

**PART 948—IRISH POTATOES GROWN IN COLORADO**

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Amend § 948.386 by revising paragraph (a)(2) to read as follows:

**§ 948.386 Handling Regulation.**

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(a) \* \* \*

(2) *All other varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter or 4 ounces minimum weight.

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Dated: January 13, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–1000 Filed 1–20–10; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 300**

[Docket No. 070717350–9936–02]

**RIN 0648–AV63**

**International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Initial Implementation of the Western and Central Pacific Fisheries Convention**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act), which authorizes the Secretary of Commerce to promulgate regulations needed to carry out the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), including implementing the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The regulations include requirements related to permitting, vessel monitoring systems, vessel

observers, vessel markings, reporting and recordkeeping, at-sea transshipment, and boarding and inspection on the high seas, among others. NMFS has determined that this action is necessary for the United States to satisfy its international obligations under the Convention, to which it is a Contracting Party. It will have the effect of requiring that all relevant U.S. fishing vessels are operated in conformance with the provisions of the Convention.

**DATES:** This final rule is effective February 22, 2010.

**ADDRESSES:** Copies of supporting documents that were prepared for this final rule, including the regulatory impact review (RIR) and environmental assessment (EA), as well as the proposed rule, are available via the Federal e-Rulemaking portal, at <http://www.regulations.gov>. Those documents, and the small entity compliance guide prepared for this final rule, are also available from the Regional Administrator, NMFS, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700. The initial regulatory flexibility analysis (IRFA) and final regulatory flexibility analysis (FRFA) prepared for this rule are included in the proposed rule and this final rule, respectively.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Pacific Islands Regional Office (see contact information above), and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Tom Graham, NMFS Pacific Islands Regional Office, 808–944–2219.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This final rule is also accessible at <http://www.gpoaccess.gov/fr>.

**Background**

On May 22, 2009, NMFS published a proposed rule in the **Federal Register** (74 FR 23965) that would add regulations at 50 CFR part 300, subpart O, in order to implement certain provisions of the Convention and decisions of the WCPFC. The proposed rule was open to public comment through June 22, 2009.

This final rule is implemented under authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States

Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The authority to promulgate regulations has been delegated to NMFS.

The proposed rule includes additional background information, including information on the Convention and the WCPFC, the international obligations of the United States under the Convention, and the basis for the proposed regulations.

**New Requirements**

This final rule establishes the following requirements:

**1. Authorization To Fish**

Owners or operators of U.S. vessels used for commercial fishing for highly migratory species (HMS) on the high seas in the Convention Area will be required to obtain a new NMFS-issued fishing authorization, called a “WCPFC Area Endorsement.” The definition of fishing will include, consistent with its definition under the WCPFC Implementation Act, receiving fish from another fishing vessel and bunkering or otherwise supplying or supporting a vessel that engages in fishing. Thus, carriers that receive HMS from another vessel, vessels that bunker vessels used to fish for HMS, and vessels that engage in operations at sea directly in support of, or in preparation for, fishing or transshipping by other vessels will also be subject to this and other requirements of the final rule. This new authorization will be issued by the Regional Administrator of NMFS, Pacific Islands Region, supplemental to, and as an endorsement on, the permits issued under the authority of the High Seas Fishing Compliance Act of 1995 (HSFCA; 16 U.S.C. 5501 *et seq.*) (hereafter, “high seas fishing permits;” see 50 CFR 300.13). The prerequisites to obtaining a WCPFC Area Endorsement will be: (1) Having a valid high seas fishing permit (or simultaneously applying for one); (2) submitting a complete application (see the next item, “vessel information”); and (3) paying the required administrative fee. The application form will be designed as a supplement to the application for a high seas fishing permit. The WCPFC Area Endorsement will become void upon expiration, suspension, or revocation of the underlying high seas fishing permit. The WCPFC Area Endorsement is also subject to suspension or revocation independent of the high seas fishing permit. Holding a WCPFC Area Endorsement will trigger a number of

other requirements, as described in the elements that follow.

## 2. Vessel Information

Vessel owners and operators that apply for WCPFC Area Endorsements will be required to submit to NMFS, in their application forms for WCPFC Area Endorsements, specified information about the vessel and its operator (*i.e.*, the master on board and in charge of the vessel) that is not already collected via the high seas fishing permit application. This information includes the name and nationality of the vessel operator (or operators); all communication types used on the vessel (*e.g.*, single sideband radio, voice Inmarsat, fax Inmarsat, e-mail Inmarsat, telex Inmarsat, or other type of satellite telephone), along with the communication service used and the identifying/contact number for each; the fishing methods used or intended to be used; the vessel's fish hold capacity, expressed in terms of either cubic meters or short tons; and the vessel's refrigeration and freezer capacity, including the types of refrigeration and freezer systems on board, the number of refrigeration and freezer units of each type, and the total refrigerating or freezing capacity of each type of system.

In addition, a bow-to-stern side-view photograph of the vessel that shows the vessel in its current form and appearance and that is no older than five years will have to be submitted to NMFS. The photograph can be in either paper or electronic format and must meet certain minimum specifications in terms of its size and resolution and the legibility of the vessel markings. Although the international radio call sign assigned to a given vessel is already collected in high seas fishing permit applications, an indication of whether or not an international radio call sign has been assigned to the vessel, and if so, the call sign itself, will have to be submitted to NMFS by applicants for WCPFC Area Endorsements. This is because of the importance under the Convention of a vessel's international radio call sign (*e.g.*, see paragraph below on "vessel identification") and NMFS' need to verify that the collected information is accurate. WCPFC Area Endorsement holders will have to submit to NMFS any subsequent changes to the submitted information within 15 days of the change.

In addition, owners or operators of any U.S. vessel used for fishing for HMS in the Convention Area in areas under the jurisdiction of any nation other than the United States (*i.e.*, vessels for which a WCPFC Area Endorsement will not necessarily be required) will be required to submit to NMFS information about

the vessel, its owners and operators and any fishing authorizations issued by such other nations. Specifically, all the information specified in the application for high seas fishing permits and in the application for WCPFC Area Endorsements will be required, as well as, for each fishing authorization issued by a nation or political entity other than the United States, the name of the nation or political entity, the name of the issuing authority, the authorization type, the period of validity, the specific activities authorized, the species for which fishing is authorized, the areas in which fishing is authorized, and any unique identifiers assigned to the authorization. Copies of any such fishing authorizations will also have to be submitted to NMFS. This information will be collected via a new form (hereafter, "Foreign EEZ Form") designed for this purpose, and vessel owners/operators will be required to submit to NMFS any subsequent changes to the submitted information within 15 days of the change.

The collected information referred to above will be incorporated by NMFS into a record of U.S. fishing vessels authorized to be used for commercial fishing for HMS in the Convention Area beyond areas of U.S. jurisdiction. In accordance with the Convention, NMFS will keep this record updated and share it with the WCPFC, which will combine it with the records of its other Members and Cooperating Non-Members and make it publicly available via its Web site and other means.

## 3. Vessel Monitoring System

Owners and operators of vessels with WCPFC Area Endorsements will be required to have installed, activate, carry and operate vessel monitoring system (VMS) units (also known as "mobile transmitting units") that are type-approved by NMFS, and authorize the WCPFC and NMFS to receive and relay transmissions (also called "position reports") from the VMS unit to the WCPFC and to NMFS. The WCPFC and NMFS will use the position reports as part of their respective VMS. Activation of a VMS unit will be required any time the unit is installed or reinstalled, any time the mobile communications service provider has changed, and any time directed by NMFS. Activation will involve submitting to NMFS a report ("activation report") via mail, facsimile or e-mail with information about the vessel, its owner or operator, and the VMS unit, as well as receiving confirmation from NMFS that the VMS unit is transmitting position reports properly. The VMS unit will have to be

turned on and operating (*i.e.*, transmitting automated position reports) at all times while the vessel is at sea, both inside and outside the Convention Area. The VMS unit may be turned off while the vessel is in port, but only if the vessel operator notifies NMFS via mail, facsimile or e-mail prior to such shut-down. In such cases, NMFS must also be notified when the VMS unit is subsequently turned back on (these two types of notifications are called "on/off reports"), and the vessel operator must receive confirmation from NMFS that the VMS unit is functioning properly prior to leaving port. In the case of failure of the VMS unit while at sea, the vessel operator will be required to contact NMFS and follow the instructions provided by NMFS, which could include, among other actions: Submitting position reports at specified intervals by other means, ceasing fishing, stowing fishing gear, and/or returning to port; and repairing or replacing the VMS unit and ensuring it is operable before starting the next trip. To facilitate communication with management and enforcement authorities about the functioning of the VMS unit and for other purposes, operators of vessels with WCPFC Area Endorsements will be required to carry on board and continuously monitor while at sea a two-way communication device capable of real-time communication with NMFS in Honolulu. For the purpose of submitting position reports that might be required in the case of VMS unit failure, vessel operators must also carry on board a communication device capable of transmitting communications by telephone, facsimile, e-mail, or radio to the WCPFC in Pohnpei, Micronesia, while the vessel is on the high seas in the Convention Area.

The vessel owner and operator will be responsible for all costs associated with the purchase, installation and maintenance of the VMS unit, and for all charges levied by the mobile communications service provider as necessary to ensure the transmission of automatic position reports to NMFS. However, if the VMS unit is being carried and operated in compliance with the requirements in 50 CFR parts 300, 660, or 665 relating to the installation, carrying, and operation of VMS units, the vessel owner and operator will not be responsible for costs that are the responsibility of NMFS under those regulations. In addition, the vessel owner and operator will not be responsible for the costs of transmitting the automatic position reports to the WCPFC.

NMFS publishes separately type-approval lists of VMS units. The current type-approval lists can be obtained from the NOAA Office of Law Enforcement, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910; by telephone at 888-210-9288; or by fax at 301-427-0049.

This final rule is worded so as to avoid duplication with other VMS requirements, such as those established under the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*) and the South Pacific Tuna Act of 1988 (SPTA; 16 U.S.C. 973-973r). Compliance with the existing VMS requirements at 50 CFR parts 300, 660, and 665 will satisfy this new requirement, provided that the VMS unit is type-approved by NMFS specifically for fisheries governed under the WCPFC Implementation Act, the VMS unit is operated continuously at all times while the vessel is at sea, the vessel owner and operator have authorized the WCPFC and NMFS to receive and relay transmissions from the VMS unit, and the requirements in case of VMS unit failure are followed.

#### 4. Vessel Observer Program

The operator of a vessel with a WCPFC Area Endorsement will be required to accept on board and accommodate observers deployed as part of the WCPFC "Regional Observer Programme" (WCPFC ROP) on fishing trips that are partially or fully in the Convention Area. Such observers include persons designated by the WCPFC Secretariat, by the United States or by other Members of the WCPFC. Persons will be designated as WCPFC observers by the United States or other WCPFC Members only if the national or sub-regional observer program that deploys such observers has been authorized by the WCPFC to be a part of the WCPFC ROP. Once an observer program of NMFS is determined by the WCPFC to meet specified minimum standards and incorporated into the WCPFC ROP, relevant data collected in the NMFS program will be submitted to the WCPFC and maintained and used by the WCPFC as data in its larger WCPFC ROP.

