Public comments on proposed rule 0648-AV63, with draft responses

VMS requirements:

Comment 1: The proposed rule includes a requirement in section 300.219(c)(3)(iii) that prior to leaving port, a vessel owner and operator must "receive verbal or written confirmation from NMFS that proper transmissions are being received from the VMS unit." The lack of availability of staff in the NOAA Office of Law Enforcement, Pacific Islands Division ("OLE-PID"), may cause an unreasonable loss of fishing time for fishing vessels, which do not operate on a 9 a.m. to 5 p.m. basis and operate in various time zones. There should be a system that allows confirmation of VMS unit operation outside the regular office hours of OLE-PID. One suggestion is to allow a vessel to contact, and receive confirmation from, a representative of the VMS unit manufacturer, after which the vessel could contact and receive confirmation from the OLE-PID once it opens for business.

Response: The referenced proposed requirement applies in the case that the vessel owner and operator have chosen to shut down the VMS unit while at port or otherwise not at sea. NMFS recognizes that the office hours of OLE-PID are somewhat constraining, but notes that the owner and operator of a fishing vessel need not wait until immediately prior to the port departure time to turn on the VMS unit and submit the on/off report to NMFS. In order to provide a few additional hours each day for these communication purposes, NMFS has made a revision to the final rule such that vessel owners and operators may submit the VMS unit on/off reports to, and receive confirmations from, either the OLE-PID or the NOAA Office of Law Enforcement's VMS Helpdesk. The contact information and business hours for the latter are: telephone: 888-219-9228; email: ole.helpdesk@noaa.gov; 7 a.m. to 11 p.m. [need to confirm hours], Eastern Time.

Comment 2: Under the proposed rule, if a VMS unit fails while the vessel is at sea, the vessel owner, operator, or designee must contact the OLE-PID by telephone, facsimile, or email at the earliest opportunity during the OLE-PID's business hours, identify the caller and vessel, and follow the instructions given by the OLE-PID, which could include ceasing fishing, stowing fishing gear, returning to port, and/or submitting periodic position reports at specified intervals by other means. We expect that the OLE-PID will be reasonable in the instructions it gives in these cases.

Response: In determining what instructions to give to the operator of a fishing vessel whose VMS unit has failed while at sea, the OLE-PID would indeed try to be reasonable, and in doing so would take into account the specific circumstances of the case.

Comment 3: Given that albacore troll and baitboats are small, have little problems with bycatch, enforcement issues, or gear conflicts, land nearly all their fish on the U.S. west coast and document their catch in logbooks, and there are few marine protected areas in offshore regions where U.S. albacore troll vessels operate, how effective and useful will the required VMS data be?

Response: The United States is obligated, as a Contracting Party to the Convention, to implement Article 24 of the Convention, which calls for each WCPFC member to require that its fishing vessels used to fish for highly migratory fish stocks on the high seas in the Convention Area use near real-time satellite position-fixing transmitters while in such areas. Apart from this international obligation, NMFS believes that requiring U.S. albacore vessels, however small and free of problems, to carry VMS units, would provide information that will be useful for scientific and compliance-related purposes.

Comment 4: Why is it proposed that the VMS units have to be turned on 365 days per year? A declaration of departure and a check to see if the VMS unit is on should serve the purpose.

Response: Under the proposed rule, the VMS unit could be shut down while the fishing vessel is at port or otherwise not at sea, provided that the OLE-PID is notified both in advance of the shut-down and upon turning the VMS unit back on, and that prior to subsequently leaving port, the vessel owner and operator receive verbal or written confirmation from NMFS that proper transmissions are being received from the VMS unit.

Comment 5: If the United States is requiring VMS units under the Convention then NOAA should pay for installation as in other fisheries. The U.S. albacore fleet is in economic distress and is an important component of the coastal rural economy; any new fees at this time would be detrimental to the family-owned U.S. albacore fleet and community at this time.

Response: NMFS is indeed requiring that VMS units be carried in order to implement the provisions of the Convention, and NMFS recognizes that the proposed VMS requirements would bring new costs to businesses that operate HMS fishing vessels in the Convention Area. NMFS does not agree that NMFS or the U.S. government should pay for installation of the VMS units, but notes that vessel owners might be eligible for reimbursement for the cost of VMS units under a program administered by the NOAA Office of Law Enforcement. Further information is available on the website of the Pacific States Marine Fisheries Commission: http://www.psmfc.org/Vessel_Monitoring_System.

Comment 6: According to the proposed rule and EA, 73 vessels would have to buy, install, and maintain VMS units as well as pay for VMS transmission costs. This would cost approximately up to $1,775 [per vessel] per year or $7,100 over the course of four years, which is a VMS unit's general lifespan. It does not make sense to break out the VMS unit cost by year, as the VMS unit itself costs approximately $4,000. The EA does not describe whether NMFS has pursued government funding to cover these costs for the 73 affected vessels. NMFS should find government funding to make this requirement equitable amongst fishery participants – we strongly believe that NMFS should pay for the VMS costs for the two longline vessels operating out of CNMI, as well as for the albacore troll fleet. Furthermore, the proposed rule would require albacore trolling vessels to continue to transmit their VMS positions while fishing in the EPO. This seems particularly onerous and costly for this fleet, especially since the proposed rule is in response to WCPFC measures. The proposed rule would also require that vessel operators provide NMFS with a notice when they power down in port and shut off power supply to their VMS unit. Vessel operators would also have to inform NMFS that they have powered back on

and that they are going on a fishing trip. As this is not current practice, NMFS will need to develop a detailed outreach plan to inform fishery participants.

Response: With respect to breaking out the VMS unit costs by year, NMFS annualized the estimated cost of purchasing and installing a VMS unit in order to express expected compliance costs in terms that could be compared with, and added to, the compliance costs of other aspects of the proposed requirements – that is, in annual terms (the annualized cost of a VMS unit that costs $4,000 to purchase and install and that has a lifespan of four years would be about $1,000). With respect to who should pay the costs of the VMS-related requirements, NMFS does not agree that NMFS or the U.S. government should pay, but notes that vessel owners might be eligible for reimbursement for the cost of VMS units under a program administered by the NOAA Office of Law Enforcement. Further information is available on the website of the Pacific States Marine Fisheries Commission: http://www.psmfc.org/Vessel_Monitoring_System. With respect to the costs and burden of having to transmit position reports via VMS while a vessel is fishing in the EPO, outside the Convention Area, NMFS considered alternatives that would not require such reporting (see the IRFA, FRFA, EA, and RIR, particularly Alternatives B and C in the latter two). Position reports will cost about $1.50 per day, so the annual VMS-related compliance costs of Alternative B, which would require position reports to be transmitted only while the vessel is on the high seas in the Convention Area, would be about $105-285 less than under the proposed rule for albacore troll vessels, depending on where they fish. However, allowing the VMS unit to be turned on and off depending on where at sea the vessel is would make it more difficult to ensure that position reports are transmitted while in the Convention Area. For that reason, NMFS believes that the benefits of the more onerous alternative of requiring position reports everywhere at sea outweigh its costs. With respect to informing fishery participants about these new VMS-related requirements, NMFS does not intend to prepare an “outreach plan”, but it has prepared a small entity compliance guide, available at [insert url], for this purpose, and NMFS will use various means to reach out to fishery participants to ensure they are aware of the new requirements.