$3,971 .....                                  | \$3,830 .....                                  | \$3,737.                                       |
| Number of Affected Vessels .....   | 249 .....                                      | 50 .....                                       | 30.  |
| <b>Total Costs by Fishery (Year 1) (Total Estimated Costs/Vessel * Number of Affected Vessels).</b>            | <b>\$988,749 .....</b>                         | <b>\$191,536 .....</b>                         | <b>\$112,113.</b>                              |
| Gross Cost of Compliance, Year One (all HMS vessels combined).   |  | \$1,292,398.                                   |  |
| Potential Reimbursement Funds (\$3,100/vessel * Number of Affected Vessels).                                   |  | \$1,019,900.                                   |  |
| Compliance Costs (Year 1) (avg. cost/vessel) (installation + position reports + declaration reports).          | \$870/vessel .....                             | \$730/vessel .....                             | \$637/vessel.                                  |
| Compliance Costs/Vessel (Year 2 and Beyond) (position reports + declaration reports).                          | \$471/vessel .....                             | \$331/vessel .....                             | \$237/vessel.                                  |

\*\* The declaration costs per trip will vary based upon the number of gear types possessed onboard as operators would be required to submit one declaration for each fishing gear possessed.

There are benefits associated with the final action relative to the no-action alternative. Requiring that an E-MTU VMS unit be installed by a qualified marine electrician would improve the reliability of VMS data transmitted from HMS vessels. Implementing a declaration system would enhance NMFS communication with HMS vessels at sea and provide valuable information concerning target species and gear type(s) possessed onboard vessels to ensure enforcement of closed areas and other regulations. Furthermore, the delayed implementation date associated with the preferred alternative would allow more

time for fishermen to make the transition to the new VMS units and a declaration system coincides with a period of low fishing activity for many HMS permit holders. NMFS solicited comment from the public regarding the implementation date and costs for installation to ensure that economic impacts are accurate. Based on public comment, the estimate for installation by a qualified marine electrician was revised to \$400 to reflect costs of installation at remote ports. Vessels at these ports would expect to pay more to cover costs of having a marine electrician travel to and from these areas. One of the objectives of this final

action is to modify the requirements in order to ensure that small entities affected can access the reimbursement funds and make the transition to E-MTU VMS.

The preferred alternative was selected over the no action alternative even though it was not the lowest cost alternative because it will ensure that all Atlantic HMS vessels that are required to use VMS are using a more reliable type of unit that is also capable of two-way communication (E-MTU VMS). Under the no action alternative, the regulations require that these updated units are installed only in the event of the MTU VMS units failing. Once the MTU units fail, then individual vessels

would be required to install E-MTU VMS units. The preferred alternative would require that all vessels make the transition to E-MTU VMS at the same time to ensure that all vessels have the same capabilities.

The preferred alternative would also require that E-MTU VMS units are installed by a qualified marine electrician. Installation of these units can be complicated and improper installation has been responsible for VMS units failing at sea during fishing activities. Ensuring that the units are properly installed and that a qualified marine electrician provides valuable information about the unit and installation to NMFS enforcement will increase the reliability and functionality of the updated units.

One of the primary objectives of the rulemaking is to improve NMFS enforcement's ability to monitor fishing vessels and ensure compliance with fishery management measures. The preferred alternative implements a fishery declaration requirement where vessels would provide valuable information concerning fishing gear onboard and target species prior to leaving port. With this information, NMFS enforcement will know which regulations should apply to an individual vessel without having to dispatch an aircraft or enforcement vessel to board a fishing vessel to discern its activities.

This final action does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide for this final rule are available (see **ADDRESSES**).

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

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

Dated: November 25, 2011.

**Patricia A. Montanio,**

*Acting Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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

#### **PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

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

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

■ 2. In § 635.69, paragraph (a) introductory text, and paragraphs (d), (e), and (g) are revised to read as follows:

#### **§ 635.69 Vessel monitoring systems.**

\* \* \* \* \*

(a) *Applicability.* To facilitate enforcement of time/area and fishery closures, an owner or operator of a commercial vessel permitted, or required to be permitted, to fish for Atlantic HMS under § 635.4 and that fishes with pelagic or bottom longline or gillnet gear, is required to install a NMFS-approved enhanced mobile transmitting unit (E-MTU) vessel monitoring system (VMS) on board the vessel and operate the VMS unit under the circumstances listed in paragraphs (a)(1) through (a)(4) of this section. For purposes of this section, a NMFS-approved E-MTU VMS is one that has been approved by NMFS as satisfying its type approval listing for E-MTU VMS units. Those requirements are published in the **Federal Register** and may be updated periodically.

\* \* \* \* \*

(d) *Installation and activation.* As of March 1, 2012, only an E-MTU VMS that has been approved by NMFS for Atlantic HMS Fisheries may be used. As of January 1, 2012, any VMS unit must be installed by a qualified marine electrician. When any NMFS-approved E-MTU VMS is installed and activated or reinstalled and reactivated, the vessel owner or operator must—

(1) Follow procedures indicated on a NMFS-approved installation and activation checklist for the applicable fishery, which is available from NMFS;

(2) Submit to NMFS a statement certifying compliance with the checklist, as prescribed on the checklist; and,

(3) Submit to NMFS the checklist, completed by a qualified marine electrician. Vessels fishing prior to NMFS' receipt of the completed checklist and compliance certification

statement will be in violation of the VMS requirement.

(e) *Operation.*—(1) Owners or operators of vessels subject to requirements specified in paragraph (a) of this section, must activate the VMS unit to submit automatic position reports at least 2 hours prior to leaving port and continuing until the vessel returns to port. While at sea, the unit must always be on, operating and reporting without interruption, and NMFS enforcement must receive position reports without interruption. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(2) At least 2 hours prior to departure for each trip, a vessel owner or operator must initially report to NMFS any HMS the vessel will target on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel. If the vessel owner or operator participates in multiple HMS fisheries, or possesses multiple fishing gears on board the vessel, the vessel owner or operator must submit multiple electronic reports to NMFS. If, during the trip, the vessel switches to a gear type or species group not reported on the initial declaration, another declaration must be submitted before this fishing begins. This information must be reported to NMFS using an attached VMS terminal.

(3) A vessel owner or operator must report advance notice of landing to NMFS. For the purposes of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The vessel owner or operator is responsible for ensuring that NMFS is contacted at least 3 hours in advance of landing regardless of trip duration. This information must be reported to NMFS using an attached VMS terminal.

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(g) *Repair and replacement.* After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must have a qualified marine electrician replace or repair the VMS unit prior to the vessel's next trip. Repair or reinstallation of a VMS unit or installation of a replacement, including change of communications service provider, shall be in accordance with the installation and activation

requirements specified at § 635.69(d) of  
this part.

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