The preamble to the proposed rule inaccurately stated that the observer requirements would also apply to vessels used in areas under the jurisdiction of another Member of the WCPFC. This final rule clarifies that the observer requirements apply only to vessels that have, or are required to have, WCPFC Area Endorsements.

It is anticipated that the NMFS observer program operating out of Honolulu, Hawaii, and Pago Pago, American Samoa, will be among the

first national observer programs to be authorized to be part of the WCPFC ROP. The NMFS observer program currently has interim authorization until July 1, 2012, and full authorization is anticipated after a successful audit of the program. Accordingly, NMFS expects there to be little, if any, change in the placement of observers on vessels in the longline fleets based in Hawaii and American Samoa. The WCPFC Secretariat may place an occasional observer as part of an auditing process to ensure that national and sub-regional observer programs are operating up to WCPFC standards.

It is also anticipated that U.S. purse seine vessels operating under the SPTA will continue to carry observers from the Pacific Islands Forum Fisheries Agency (FFA) observer program (a sub-regional observer program). If the FFA is unable to provide observers to meet increased coverage levels mandated by the WCPFC, those vessels may make other arrangements to obtain WCPFC-approved observers.

The responsibilities of vessel operators and crew members with respect to observers will include allowing and assisting observers to do the following: embark and disembark at agreed times and places; have access to and use of all facilities and equipment on board that are necessary to conduct observer duties; remove samples; and carry out all duties safely. The vessel operator also will be responsible for providing observers, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel. In the case of longline vessels in the Hawaii and American Samoa fleets, however, costs incurred for providing subsistence for NMFS observers will be eligible for reimbursement, as currently provided at 50 CFR Part 665.

#### 5. Vessel Identification

Vessels with WCPFC Area Endorsements will be required to be marked in accordance with the Convention's requirements, which are based on the FAO Standard Specifications for the Marking and Identification of Fishing Vessels. Specifically, if assigned an international radio call sign (IRCS), the port and starboard sides of a vessel's hull or superstructure, as well as a deck, will have to be marked with the IRCS; if not assigned an IRCS, they will have to be marked with the vessel's official number (*i.e.*, USCG documentation number or state or tribal registration number), preceded by the characters "USA" and a hyphen. In both cases, the specified

marking will be the only allowable marking on the hull or superstructure apart from the vessel's name and hailing port. The markings will have to be placed so that they are clear, distinct, uncovered, and unobstructed. Any boats, skiffs, or other watercraft that are carried on board the vessel also will have to be marked with the same identifier as the fishing vessel. For some affected vessels, this marking requirement will conflict with other existing vessel marking requirements, such as those at 50 CFR 300.14 (under the HSFCA; applicable to vessels used for fishing on the high seas), 50 CFR 300.173 (under the legislation implementing the U.S.-Canada Albacore Treaty; applicable to vessels used for fishing under that treaty), 50 CFR 660.704 (under the MSA; applicable to vessels in West Coast HMS fisheries), and 50 CFR 665.16 (under the MSA; applicable to vessels in western Pacific fisheries). Accordingly, with respect to the vessel identification requirements at 50 CFR 300.14, this final rule will slightly modify those requirements to make them consistent with this new requirement. With respect to the vessel identification requirements at 50 CFR 665.16, NMFS has issued a proposed rule (74 FR 34707; July 17, 2009) to revise those requirements such that they do not conflict with the requirements of this final rule. NMFS anticipates issuing the final rule for that action nearly concurrently with this final rule, in which case there will be no conflict. With respect to the vessel identification requirements at 50 CFR 300.173 and 660.704, no regulatory action to revise those requirements has been undertaken to date, so the vessel identification requirements in this final rule are written such that they will not apply to fishing vessels subject to the requirements of either 50 CFR 300.173 or 660.704 until the conflicts have been reconciled and a notice to that effect has been published in the **Federal Register**.

#### 6. Transshipment Restrictions

Offloading fish from a U.S. purse seine vessel or using a U.S. fishing vessel to receive fish from a purse seine vessel at sea in the Convention Area will be prohibited. Transshipping at sea is already regulated for U.S. purse seine vessels licensed under the SPTA.

#### 7. Reporting and Recordkeeping

The owner or operator of any U.S. vessel used for commercial fishing for HMS anywhere in the Pacific Ocean will be required to maintain and submit to NMFS information on fishing effort and catch. The final rule was developed to avoid duplication with other effort

and catch reporting requirements, particularly those established under the MSA, the HSFCA, the Tuna Conventions Act of 1950 (16 U.S.C. 951–961 *et seq.*), the SPTA, and the implementing legislation for the U.S.-Canada Albacore Treaty, as well as relevant State reporting requirements. Specifically, compliance with other existing reporting requirements will satisfy the new reporting requirement established in this final rule. The main effect of these new reporting requirements is to collect fishing effort and catch information under the authority of the WCPFC Implementation Act, which will enable NMFS to meet the reporting requirements of the WCPFC in accordance with the Convention and the decisions of the WCPFC. Confidentiality of information will be protected and handled by NOAA as required under U.S. laws, including the WCPFC Implementation Act and the regulations established in this final rule (see element 10 below). Once the information is submitted by NOAA to the WCPFC, it will be handled in accordance with policies and procedures adopted by the WCPFC.

#### 8. Compliance With the Laws of Other Nations

A vessel with a WCPFC Area Endorsement will be prohibited from being used for fishing in areas under the jurisdiction of another nation unless it holds any license, permit or authorization that may be required by such nation to do so. When a vessel with a WCPFC Area Endorsement operates in the Convention Area in areas under the jurisdiction of a Member of the WCPFC other than the United States, it will have to be operated in compliance with the laws of that Member.

Additionally, the owner and operator of any U.S. fishing vessel used in the Convention Area in an area under the jurisdiction of another Member of the WCPFC, if used for fishing for, retaining on board or landing HMS, will be required to comply with the relevant laws of that Member, including any laws related to the use of VMS units.

It will be the responsibility of vessel owners and operators to ascertain the applicable laws and requirements of WCPFC members.

#### 9. Facilitation of Enforcement and Inspection

The operator and crew of a vessel with a WCPFC Area Endorsement, when in the Convention Area, will be subject to the following requirements:

- Carry on board any fishing authorizations issued by another nation

or political entity, or copies thereof, and make them available to specified authorities, depending on the area of jurisdiction the vessel is in;

- Continuously monitor the international safety and calling radio frequency (156.8 MHz; Channel 16, VHF–FM) and, if equipped to do so, the international distress and calling radio frequency (2.182 MHz);
- Carry on board a copy of the International Code of Signals; and
- When engaged in transshipment, allow and assist transshipment monitors authorized by the WCPFC (if on the high seas) or other Members of the WCPFC (if within their areas of jurisdiction) to inspect the vessel and gather information and samples.

In addition, the operator of any U.S. fishing vessel that is used for commercial fishing for HMS, when present in the Convention Area in an area in which it is not authorized to fish (*e.g.*, on the high seas without a valid WCPFC Area Endorsement or in an area under the jurisdiction of another nation without an authorization from that nation to fish in the area), will be required to stow all fishing gear and equipment so such materials are not readily available for fishing.

Further, the operator of any U.S. fishing vessel (regardless of the species for which it is used to fish), when on the high seas in the Convention Area, will be required to accept and assist boarding and inspection by authorized inspectors of other Contracting Parties to the Convention and of fishing entities that have agreed to be bound by the regime established by the Convention, provided that such boarding and inspection is undertaken in conformance with the WCPFC's adopted procedures. At present, Chinese Taipei (Taiwan) is the only fishing entity that has agreed to be bound by the regime established by the Convention.

#### 10. Confidentiality of Information

As mandated by the WCPFC Implementation Act, the final rule includes procedures designed to preserve the confidentiality of information submitted in compliance with the WCPFC Implementation Act and its implementing regulations. In accordance with the Convention, the procedures allow for the disclosure of confidential information to the WCPFC. Once such information is held by the WCPFC, access to the information will be governed by the policies and procedures adopted by the WCPFC.

#### Comment and Responses

Public comments on the proposed rule, organized by subject, are

summarized below, with responses from NMFS.

#### Authorization to Fish and Vessel Information

*Comment 1:* NMFS proposes to charge \$25 (or \$5 per year) for the WCPFC Area Endorsement. Although this is a small amount relative to vessel revenues, NMFS does not provide adequate reasoning of why or how this amount will recoup administrative costs, resulting in the perception of NMFS attempting to “nickel and dime” U.S. fishing vessels. NMFS should not charge any fees for WCPFC Area Endorsements, but if NMFS insists, then it should describe in the final rule or EA how the total amount of monies received from area endorsement applications would offset administrative costs.

*Response:* NMFS does not agree that an application fee should not be charged for WCPFC Area Endorsements. As stated in footnote 63 of the EA, the cost estimates for the application fee are based on the administrative cost burden incurred by NMFS, which is derived from agency practice and experience. The fee has been calculated in accordance with the NOAA Finance Handbook to recover the administrative costs of administering the permit program for WCPFC Area Endorsements, as authorized under section 506 of the WCPFC Implementation Act.

*Comment 2:* The new information that will be solicited from vessel owners, including nationality of vessel master, vessel communication types, type of fishing or method, color photograph of the vessel, and carrying capacity, including freezer type, capacity and number, and fish hold capacity, could generate confusion regarding the units of measurement related to capacity, as well as confusion on the level of detail of the required information. NMFS should produce a comprehensive compliance guide for vessel owners to follow.

*Response:* Clear instructions on the level of detail required, as well as the measurement units, will be included in the forms used to collect the required information. The requirements are also explained in the small entity compliance guide that has been prepared for this final rule, available at: [http://www.fpir.noaa.gov/IFD/ifd\\_documents\\_data.html](http://www.fpir.noaa.gov/IFD/ifd_documents_data.html).

*Comment 3:* In 50 CFR 300.212(g) and 300.213(a) the proposed regulations call for any changes to vessel information to be reported to the NMFS Pacific Islands Regional Administrator within 15 days of the change. This requirement would

be burdensome; 30 days would be much more manageable.

*Response:* The proposed 15-day requirement is necessary to satisfy the provisions of the Convention and decisions of the WCPFC with respect to the obligations of the United States to notify the WCPFC of changes to information associated with U.S.-flagged vessels authorized to fish in the Convention Area. Furthermore, the proposed 15-day requirement is consistent with the existing, related, 15-day requirement for changes to application information for permits issued under the HSFCA (50 CFR 300.13(g)). The requirement at proposed section 300.212(g) relates to application information for a WCPFC Area Endorsement, which would be issued supplemental to, and as an endorsement on, a permit issued under the HSFCA.

#### *Vessel Monitoring System*

*Comment 4:* The proposed rule includes a requirement in § 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 OLE-PID once it opens for business.

*Response:* The referenced 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 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; e-mail: [ole.helpdesk@noaa.gov](mailto:ole.helpdesk@noaa.gov); 7 a.m. to 11 p.m., Eastern Time.

*Comment 5:* Under the proposed rule, if a VMS unit fails while the vessel is at sea, the vessel owner, operator, or designee must contact OLE-PID by telephone, facsimile, or e-mail at the earliest opportunity during OLE-PID’s business hours, identify the caller and vessel, and follow the instructions given by 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 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, OLE-PID would take into account the specific circumstances of the case, and determine the appropriate course of action consistent with this rule.

*Comment 6:* 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. In addition, NMFS believes that requiring U.S. albacore troll vessels to carry VMS units would provide important information that will aid in scientific and compliance-related purposes.

*Comment 7:* 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, as well as this final rule, the VMS unit can be shut down while the fishing vessel is at port or otherwise not at sea, provided that NMFS 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 8:* 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 the U.S. Government is responsible for covering the cost of coming into compliance with this rule, but notes that it has conducted an analysis of the impact of this rule on small entities, in accordance with the Regulatory Flexibility Act (see IRFA and FRFA). In addition, fishermen may be eligible for full or partial reimbursement for the required purchase costs of authorized VMS units, to the extent appropriations allow. Questions concerning reimbursement eligibility can be directed to the NOAA Office of Law Enforcement VMS Support Center at 888-219-9228, and further information is available on the Web site of the Pacific States Marine Fisheries Commission: [http://www.psmfc.org/Vessel\\_Monitoring\\_System](http://www.psmfc.org/Vessel_Monitoring_System).

*Comment 9:* 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—the Western Pacific Regional Fishery Management Council strongly believes that NMFS should pay for the VMS costs for the two longline vessels operating out of the Commonwealth of the Northern Mariana Islands (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 eastern Pacific Ocean (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 is responsible for covering the costs, 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 (for more information, see the response to comment 8, above).

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, which would reduce the effectiveness of the VMS. For that reason, NMFS believes that the benefits of the preferred alternative of requiring position reports everywhere at sea outweigh the burden.

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 [http://www.fpir.noaa.gov/IFD/ifd\\_documents\\_data.html](http://www.fpir.noaa.gov/IFD/ifd_documents_data.html), for this purpose, and NMFS will use various means to reach out to fishery participants to ensure they are aware of the new requirements.

#### *Vessel Observer Program*

*Comment 10:* The Western Pacific Regional Fishery Management Council strongly believes that NMFS should pay for the observer costs for the two longline vessels operating out of the CNMI, as well as for the albacore troll fleet.

*Response:* NMFS has analyzed the costs of accommodating observers in the IRFA and has assessed its impacts on small entities. NMFS believes that these costs are reasonable and properly should be borne by vessels that accept the benefits of commercial fishing for HMS in the Convention Area.

*Comment 11:* The EA is unclear on why alternatives were not identified or considered for implementation of the WCPFC observer program. The VMS category considered alternatives that would trigger VMS requirements if certain temporal and spatial characteristics were met. However, similar alternatives were [not] considered for the vessel observer program category. The EA does not provide any explanation on why NMFS has no discretion in implementing the WCPFC observer program. The observer requirements could be especially onerous for U.S. albacore fishermen who fish on relatively small vessels, and no reason is provided for potentially requiring them to carry observers when they may not be fishing in the Convention Area. NMFS should include and analyze this alternative that would avoid this situation in the Final EA.

*Response:* The observer requirements in the rule implement the specific requirements of the WCPFC ROP set forth in Article 28 of the Convention. The requirements will apply to any U.S. vessel used for commercial fishing for HMS on the high seas in the Convention Area (*i.e.*, a vessel that has, or that is required to have, a WCPFC Area Endorsement). As explained below, NMFS has clarified in this final rule that fishing vessels with WCPFC Area Endorsements will be required to accept and accommodate observers only on trips that take place partially or fully in the Convention Area. The compliance costs for the observer requirements have been estimated accordingly, as described in the RIR and IRFA and summarized in the EA.

Chapters 1 and 2 of the EA set forth the discretionary provisions of the rule and the alternatives analyzed in the EA, while Appendix I of the EA describes the non-discretionary provisions of the rule. NMFS characterized the discretionary provisions as those for which reasonable and feasible alternatives could be considered and analyzed. As discussed in more detail in the response to Comment 27, below, the EA discussed the environmental impacts that could be caused by the non-discretionary provisions of the rule as part of the cumulative impacts analysis. The purpose of the rule is for NMFS to develop and promulgate domestic fishery regulations to implement the provisions of the Convention that are ready for implementation, while the need for the rule is to satisfy the obligations of the United States under the Convention. Thus, alternatives that would impose requirements on vessel owners and operators that would go beyond the requirements specified under the Convention would be outside the scope of this rule. Correspondingly, alternatives that would impose requirements on vessel owners and operators that would be less restrictive than the requirements specified under the Convention would not meet the purpose of and need for the rule. NMFS did consider alternatives for the VMS requirements that would apply on broader temporal and spatial scales than the VMS requirements specified in the Convention. However, these alternatives were considered primarily in terms of their capability to enhance the enforcement of and compliance with the VMS requirements specified in the Convention, concerns not applicable to the observer requirements. Alternatives to the observer requirements set forth in the rule, such as an alternative that would require vessels with WCPFC Area Endorsements to carry observers when operating outside of the Convention Area, or an alternative that would allow particular vessels to operate without observers, would either exceed the scope of the rule or not meet the purpose of and need for the rule.

*Comment 12:* With respect to the proposed vessel observer requirements, a clear list of questions that observers may appropriately ask should be developed and provided to vessel management, vessel operators, and observers. The proposed rule spells out the responsibilities of vessel operators and crew with respect to accommodating observers, but little information is provided on the expected

behavior and responsibilities of observers.

*Response:* This final rule does not establish any new reporting requirements with respect to WCPFC observers.

With regard to the expected behavior and responsibilities of observers, under the WCPFC ROP, WCPFC observers must be trained to specified minimum standards, and they are obligated to behave and perform in conformance with principles and guidelines specified in the WCPFC Conservation and Management Measure for the Regional Observer Programme (Conservation and Management Measure 2007-01, available at: <http://www.wcpfc.int/conservation-and-management-measures>). In the case that a WCPFC observer is deployed as part of a NMFS observer program, NMFS would work to ensure that the observer behaves and performs in conformance with those principles and guidelines. If the WCPFC observer is deployed under some other program, such as the FFA observer program, NMFS would work with the personnel in that program, as well as in the WCPFC, to ensure, to the extent possible, that that program's observers behave and perform in conformance with the principles and guidelines established in the WCPFC ROP.

*Comment 13:* In order to provide timely feedback to vessel operators, which would improve their observer responsibilities, observers should be debriefed at the end of each fishing trip, such as by NMFS staff in the presence of the vessel captain.

*Response:* NMFS agrees that debriefings are important and should be an element of the WCPFC ROP. However, WCPFC observers are not necessarily deployed by NMFS or otherwise in the employ of the U.S. Government, so NMFS is not able to mandate that observer debriefings occur or that vessel captains be allowed to attend such debriefings. Instead, such provisions would have to be incorporated into the WCPFC ROP, the applicable provisions of which NMFS would then implement as needed. As part of U.S. delegations to the WCPFC, NMFS will keep this comment under consideration as the WCPFC further develops the WCPFC ROP.

*Comment 14:* The cost of carrying an observer is estimated in the IRFA to cost \$20 per day, which, at a 5% coverage rate, would total \$350 per trip, depending on the length of the trip. But because albacore vessels operating west of 150° W. long. would be at sea for 25 to 100 days, the cost would be more like \$400 to \$2,000 per trip. These costs

should be clarified and a cap of \$350 per trip should be considered.

*Response:* It is stated in the IRFA that at a daily cost of \$20, a 5% coverage rate, and 170 to 350 days at sea per year, the annual (not per-trip) cost would be \$170 to \$350. This is an estimate of average annual costs; the cost would be greater in a year in which a vessel was required to carry an observer on more than 5% of its sea-days, and the cost would be less in a year in which the vessel was required to carry an observer on less than 5% of its sea-days. The estimated cost of an observed trip 100 days long would indeed be about \$2,000, as indicated by the commenter. NMFS believes it to be appropriate that vessel owners and operators bear the entirety of these costs and that a cap is not appropriate.

*Comment 15:* Most albacore vessels are small compared to longline and purse seine vessels; a typical vessel operating west of 150° W. long. would be 50–100 feet in length and have a crew of 2–3 persons; most of the vessels in the 50–65-foot range have limited space for observers, especially on extended trips.

*Response:* NMFS recognizes that some fishing vessels have limited space and small crew sizes. If NMFS determines that deploying an observer on a particular vessel would compromise the safety of the observer or the vessel crew, it would not deploy the observer.

*Comment 16:* Considering that albacore troll vessels may be at sea for 25 to 100 days at a time and operate in a fishery with virtually no environmental or regulatory impacts, how practical is it to carry an observer?

*Response:* One of the purposes of deploying observers under the WCPFC ROP is to gather information that can be used to characterize fishing activities and their impacts on living marine resources. As more information is gathered and better characterizations are developed in a given fishery, such as the albacore troll fishery, NMFS expects that the coverage rate in that fishery would be adjusted by the WCPFC accordingly.

*Comment 17:* Albacore troll vessels operate at least 7–10 days away from any harbor and travel at only 7–9 knots; aborting a trip because of a health or other problem with an observer would be problematic; who would reimburse the vessel for potentially two to three weeks of lost time?

*Response:* NMFS recognizes that there may be instances in which the presence of an observer on board a fishing vessel could influence the course of a fishing trip. NMFS, however, believes that these occurrences will be rare. Accordingly,

the final rule does not include any provisions for reimbursing or otherwise compensating vessel owners or operators for any losses incurred in such instances.

#### *Vessel Identification*

*Comment 18:* The proposed vessel identification requirements, which in the case of a vessel that has not been assigned an international radio call sign require that the vessel's Federal, State or other documentation number be preceded by the letters "USA", might be a problem for some smaller albacore vessels because of space, particularly given that under the U.S.-Canada Albacore Treaty U.S. vessels are already required to put a "U" after the vessel's U.S. Coast Guard Documentation number or state registration number.

*Response:* The rule specifies minimum heights of the letters and numbers to be marked on the vessel that are proportional to the length of the vessel. The rule also specifies minimum widths of strokes, minimum hyphen lengths, and minimum sizes of the spaces between letters and numbers, all of which are expressed in terms of the letter height. In other words, the size specifications for the vessel markings explicitly take boat length into consideration.

It should also be noted that the vessel identification requirements under the U.S.-Canada Albacore Treaty (at 50 CFR 300.173) conflict with the vessel identification requirements established in this rule, and because of that, the requirements in this rule will become effective only when the requirements at 50 CFR 300.173 have been revised so as to remove the conflict.

#### *Transshipment Restrictions*

*Comment 19:* The proposed rule's prohibition on purse seine transshipments at sea is appropriate. However, NMFS should provide information on the impact of the proposed rule's prohibition on purse seine transshipments at sea and also describe if the U.S. fleet has historically transshipped, including the locations of such transshipments, in past years.

*Response:* As described in the IRFA and RIR, U.S. purse seine vessels are already subject to substantial restrictions on at-sea transshipments under the SPTA, and U.S. purse seine vessels consequently do not, in practice, transship at sea. Accordingly, this requirement is not expected to bring a new compliance burden on affected fishermen or otherwise cause any impacts on purse seine transshipments at sea.



### *Reporting and Recordkeeping*

*Comment 20:* The proposed rule would require any U.S. commercial fishing vessel fishing for HMS anywhere in the Pacific Ocean to submit catch and effort information to NMFS. The preamble to the proposed rule indicates that these reporting requirements are already met by reporting requirements established under the MSA, the HSFCA, the Tuna Conventions Act of 1950, the SPTA, the implementing legislation for the U.S.-Canada Albacore Treaty, as well as relevant State reporting requirements. The proposed rule and EA do not include detailed information to verify NMFS' indication that this is applicable to 5,000 vessels, nor do they discuss in detail how NMFS is currently obtaining this important information.

*Response:* The proposed rule and EA include what NMFS believes to be sufficient detail to explain the proposed requirements and their basis and to assess their impacts. The rule at 50 CFR 300.218 details the specific regulations that contain the applicable catch and effort reporting requirements.

### *Compliance With the Laws of Other Nations*

*Comment 21:* The proposed rule's requirement for owners and operators to comply with laws of other nations is appropriate. However, the EA does not provide any current or historical information on the number of U.S. vessels that fish in the exclusive economic zones of other member nations. To get a better understanding on the issue, the Final EA should include this information.

*Response:* Annex III, Article 2 of the Convention sets forth the specific provisions for complying with national laws that are being implemented in this rule. Providing current or historical information on the number of U.S. vessels that fish in the exclusive economic zones of other WCPFC members in the EA would not provide information relevant to the analysis or affect the proposed action. See the IRFA and FRFA for estimates of the numbers of vessels and small entities to which this requirement will apply.

### *Facilitation of Enforcement and Inspection*

*Comment 22:* The proposed rule states that the operator of any U.S. fishing vessel must accept and assist boarding and inspection by contracting parties of the WCPFC. As there are U.S. vessels that have Pacific Remote Island Areas bottomfish, lobster, and troll permits, NMFS should provide information to these vessel operators so that they are

aware of potential boarding and inspection by non U.S. parties. The final rule and Final EA should describe this outreach as well as the number and type of other U.S. fishing vessels that could be subject to non-U.S. boarding and inspection.

*Response:* NMFS will endeavor to ensure that all affected U.S. fishing vessels are aware of this new requirement, such as by making copies of this final rule and its associated small entity compliance guide available to affected permit holders.

*Comment 23:* In the case of a high seas boarding and inspection of a U.S. vessel, NMFS or the U.S. Coast Guard should establish and maintain communication with the U.S. vessel during the boarding and inspection and should also follow up with the vessel afterwards to ascertain if any problems occurred. NMFS should also provide guidelines for U.S. vessel operators to follow in the event of a boarding on the high seas by a WCPFC member nation.

*Response:* U.S. Government entities such as NMFS and the U.S. Coast Guard will establish and maintain communications with U.S. vessels as required under applicable laws and in accordance with agency policies and practices. This rule establishes the requirements with which U.S. vessel operators must comply in the event of a boarding and inspection undertaken pursuant to WCPFC procedures. These requirements are also explained in the small entity compliance guide prepared for this rule, available at [http://www.fpir.noaa.gov/IFD/ifd\\_documents\\_data.html](http://www.fpir.noaa.gov/IFD/ifd_documents_data.html).

### *Confidentiality of Information*

*Comment 24:* The proposed rule and the EA offer no details on how the proposed procedures regarding the confidentiality of information vary or are consistent with current procedures, what specific procedures will be followed, or what specific information will be protected. Without this information, it is not possible to comment on this issue. All information submitted by or collected from vessel owners, operators, or crew must be treated as confidential business information and not released in any manner that reveals the identities, operations, or fishing locations of any individual vessel. Fishing operations, locations, and catches are considered to be proprietary business information and must be treated as such. Furthermore, the EA should discuss the current status of agreements within the WCPFC with respect to confidential information.

*Response:* NMFS does not believe that any of this further information was or is

needed in the proposed rule or the EA. The procedures established in this rule regarding the confidentiality of information are consistent with, and implement, the requirements of the WCPFC Implementation Act, specifically section 506(d). The provisions of that section are substantially similar to the information confidentiality provisions of the MSA. Accordingly, the procedures established in this rule are substantially similar to the procedures established under the MSA (see 50 CFR part 600, subpart E), but tailored to conform to the provisions of the WCPFC Implementation Act. With respect to agreements with the WCPFC, there are no bilateral agreements between the U.S. Government and the WCPFC with respect to confidential information, such as an agreement that would prevent public disclosure of the identity or business of any person, as referred to in section 506(d)(1)(B) of the WCPFC Implementation Act. However, information held by the WCPFC is subject to rules and procedures concerning the protection of, access to, and dissemination of WCPFC-held data. These rules and procedures are available at: <http://www.wcpfc.int/guidelines-procedures-and-regulations>.

### *Other*

*Comment 25:* The definition of "fishing" should not include activities that take place in port, such as transshipping. The proposed definition, which would include transshipment, could improperly cause days in port to be counted against available fishing days.

*Response:* The definition of "fishing" in the regulations must be consistent with the definition in the WCPFC Implementation Act, which specifies that "fishing" includes transshipment, but only "at sea." Accordingly, NMFS has revised the definition of "fishing" in the final rule to clarify that it includes transshipment, but only at sea.

*Comment 26:* Carriers and refueling vessels should not be treated as fishing vessels in virtually all ways; the United States should be careful to not impose more regulations on these vessels than are required; we hope the United States will continue to negotiate reasonable working arrangements for these vessels.

*Response:* The definition in this rule of "fishing vessel" includes carriers and bunkering and other support vessels, consistent with the definition of "fishing vessel" in the WCPFC Implementation Act. The scope of the regulations established in this rule as they relate to carriers and bunkers is consistent with the provisions of the Convention and



the decisions of the WCPFC, NMFS, as part of U.S. delegations to the WCPFC, will continue to promote conservation and management measures that include appropriate and reasonable requirements for carriers and bunkers.

*Comment 27:* Overall, the EA should be improved to discuss the impact of the “non-discretionary” obligations.

*Response:* The EA addressed the “non-discretionary” provisions of the rule as part of the cumulative impacts analysis, as specified in Section 4.2.13 of the EA. The non-discretionary provisions would impose a financial burden on fishermen that is minor relative to the total gross revenue earned by each fishing vessel. Table 40 of the EA details this financial burden. Accordingly, the financial burden of the non-discretionary provisions in addition to the financial burden imposed on fishermen from the discretionary provisions, would enhance the likelihood and/or magnitude of the expected environmental impacts of the discretionary provisions of the rule (which are detailed in the EA), but only slightly so.

*Comment 28:* Table 41 of the EA indicates that NMFS contacted the Western Pacific Regional Fishery Management Council (Council) for information, but the Council has no record of this.

*Response:* As indicated in Section 1.3 of the EA, NMFS published a Notice of Intent (NOI) to prepare the EA in the **Federal Register** on February 26, 2007. During the time between the publication of the NOI and issuance of the EA, NMFS informally discussed the scope and contents of the EA with Council staff who have NEPA expertise. Thus, NMFS believed it appropriate to list the Council as a party that was contacted for information in Table 41 of the EA.

*Comment 29:* It is vital to the survival of the U.S. purse seine fleet that the United States negotiate measures in regional fisheries management organizations (RFMO) that impose a comparable burden on all participants in the fishery, and that U.S. fishermen do not bear an unfair amount of the conservation burden. Furthermore, it is critical to the survival of the U.S. purse seine fleet that domestic regulations implementing RFMO measures not be significantly more burdensome on the U.S. fleet than those imposed on the fleet's foreign competitors. Also, it is the responsibility of the U.S. Government to ensure that other governments implement substantially similar rules and regulations, and the U.S. Government should promptly give notice to the appropriate RFMO of any shortcomings in the regulations and

enforcement by other member countries of the RFMO.

*Response:* This comment does not pertain to the proposed rule itself. NMFS, as part of U.S. delegations to the WCPFC and other RFMOs, shares the view that all participants in affected fisheries should share comparable burdens when seeking to achieve conservation and management objectives, and NMFS applies this principle in its role as part of U.S. delegations to the WCPFC and other RFMOs. As part of such U.S. delegations, NMFS routinely endeavors to determine whether all RFMO members are satisfying their obligations to implement the decisions of the RFMOs, and to alert the RFMOs, as appropriate, about any shortcomings in such implementation.

### Changes From the Proposed Rule

In the proposed regulations, regulatory instruction (3) said that “Subpart O, consisting of §§ 300.210 through 300.222, is added to part 300 to read as follows.” The instruction was meant to read “\* \* \* consisting of §§ 300.210 through 300.222 \* \* \*” and the corresponding instructions in this final rule are corrected accordingly.

The proposed rule that led to this final rule would have established a new subpart O in part 300 of title 50 of the *Code of Federal Regulations*, titled “Western and Central Pacific Fisheries for Highly Migratory Species.” However, on August 4, 2009, after publication of that proposed rule, NMFS published in the **Federal Register** a final rule to implement certain decisions of the WCPFC (74 FR 38544). That final rule (called here the “WCPFC purse seine rule”) established subpart O in part 300 of title 50, including some of the definitions and certain other regulations that would have been established in the proposed rule for this action. Consequently, the regulations in this final rule are written as amendments to the sections in subpart O, and since some of the regulations in the proposed rule for this action have already been established in the WCPFC purse seine rule, they need not be included in this final rule. Specifically, the following elements of the regulations in the proposed rule for this action are not included in this final rule: § 300.210, “Purpose and scope,” in its entirety; in § 300.211, “Definitions,” the introductory sentence and the definitions for all the terms needed in the WCPFC purse seine rule; in § 300.215, “Observers,” all of paragraph (c) except the sentence “All fishing vessels subject to this section must carry a WCPFC observer when directed to do

so by NMFS” (which has been further revised—see below); and in § 300.222, “Prohibitions,” the introductory sentence.

In § 300.211, “Definitions,” the definition of “Fishing” has been revised to clarify that it includes transshipment only if the transshipment takes place at sea.

In § 300.212, “Vessel permit endorsements,” the following statement has been removed from paragraph (c)(3), which relates to the requirement that a photograph of the subject vessel be included with the application for a WCPFC Area Endorsement: “A vessel photograph submitted as part of an application for a high seas fishing permit will be deemed to satisfy the requirement under this section, provided that it clearly shows that the vessel is marked in accordance with the vessel identification requirements of § 300.217 and it meets the specifications prescribed on the WCPFC Area Endorsement application form.” This statement was included in the proposed rule in anticipation that the high seas fishing permit application requirements under 50 CFR 300.13 might be revised to require that the applicant provide a vessel photograph. The high seas permit application requirements have not been revised in that manner, so the statement has been removed from this final rule. Also in § 300.212, paragraph (f) has been revised to clarify that a WCPFC Area Endorsement shall be void whenever the underlying high seas fishing permit is void, “suspended, sanctioned or revoked,” and “is also subject to suspension or revocation independent of the high seas fishing permit.”

In § 300.215, “Observers,” paragraph (c) has been clarified to say that the requirement to carry a WCPFC observer when directed to do so by NMFS is limited to fishing trips during which the fishing vessel at any time enters or is within the Convention Area.

In § 300.216, “Transshipment,” paragraph (b) has been clarified to say that the restrictions apply to transshipments from purse seine fishing vessels “of the United States” and to transshipments from purse seine fishing vessels to fishing vessels “of the United States.”

In § 300.217, “Vessel identification,” a new paragraph (c) has been added to say that the section does not apply to fishing vessels that are subject to the vessel identification requirements of 50 CFR 300.173 or 660.704 until conflicts with those requirements are reconciled, and only upon publication in the **Federal Register** of a notice or final rule that includes a statement to that effect.

In § 300.218, “Reporting and recordkeeping,” paragraph (a)(1) has been clarified to say that the requirements of the section apply to fishing vessels “of the United States” used for commercial fishing for HMS in the Pacific Ocean.

In § 300.219, “Vessel monitoring system,” paragraph (a) has been revised to include the NOAA Office of Law Enforcement’s VMS Helpdesk as a contact for the purpose of submitting on/off reports. Also in § 300.219, several references to “NMFS” have been replaced by “the SAC” in order to clarify that certain communications from NMFS can be expected to be received specifically from the SAC, which is the Special-Agent-In-Charge, NOAA Office of Law Enforcement, Pacific Islands Division, or a designee.

In § 902.1(b) of title 15 of the *Code of Federal Regulations*, which includes a table listing control numbers issued by the Office of Management and Budget (OMB) for collections of information required under NOAA regulations, new entries have been added for the OMB control numbers approved for the information collections required under §§ 300.212, 300.213, and 300.219 of title 50 of the *Code of Federal Regulations*.

#### Delegation of Authority

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

#### Classification

The NOAA Assistant Administrator for Fisheries has determined that this final rule is consistent with the WCPFC Implementation Act and other applicable laws.

#### National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA) that discusses the expected impacts that implementation of the rule would have on the environment. NMFS issued a draft version of the EA for public review and comment in conjunction with the proposed rule. Comments on the draft EA have been addressed in the preamble to the final rule. The final version of the EA is available at [http://www.fpir.noaa.gov/IFD/ifd\\_documents\\_data.html](http://www.fpir.noaa.gov/IFD/ifd_documents_data.html). NMFS analyzed four action alternatives as well as the no-action, or baseline, alternative in the EA. The action alternatives include the provisions of the rule that are discretionary in nature (*i.e.*, the

provisions that allow NMFS discretion in the methods and means to implement them), while the other provisions of the rule were analyzed as part of the cumulative impacts analysis. The primary environmental effect of any of the action alternatives is that implementation of the requirements would make it more costly to fish, and thus, there could be a disincentive to fish, at least in the area of application of the requirements. However, the disincentive to fish would be expected to be minor for the majority of affected vessels. At most, the disincentive to fish could result in slight decreases in longline and/or albacore troll fishing effort on the high seas in the area of application of the Convention, and correspondingly slight increases in other areas. None of the requirements would directly control fishing practices per se, such as how much fishing effort is exerted, how much of a given resource may be caught, where fishing may take place, what type of fishing gear may be used, or how fishing gear may be deployed. None of the action alternatives would authorize or open the possibility for a new fishery or expand fishing opportunities. None of the action alternatives would be anticipated to result in an increase in fishing effort in the area of application of the Convention, and none would be expected to result in marked changes in fishing patterns anywhere. The non-discretionary provisions of the rule analyzed as part of the cumulative impacts analysis would also make it more costly to fish, and thus, would enhance the likelihood and/or magnitude of the expected impacts of the action alternatives, but only slightly so. The contribution to cumulative environmental impacts on the affected environment from any of the provisions in the rule would be minor. The final rule implements Alternative D, because it would achieve what NMFS believes is the best balance between the compliance costs that would be imposed on fishermen and the effectiveness of the resulting management regime. Based on the analysis in the EA, NMFS has determined that there will be no significant impact on the human environment as a result of this rule.

The economic impacts of the rule are addressed in the EA only insofar as they are related to impacts to the biophysical environment. They are addressed more fully in the RIR, IRFA, and FRFA. A copy of the EA is available from NMFS (*see ADDRESSES*).

#### Executive Order 12866

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

#### Regulatory Flexibility Act

NMFS prepared a final regulatory flexibility analysis (FRFA) for the rule, Initial Implementation of the Western and Central Pacific Fisheries Convention. The FRFA incorporates the IRFA prepared for the proposed rule (74 FR 23965; May 22, 2009; available from NMFS—*see ADDRESSES*). The analysis provided in the IRFA is not repeated here in its entirety.

The need for, reasons why action by the agency is being considered, and the objectives of the action are explained in the preambles to the proposed rule and final rule and are not repeated here. There are no disproportionate economic impacts between small and large vessels resulting from this final rule.

Furthermore, there are no disproportionate economic impacts from this rule based on vessel size, gear, or homeport. The new recordkeeping or reporting requirements in this rule, as well as other compliance requirements, are described in the IRFA. This final rule is issued under authority of the WCPFC Implementation Act.

#### Description of Small Entities to Which the Rule Will Apply

This final rule will apply to owners and operators of U.S. vessels used for fishing in the Pacific Ocean. Most elements of the proposed rule will apply to smaller subsets of that pool of vessels, as shown in Table 1. The numbering of the elements in Table 1 corresponds to the numbering used in the descriptions earlier in this section of the preamble. Table 1 also shows estimates of the numbers of vessels, broken down by vessel type where possible, to which each element of the rule will apply. Based on available financial information about the affected fishing fleets, NMFS believes that with the exception of most vessels in the purse seine and carrier and support vessel fleets, virtually all the affected vessels are owned by small business entities (*i.e.*, they have gross annual receipts of no more than \$4.0 million). In the purse seine fleet, NMFS believes that as many as 10 of the affected vessels are owned by small entities. In the carrier and support vessel fleet, NMFS believes that no vessels are owned by small entities. The estimated numbers of small entities that will be affected by each element of the rule are shown in parentheses in the last column of Table 1.

TABLE 1—DESCRIPTIONS AND NUMBERS OF VESSELS AND SMALL ENTITIES TO WHICH THE PROPOSED RULE WOULD APPLY

Element of proposed rule	Description of vessels to which element would apply	Estimated number of vessels (and small entities) to which element would apply
1. Authorization to fish .....	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139). Purse seine 40 (10). Troll 69 (69). Support 5 (0). Total 253 (218).
2a. Vessel information—high seas .....	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139). Purse seine 40 (10). Troll 69 (69). Support 5 (0). Total 253 (218).
2b. Vessel information—foreign jurisdictions .....	Vessels used for commercial fishing for HMS in foreign jurisdictions in Convention Area.	Longline, troll, support 20 (20). Purse seine 40 (10). Total 60 (30).
3. VMS .....	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139). Purse seine 40 (10). Troll 69 (69). Support 5 (0). Total 253 (218).
4. Vessel observer program .....	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139). Purse seine 40 (10). Troll 69 (69). Support 5 (0). Total 253 (218).
5. Vessel identification .....	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139). Purse seine 40 (10). Troll 69 (69). Support 5 (0). Total 253 (218).
6. Transshipment restrictions .....	Purse seine vessels used for fishing in Convention Area and vessels used to receive fish in Convention Area.	Longline 0 (0). Purse seine 40 (10). Troll 0 (0). Support 5 (0). Total 45 (10).
7. Reporting and recordkeeping .....	Vessels used for commercial fishing for HMS in Pacific Ocean.	Total 5,000 (5,000).
8a. Compliance with the laws of other nations—high seas.	Vessels used for commercial fishing for HMS on high seas in Convention Area.	Longline 139 (139). Purse seine 40 (10). Troll 69 (69). Support 5 (0). Total 253 (218).
8b. Compliance with the laws of other nations—jurisdictions of other WCPFC members.	Vessels used for commercial fishing for HMS in areas under the jurisdiction of other WCPFC members.	Longline, troll, support 20 (20). Purse seine 40 (10). Total 60 (30).
9a. Facilitation of enforcement and inspection—HMS fishing.	Vessels used for commercial fishing for HMS in the Convention Area on high seas or in areas under the jurisdiction of other nations.	Longline 139 (139). Purse seine 40 (10). Troll 69 (69). Support 5 (0). Total 253 (218).
9b. Facilitation of enforcement and inspection—all fishing.	Fishing vessels used on high seas in Convention Area.	Longline 139 (139). Purse seine 40 (10). Troll 69 (69). Support 5 (0). Total 253 (218).
10. Confidentiality of information .....	None .....	Longline 0 (0). Purse seine 0 (0). Troll 0 (0). Support 0 (0). Total 0 (0).

#### Steps Taken To Minimize the Significant Economic Impact on Small Entities

NMFS explored alternatives that would achieve the objective of this action (to satisfy the international

obligations of the United States under the Convention and accomplish the objectives of the WCPFC Implementation Act) while minimizing economic impacts on small entities. As described in the IRFA, NMFS has limited discretion as to how to

implement the provisions of the Convention and the decisions of the WCPFC. Consequently, NMFS was able to identify alternatives that would satisfy the Convention's provisions for only four elements of the rule, as identified in the IRFA: Element (1),

authorization to fish; element (2), vessel information; element (3), VMS; and the high seas boarding and inspection component of element (9), facilitation of enforcement and inspection. NMFS was not able to identify any additional alternatives that would minimize significant economic impacts on small entities while satisfying the obligations of the United States under the Convention. The alternatives considered in the IRFA, and the reasons for preferring one over another, are summarized below.

With respect to element (1), authorization to fish, one alternative would be to rely on the existing high seas fishing permit requirement under the HSFCA (that requirement applies to the high seas globally, not just the high seas in the Convention Area), rather than establishing an additional authorization requirement. Although this would be less costly to affected small entities than the proposed action, this alternative would fail to identify the pool of vessel owners and operators interested in fishing on the high seas in the Convention Area and subject to all the other Convention-related requirements. As a consequence, it would be difficult to conduct effective outreach and enforcement activities to achieve a high level of compliance with those requirements. For that reason, this alternative was rejected. A second alternative would be to create a new stand-alone permit (WCPFC Area Permit) that would be required for any vessel used for commercial fishing for HMS on the high seas in the Convention Area but which, unlike the proposed WCPFC Area Endorsement (which would be an endorsement on a high seas fishing permit), would not be related in any way to the high seas fishing permit. This would be slightly more costly to affected small entities than the WCPFC Area Endorsement. For that reason, this alternative was rejected.

With respect to element (2), vessel information, one alternative would be to collect the needed information separately from any permit requirement; that is, as a stand-alone requirement for vessel owners to submit specified information to NMFS. The cost to affected small entities would be about the same as that of the proposed action, but because it would not be tied to obtaining a fishing authorization, compliance with this alternative would likely be poorer than for the proposed action. For that reason, this alternative was rejected. A second alternative would be to collect the needed information via the application for a WCPFC Area Permit. The cost to affected small entities under this

alternative would be about the same as that of the proposed action, but because the cost of the WCPFC Area Permit alternative would be slightly more costly to affected small entities than the WCPFC Area Endorsement alternative (see above), this alternative was rejected.

With respect to element (3), VMS, one alternative would be to require that VMS units be carried and operated on vessels used for commercial fishing for HMS on the high seas in the Convention Area, but only when the subject vessel is actually on the high seas in the Convention Area. This could be slightly less costly to affected small entities because they would be allowed to turn off the VMS unit when not on the high seas in the Convention Area, but because vessel operators would be allowed to operate in many areas with their VMS units disabled, compliance with this alternative while on the high seas in the Convention Area would be expected to be lower than under the proposed action. That is, it is expected that more vessels would operate within the Convention Area more often without operating their VMS units. For that reason, this alternative was rejected. A second alternative would be to require that VMS units be carried and operated on vessels used for commercial fishing for HMS during the entirety of any trip that includes the high seas in the Convention Area. Like the previous alternative, this could be slightly less costly to affected small entities than the proposed action, but for the same reasons cited for the previous alternative, compliance with this alternative would likely be poorer than for the proposed action. For that reason, this alternative was rejected. A third alternative would be to require that a VMS unit be carried and operated at all times on any vessel with a WCPFC Area Permit. The costs to affected small entities under this alternative would be slightly more than under the proposed action. For that reason, and because the WCPFC Area Permit alternative would be slightly more costly to affected small entities than the WCPFC Area Endorsement alternative (see above), this alternative was rejected.

With respect to the high seas boarding and inspection component of element (9), facilitation of enforcement and inspection, one alternative would be to require that only operators of vessels used to fish for HMS (rather than for any species, as being proposed) on the high seas in the Convention Area accept and facilitate boarding and inspection by authorized inspectors of other members of the WCPFC. The number of affected small entities would be smaller than

under the proposed action. However, since the inspectors of other members of the WCPFC may not be able to readily distinguish U.S. vessels used for fishing for HMS (which the WCPFC's boarding and inspection regime is designed to target) from other U.S. fishing vessels, an effective boarding regime may require that U.S. fishing vessels in the latter category accept boarding from inspection vessels of other members of the WCPFC in order to verify the fishing vessel's status. By applying this requirement to all U.S. fishing vessels, not just those used for fishing for HMS, non-HMS U.S. fishing vessels would be more prepared for the prospect of being boarded and inspected. As a consequence of such preparation, any boardings and inspections of non-HMS U.S. fishing vessels would be more likely to be completed quickly and without misunderstandings and the potential for conflict. NMFS believes that the proposed action would be safer and less costly to small entities than the alternative of applying the requirement only to operators of vessels used to fish for HMS. For that reason, the alternative of applying this requirement to just those vessels used for fishing for HMS was rejected.

The alternative of taking no action at all was rejected because it would fail to accomplish the objective of the WCPFC Implementation Act or satisfy the international obligations of the United States as a Contracting Party to the Convention.

The selected alternative would satisfy the international obligations of the United States as a Contracting Party to the Convention and thereby accomplish the objective of the WCPFC Implementation Act, and do so with minimal adverse economic impacts on small entities, and for these reasons was adopted in the final rule.

#### **Comments and Responses on the IRFA**

NMFS received a number of comments on the proposed rule that pertained to information in the IRFA. These were comments 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 22, and 23, as presented in a previous section of this preamble. These comments, and NMFS' responses, are incorporated by reference into this FRFA.

#### **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. As part of this rulemaking process, a small entity compliance guide (the guide) has been prepared. The guide will be sent to all holders of relevant fishing permits and licenses. Copies of this final rule and the guide are available from NMFS (*see ADDRESSES*) and are available at: [http://www.fpir.noaa.gov/IFD/ifa\\_documents\\_data.html](http://www.fpir.noaa.gov/IFD/ifa_documents_data.html).

#### Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget (OMB) under OMB Control Numbers 0648–0595 (vessel information requirements) and 0648–0596 (VMS requirements). The public reporting burden for the vessel information requirements is estimated to average 60 minutes per WCPFC Area Endorsement application, with about one application per five years per respondent (*i.e.*, 12 minutes per respondent per year, on average); and about 90 minutes per Foreign EEZ Form, with about one form per five years per respondent (*i.e.*, 18 minutes per respondent per year, on average). The public reporting burden for the VMS requirements is estimated to average 5 minutes per activation report, with about one activation report per two years per respondent (*i.e.*, 2.5 minutes per respondent per year, on average); 5 minutes per on/off report, with about 10 on/off reports per year per respondent (*i.e.*, 50 minutes per respondent per year, on average); 4 hours per VMS unit purchase and installation, with about one purchase and installation per four years per respondent (*i.e.*, 1 hour per respondent per year, on average); and 1 hour per year per respondent for VMS unit maintenance (*i.e.*, 1 hour per respondent per year, on average). These estimated burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data information, including suggestions for reducing the burden, to NMFS (*see ADDRESSES*) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@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.

Prior notice and opportunity for public comment are not required with respect to the revision to the table of OMB control numbers in 15 CFR 902.1(b) because this action is a rule of agency organization, procedure or practice under 5 U.S.C. 553(b)(A).

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: January 14, 2010.

**James W. Balsiger,**

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

■ For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter III are amended as follows:

#### 15 CFR CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

##### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, paragraph (b), the table is amended by adding in the left column under 50 CFR, in numerical order, entries for §§ 300.212, 300.213, and 300.219, and, in the right column, in corresponding positions, the control numbers “–0595,” “–0595,” and “–0596,” as follows:

##### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
50 CFR	
300.212 .....	–0595
300.213 .....	–0595
300.219 .....	–0596

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
*	*

#### 50 CFR CHAPTER III—INTERNATIONAL FISHING AND RELATED ACTIVITIES

##### PART 300—INTERNATIONAL FISHERIES REGULATIONS

##### Subpart B—High Seas Fisheries

■ 3. The authority citation for 50 CFR part 300, subpart B, continues to read as follows:

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

■ 4. In § 300.14, paragraph (b)(2)(i) is revised to read as follows:

##### § 300.14 Vessel identification.

- (b) \* \* \*
- (2) \* \* \*
- (i) A vessel must be marked with its IRCS if it has been assigned an IRCS. If an IRCS has not been assigned to the vessel, it 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–”).

##### Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 5. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

**Authority:** 16 U.S.C. 6901 *et seq.*

■ 6. In § 300.211, definitions of “1982 Convention,” “Aggregate or summary form,” “Commercial,” “Confidential information,” “Conservation and management measure,” “High seas fishing permit,” “Highly migratory species (or HMS),” “Marine Fisheries Commission,” “NOAA,” “Observer employer/observer provider,” “Observer information,” “Special Agent-In-Charge (or SAC),” “Vessel monitoring system (or VMS),” “VMS unit,” “WCPFC Area Endorsement,” “WCPFC inspection vessel,” “WCPFC inspector,” and “WCPFC transshipment monitor” are added, in alphabetical order, and the definition of “Fishing” is revised, to read as follows:

**§ 300.211 Definitions.**

\* \* \* \* \*

*1982 Convention* means the United Nations Convention on the Law of the Sea of 10 December 1982.

*Aggregate or summary form* means information structured in such a way which does not directly or indirectly disclose the identity or business of any person who submits such information.

*Commercial*, with respect to commercial fishing, means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce through sale, barter or trade.

\* \* \* \* \*

*Confidential information* means any observer information or any information submitted to the Secretary, a State

fishery management agency, or a Marine Fisheries Commission by any person in compliance with any requirement or regulation under the Act or under the Magnuson-Stevens Fishery Conservation and Management Act.

*Conservation and management measure* means those conservation and management measures adopted by the Commission pursuant to Article 10 of the WCPF Convention.

\* \* \* \* \*

*Fishing* means using any vessel, vehicle, aircraft or hovercraft for any of the following activities, or attempting to do so:

- (1) Searching for, catching, taking, or harvesting fish;

(2) Engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish for any purpose;

(3) Placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(4) Engaging in any operations at sea directly in support of, or in preparation for, any of the activities previously described in paragraphs (1) through (3) of this definition, including, but not limited to, bunkering;

(5) Engaging in transshipment at sea, either unloading or loading fish.

\* \* \* \* \*

*Highly migratory species (or HMS)* means any of the following species:

Common name	Scientific name
Albacore .....	<i>Thunnus alalunga</i> .
Pacific bluefin tuna .....	<i>Thunnus orientalis</i> .
Southern bluefin tuna .....	<i>Thunnus maccoyii</i> .
Bigeye tuna .....	<i>Thunnus obesus</i> .
Skipjack tuna .....	<i>Katsuwonus pelamis</i> .
Yellowfin tuna .....	<i>Thunnus albacares</i> .
Little tuna .....	<i>Euthynnus affinis</i> .
Frigate mackerel .....	<i>Auxis thazard</i> ; <i>Auxis rochei</i> .
Pomfrets .....	Family Bramidae.
Marlins .....	<i>Tetrapturus angustirostris</i> ; <i>Tetrapturus audax</i> ; <i>Makaira mazara</i> ; <i>Makaira indica</i> ; <i>Makaira nigricans</i> .
Sail-fishes .....	<i>Istiophorus platypterus</i> .
Swordfish .....	<i>Xiphias gladius</i> .
Dolphinfish .....	<i>Coryphaena hippurus</i> ; <i>Coryphaena equiselis</i> .
Oceanic sharks .....	<i>Hexanchus griseus</i> ; <i>Cetorhinus maximus</i> ; Family Alopiidae; <i>Rhincodon typus</i> ; Family Carcharhinidae; Family Sphyrnidae; Family Isuridae (or Lamnidae).

*High seas fishing permit* means a permit issued under § 300.13.

\* \* \* \* \*

*Marine Fisheries Commission* means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific States Marine Fisheries Commission.

\* \* \* \* \*

*NOAA* means the National Oceanic and Atmospheric Administration, Department of Commerce.

*Observer employer/observer provider* means any person that provides observers to fishing vessels, shoreside processors, or stationary floating processors under a requirement of the Act or the Magnuson-Stevens Fishery Conservation and Management Act.

*Observer information* means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-

specific information (including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.

\* \* \* \* \*

*Special Agent-In-Charge (or SAC)* means the Special-Agent-In-Charge, NOAA Office of Law Enforcement, Pacific Islands Division, or a designee (1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814; tel: (808) 203-2500; facsimile: (808) 203-2599; e-mail: [pidvms@noaa.gov](mailto:pidvms@noaa.gov)).

\* \* \* \* \*

*Vessel monitoring system (or VMS)* means an automated, remote system that provides information about a vessel's identity, location and activity, for the purposes of routine monitoring, control, surveillance and enforcement of area and time restrictions and other fishery management measures.

*VMS unit*, sometimes known as a "mobile transmitting unit," means a transceiver or communications device, including all hardware and software, that is carried and operated on a vessel as part of a VMS.

*WCPFC Area Endorsement* means the authorization issued by NMFS under § 300.212, supplementary to a valid high seas fishing permit and expressed as an endorsement to such permit, for a fishing vessel used for commercial fishing for highly migratory species on the high seas in the Convention Area.

\* \* \* \* \*

*WCPFC inspection vessel* means any vessel that is:

(1) Authorized by a member of the Commission to be used to undertake boarding and inspection of fishing vessels on the high seas pursuant to, and in accordance with, Article 26 of the WCPF Convention and procedures established by the Commission pursuant thereto;

(2) Included in the Commission's register of authorized inspection vessels and authorities or inspectors, established by the Commission in procedures pursuant to Article 26 of the WCPF Convention; and

(3) Flying the WCPFC inspection flag established by the Commission.

*WCPFC inspector* means a person that is authorized by a member of the

Commission to undertake boarding and inspection of fishing vessels on the high seas pursuant to, and in accordance with, the boarding and inspection procedures adopted by the Commission under Article 26 of the WCPFC Convention, and referred to therein as a “duly authorized inspector” or “authorized inspector.”

\* \* \* \* \*

*WCPFC transshipment monitor* means, with respect to transshipments that take place on the high seas, a person authorized by the Commission to conduct transshipment monitoring on the high seas, and with respect to transshipments that take place in areas under the jurisdiction of a member of the Commission other than the United States, a person authorized by such member of the Commission to conduct transshipment monitoring.

■ 7. Section 300.212 is added to read as follows:

**§ 300.212 Vessel permit endorsements.**

(a) Any fishing vessel of the United States used for commercial fishing for HMS on the high seas in the Convention Area must have on board a valid high seas fishing permit, or a copy thereof, that has a valid WCPFC Area Endorsement, or a copy thereof.

(b) *Eligibility.* Only a fishing vessel that has a valid high seas fishing permit is eligible to receive a WCPFC Area Endorsement.

(c) *Application.* (1) A WCPFC Area Endorsement may be applied for at the same time the underlying high seas permit is applied for, or at any time thereafter.

(2) The owner or operator of a high seas fishing vessel may apply for a WCPFC Area Endorsement by completing an application form, available from the Pacific Islands Regional Administrator, and submitting the complete and accurate application, signed by the applicant, to the Pacific Islands Regional Administrator, along with the required fees.

(3) The application must be accompanied by a bow-to-stern side-view photograph of the vessel in its current form and appearance. The photograph must meet the specifications prescribed on the application form and clearly show that the vessel is marked in accordance with the vessel identification requirements of § 300.217.

(d) *Fees.* NMFS will charge a fee to recover the administrative expenses of issuance of a WCPFC Area Endorsement. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook, available from the Pacific

Islands Regional Administrator, for determining administrative costs of each special product or service. The fee is specified in the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the WCPFC Area Endorsement. Payment by a commercial instrument later determined to be insufficiently funded is grounds for invalidating the WCPFC Area Endorsement.

(e) *Issuance.* (1) The Pacific Islands Regional Administrator will issue a WCPFC Area Endorsement within 30 days of receipt of a complete application that meets the requirements of this section and upon payment of the appropriate fee.

(2) If an incomplete or improperly completed application is submitted, the Pacific Islands Regional Administrator will notify the applicant of such deficiency within 30 days of the date of receipt of the application. If the applicant fails to correct the deficiency and send a complete and accurate application to the Pacific Islands Regional Administrator within 30 days of the date of the notification of deficiency, the application will be considered withdrawn and no further action will be taken to process the application. Following withdrawal, the applicant may at any time submit a new application for consideration.

(f) *Validity.* A WCPFC Area Endorsement issued under this subpart expires upon the expiration of the underlying high seas fishing permit, and shall be void whenever the underlying high seas fishing permit is void, suspended, sanctioned or revoked. A WCPFC Area Endorsement is also subject to suspension or revocation independent of the high seas fishing permit. Renewal of a WCPFC Area Endorsement prior to its expiration is the responsibility of the WCPFC Area Endorsement holder.

(g) *Change in application information.* Any change in the required information provided in an approved or pending application for a WCPFC Area Endorsement must be reported by the vessel owner or operator to the Pacific Islands Regional Administrator in writing within 15 days of such change.

(h) *Transfer.* A WCPFC Area Endorsement issued under this subpart is valid only for the vessel, owner, and high seas fishing permit to which it is issued and is not transferable or assignable to another high seas fishing permit or to another vessel.

(i) *Display.* A valid WCPFC Area Endorsement, or a photocopy or facsimile copy thereof, issued under this subpart must be on board the vessel and

available for inspection by any authorized officer while the vessel is at sea and must be available for inspection by any WCPFC inspector while the vessel is on the high seas in the Convention Area.

■ 8. Section 300.213 is added to read as follows:

**§ 300.213 Vessel information.**

(a) The owner or operator of any fishing vessel of the United States that is used for fishing for HMS in the Convention Area in waters under the jurisdiction of any nation other than the United States must, prior to the commencement of such fishing, submit to the Pacific Islands Regional Administrator information about the vessel and its ownership and operation, and the authorized fishing activities, including copies of any permits, licenses, or authorizations issued for such activities, as specified on forms available from the Pacific Islands Regional Administrator. The owner or operator of such a fishing vessel must also submit to the Pacific Islands Regional Administrator a bow-to-stern side-view photograph of the vessel in its current form and appearance, and the photograph must meet the specifications prescribed on the application form. If any of the submitted information changes, the vessel owner or operator must report the updated information to the Pacific Islands Regional Administrator in writing within 15 days of the change.

(b) If any of the information or the vessel photograph required under paragraph (a) of this section has been submitted for the subject vessel on an application for a high seas fishing permit or an application for a WCPFC Area Endorsement, then the requirements of paragraph (a) of this section will be deemed satisfied. However, in order to satisfy this requirement, the high seas fishing permit or WCPFC Area Endorsement must be valid, the information provided must be true, accurate and complete, and in the case of a vessel photograph, it must meet the specifications prescribed on the form used for the purpose of submitting the photograph under this section.

■ 9. Section 300.214 is added to read as follows:

**§ 300.214 Compliance with laws of other nations.**

(a) The owner and operator of a fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required:



(1) May not use the vessel for fishing, retaining fish on board, or landing fish in areas under the jurisdiction of a nation other than the United States unless any license, permit, or other authorization that may be required by such other nation for such activity has been issued with respect to the vessel.

(2) Shall, when the vessel is in the Convention Area in areas under the jurisdiction of a member of the Commission other than the United States, operate the vessel in compliance with, and ensure its crew complies with, the applicable national laws of such member.

(b) The owner and operator of a fishing vessel of the United States shall ensure that:

(1) The vessel is not used for fishing for HMS, retaining HMS on board, or landing HMS in the Convention Area in areas under the jurisdiction of a nation other than the United States unless any license, permit, or other authorization that may be required by such other nation for such activity has been issued with respect to the vessel.

(2) If the vessel is used for commercial fishing for HMS, including transshipment of HMS, in the Convention Area in areas under the jurisdiction of a member of the Commission other than the United States, the vessel is operated in compliance with, and the vessel crew complies with, the applicable laws of such member, including any laws related to carrying vessel observers or the operation of VMS units.

(c) For the purpose of this section, the meaning of transshipment does not include transfers that exclusively involve fish that have been previously landed and processed.

■ 10. In § 300.215, paragraphs (a), (c), and (d) are revised to read as follows:

#### § 300.215 Observers.

(a) *Applicability.* This section applies to any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required.

\* \* \* \* \*

(c) *Accommodating observers.* All fishing vessels subject to this section must carry, when directed to do so by NMFS, a WCPFC observer on fishing trips during which the vessel at any time enters or is within the Convention Area. The operator and each member of the crew of the fishing vessel shall act in accordance with this paragraph with respect to any WCPFC observer.

(1) The operator and crew shall allow and assist WCPFC observers to:

(i) Embark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator;

(ii) Have access to and use of all facilities and equipment on board as necessary to conduct observer duties, including, but not limited to: full access to the bridge, the fish on board, and areas which may be used to hold, process, weigh and store fish; full access to the vessel's records, including its logs and documentation, for the purpose of inspection and copying; access to, and use of, navigational equipment, charts and radios; and access to other information relating to fishing;

(iii) Remove samples;

(iv) Disembark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; and

(v) Carry out all duties safely.

(2) The operator shall provide the WCPFC observer, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel, at no expense to the WCPFC observer.

(3) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass or interfere with WCPFC observers in the performance of their duties, or attempt to do any of the same.

(d) *Related observer requirements.* Observers deployed by NMFS pursuant to regulations issued under other statutory authorities on vessels used for commercial fishing for HMS in the Convention Area will be deemed by NMFS to have been deployed pursuant to this section.

■ 11. Section 300.216 is added to read as follows:

#### § 300.216 Transshipment.

(a) *Transshipment monitoring.*  
[Reserved]

(b) *Transshipment restrictions.* Fish may not be transshipped from a purse seine fishing vessel of the United States at sea in the Convention Area, and a fishing vessel of the United States may not be used to receive a transshipment of fish from a purse seine fishing vessel at sea in the Convention Area.

■ 12. Section 300.217 is added to read as follows:

#### § 300.217 Vessel identification.

(a) *General.* (1) A fishing vessel must be marked in accordance with the requirements of this section in order for a WCPFC Area Endorsement to be issued for the fishing vessel.

(2) Any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required shall be marked for identification purposes in accordance with this section, and all parts of such markings shall be clear, distinct, uncovered, and unobstructed.

(3) Any boat, skiff, or other watercraft carried on board the fishing vessel shall be marked with the same identification markings as required under this section for the fishing vessel and shall be marked in accordance with this section.

(b) *Marking.* (1) Vessels shall be marked in accordance with the identification requirements of § 300.14(b)(2), and if an IRCS has not been assigned to the vessel, then the Federal, State, or other documentation number used in lieu of the IRCS must be preceded by the characters "USA" and a hyphen (that is, "USA-").

(2) With the exception of the vessel's name and hailing port, the marking required in this section shall be the only vessel identification mark consisting of letters and numbers to be displayed on the hull and superstructure.

(c) This section will not apply to fishing vessels that are subject to the vessel identification requirements of §§ 300.173 or 660.704 of this title until conflicts between the requirements of this section and the requirements of those sections are reconciled, and only upon publication in the **Federal Register** of a notice or final rule that includes a statement to that effect.

■ 13. Section 300.218 is added to read as follows:

#### § 300.218 Reporting and recordkeeping requirements.

(a) *Fishing reports.*—(1) *General.* The owner or operator of any fishing vessel of the United States used for commercial fishing for HMS in the Pacific Ocean must maintain and report to NMFS catch and effort and other operational information for all such fishing activities. The reports must include at a minimum: identification information for the vessel; description of fishing gear used; dates, times and locations of fishing; and species and amounts of fish retained and discarded.

(2) *Reporting options.* Vessel owners and operators shall be deemed to meet the recordkeeping and reporting requirements of paragraph (a)(1) of this section by satisfying all applicable catch and effort reporting requirements as listed below:

(i) *Western Pacific pelagic fisheries.* Fishing activities subject to the reporting requirements of § 665.14 of this title must be maintained and

reported in the manner specified in that section.

(ii) *West Coast HMS fisheries.* Fishing activities subject to the reporting requirements of § 660.708(a) of this title must be maintained and reported in the manner specified in that section.

(iii) *Pacific tuna fisheries.* Fishing activities subject to the reporting requirements of § 300.22 must be maintained and reported in the manner specified in that section.

(iv) *South Pacific tuna fisheries.* Fishing activities subject to the reporting requirements of § 300.34(c)(1) must be maintained and reported in the manner specified in that section.

(v) *High seas fisheries.* Fishing activities subject to the reporting requirements of § 300.17(a) must be maintained and reported in the manner specified in § 300.17(a) and (b).

(vi) *Canada albacore fisheries.* Fishing activities subject to the reporting requirements of § 300.174 must be maintained and reported in the manner specified in that section.

(vii) *State-regulated fisheries.* Catch and effort information for fishing activities for which reporting of effort, catch, and/or landings is required under State law must be maintained and reported in the manner specified under such State law.

(viii) *Other fisheries.* All other fishing activities subject to the requirement of paragraph (a)(1) of this section must be recorded on paper or electronic forms specified or provided by the Pacific Islands Regional Administrator. Such forms will specify the information required, which may include: Identification information for the vessel; description of fishing gear used; dates, times and locations of fishing; and species and amounts of fish retained and discarded. All information specified by the Pacific Islands Regional Administrator on such forms must be recorded on paper or electronically within 24 hours of the completion of each fishing day. The information recorded must, for each fishing day, include a dated signature of the vessel operator or other type of authentication as specified by the Pacific Islands Regional Administrator. The vessel operator must, unless otherwise specified by the Pacific Islands Regional Administrator, submit the information for each fishing day to the Pacific Islands Regional Administrator within 72 hours of the first landing or port call after the fishing day, and must submit the information in the manner specified by the Pacific Islands Regional Administrator.

(3) *Exceptions.* (i) Catch and effort information for fishing activities that

take place in waters under State jurisdiction must be maintained and reported only in cases where the reporting of such activity is required under State law or under Federal regulations at §§ 300.22 and 300.34, and §§ 660.708 and 665.14 of this title.

(ii) Catch and effort information for fishing activities that take place in waters under Federal jurisdiction around American Samoa, Guam and the Northern Mariana Islands need not be reported under this section unless reporting of such activity is required under regulations in chapter VI of this title.

(b) *Transshipment reports.* [Reserved]

■ 14. Section 300.219 is added to read as follows:

**§ 300.219 Vessel monitoring system.**

(a) *SAC and VMS Helpdesk contact information and business hours.* The contact information for the SAC for the purpose of this section is: 1601 Kapiolani Blvd., Suite 950, Honolulu, HI 96814; telephone: (808) 203-2500; facsimile: (808) 203-2599; e-mail: [pidvms@noaa.gov](mailto:pidvms@noaa.gov). The business hours of the SAC for the purpose of this section are: Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m., Hawaii Standard Time. The contact information for the NOAA Office of Law Enforcement's VMS Helpdesk for the purpose of this section is: telephone: (888) 219-9228; e-mail: [ole.helpdesk@noaa.gov](mailto:ole.helpdesk@noaa.gov). The business hours of the VMS Helpdesk for the purpose of this section are: Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

(b) *Applicability.* This section applies to any fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required.

(c) *Provision of vessel position information—(1) VMS unit installation.* The vessel owner and operator shall obtain and have installed on the fishing vessel, in accordance with instructions provided by the SAC and the VMS unit manufacturer, a VMS unit that is type-approved by NMFS for fisheries governed under the Act. The vessel owner and operator shall authorize the Commission and NMFS to receive and relay transmissions from the VMS unit. The vessel owner and operator shall arrange for a NMFS-approved mobile communications service provider to receive and relay transmissions from the VMS unit to NMFS. NMFS makes available lists of type-approved VMS units and approved mobile communications service providers.

(2) *VMS unit activation.* If the VMS unit has not yet been activated as described in this paragraph, or if the VMS unit has been newly installed or reinstalled, or if the mobile communications service provider has changed since the previous activation, or if directed by the SAC, the vessel owner and operator shall, prior to the vessel leaving port:

(i) Turn on the VMS unit to make it operational;

(ii) Submit a written activation report, via mail, facsimile or e-mail, to the SAC, that includes: the vessel's name; the vessel's official number; the VMS unit manufacturer and identification number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(iii) Receive verbal or written confirmation from the SAC that proper transmissions are being received from the VMS unit.

(3) *VMS unit operation.* The vessel owner and operator shall continuously operate the VMS unit at all times, except that the VMS unit may be shut down while the vessel is at port or otherwise not at sea, provided that the owner and operator:

(i) Prior to shutting down the VMS unit, report to the SAC or the NOAA Office of Law Enforcement's VMS Helpdesk via facsimile or e-mail, the following information: the intent to shut down the VMS unit; the vessel's name; the vessel's official number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(ii) When turning the VMS unit back on, report to the SAC or the NOAA Office of Law Enforcement's VMS Helpdesk, via mail, facsimile or e-mail, the following information: that the VMS unit has been turned on; the vessel's name; the vessel's official number; and telephone, facsimile or e-mail contact information for the vessel owner or operator; and

(iii) Prior to leaving port, receive verbal or written confirmation from the SAC that proper transmissions are being received from the VMS unit.

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

(i) If the vessel is at port: The vessel owner or operator shall repair or replace the VMS unit and ensure it is operable before the vessel leaves port.

(ii) If the vessel is at sea: The vessel owner, operator, or designee shall contact the SAC by telephone, facsimile, or e-mail at the earliest opportunity during the SAC's business hours and identify the caller and vessel. The vessel operator shall follow the instructions provided by the SAC, which could include, but are not limited to: ceasing fishing, stowing fishing gear, returning to port, and/or submitting periodic position reports at specified intervals by other means; and, repair or replace the VMS unit and ensure it is operable before starting the next trip.

(5) *Related VMS requirements.* Installing, carrying and operating a VMS unit in compliance with the requirements in part 300 of this title, part 660 of this title, or part 665 of this title relating to the installation, carrying, and operation of VMS units shall be deemed to satisfy the requirements of paragraph (c) of this section, provided that the VMS unit is operated continuously and at all times while the vessel is at sea, the VMS unit is type-approved by NMFS for fisheries governed under the Act, the owner and operator have authorized the Commission and NMFS to receive and relay transmissions from the VMS unit, and the specific requirements of paragraph (c)(4) of this section are complied with. If the VMS unit is owned by NMFS, the requirement under paragraph (c)(4) of this section to repair or replace the VMS unit will be the responsibility of NMFS, but the vessel owner and operator shall be responsible for ensuring that the VMS unit is operable before leaving port or starting the next trip.

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

(e) *Tampering.* The vessel owner and operator shall ensure that the VMS unit

is not tampered with, disabled, destroyed, damaged or operated improperly, and that its operation is not impeded or interfered with.

(f) *Inspection.* The vessel owner and operator shall make the VMS unit, including its antenna, connectors and antenna cable, available for inspection by authorized officers, by employees of the Commission, by persons appointed by the Executive Director of the Commission for this purpose, and, when the vessel is on the high seas in the Convention Area, by WCPFC inspectors.

(g) *Access to data.* The vessel owner and operator shall make the vessel's position data obtained from the VMS unit or other means immediately and always available for inspection by NOAA personnel, USCG personnel, and authorized officers, and shall make the vessel's position data for positions on the high seas in the Convention Area immediately and always available to WCPFC inspectors and the Commission.

(h) *Communication devices.* (1) To facilitate communication with management and enforcement authorities regarding the functioning of the VMS unit and other purposes, the vessel operator shall, while the vessel is at sea, carry on board and continuously monitor a two-way communication device that is capable of real-time communication with the SAC. The VMS unit used to fulfill the requirements of paragraph (c) of this section may not be used to satisfy this requirement. If the device is anything other than a radio, the contact number for the device must be provided to the Pacific Islands Regional Administrator on the application form for the WCPFC Area Endorsement in accordance with the requirements of § 300.212.

(2) For the purpose of submitting the position reports that might be required in cases of VMS unit failure under paragraph (c)(4)(ii) of this section, the vessel operator shall, while the vessel is at sea, carry on board a communication device capable of transmitting, while the vessel is on the high seas in the Convention Area, communications by telephone, facsimile, e-mail, or radio to the Commission, in Pohnpei, Micronesia. The VMS unit used to fulfill the requirements of paragraph (c) of this section may not be used to satisfy this requirement. The same communication device may be able to satisfy the requirements of both this paragraph and paragraph (h)(1) of this section.

■ 15. Section 300.220 is added to read as follows:

#### **§ 300.220 Confidentiality of information.**

(a) *Types of information covered.* NOAA is authorized under the Act and other statutes to collect and maintain information. This section applies to confidential information collected under authority of the Act.

(b) *Collection and maintenance of information—(1) General.* (i) Any information required to be submitted to the Secretary, a State fishery management agency, or a Marine Fisheries Commission under the Act shall be provided to the Assistant Administrator.

(ii) Any observer information collected under the Act shall be provided to the Assistant Administrator.

(iii) Appropriate safeguards as specified by NOAA Administrative Order (NAO) 216–100 or other NOAA/NMFS internal procedures, apply to the collection and maintenance of any information collected pursuant to paragraphs (b)(1) or (b)(2) of this section, whether separated from identifying particulars or not, so as to ensure their confidentiality. Information submitted to the Secretary in compliance with this subpart shall not be disclosed except as authorized herein or by other law or regulation.

(2) *Collection agreements with States or Marine Fisheries Commissions.* (i) The Assistant Administrator may enter into an agreement with a State or a Marine Fisheries Commission authorizing the State or Marine Fisheries Commission to collect information on behalf of the Secretary.

(ii) To enter into a cooperative collection agreement with a State or a Marine Fisheries Commission, NMFS must ensure that:

(A) The State has authority to protect the information from disclosure in a manner at least as protective as these regulations.

(B) The Marine Fisheries Commission has enacted policies and procedures to protect the information from public disclosure.

(3) *Collection services by observer employer/observer provider.* The Assistant Administrator shall make the following determinations before issuing a permit or letting a contract or grant to an organization that provides observer services:

(i) That the observer employer/observer provider has enacted policies and procedures to protect the information from public disclosure;

(ii) That the observer employer/observer provider has entered into an agreement with the Assistant Administrator that prohibits public disclosure and specifies penalties for such disclosure; and

(iii) That the observer employer/observer provider requires each observer to sign an agreement with NOAA/NMFS that prohibits public disclosure of observer information and specifies penalties for such disclosure.

(c) *Access to information*—(1) *General.* This section establishes procedures intended to manage, preserve, and protect the confidentiality of information submitted in compliance with the Act and its implementing regulations. This section applies to those persons and organizations deemed eligible to access confidential information subject to the terms and conditions described in this section and the Act. All other persons requesting access to confidential information should follow the procedures set forth in the Freedom of Information Act, 5 U.S.C. 552, 15 CFR parts 15 and 903, NAO 205–14, and Department of Commerce Administrative Orders 205–12 and 205–14, as applicable. Persons eligible to access confidential information under this section shall submit to NMFS a written request with the following information:

- (i) The specific types of information requested;
- (ii) The relevance of the information to requirements of the Act;
- (iii) The duration of time that access will be required: continuous, infrequent, or one-time; and
- (iv) An explanation of why the availability of information in aggregate or summary form from other sources would not satisfy the requested needs.

(2) *Federal employees.* Confidential information will only be accessible to the following:

- (i) Federal employees who are responsible for administering, implementing, or enforcing the Act. Such persons are exempt from the provisions of paragraph (c)(1) of this section.
- (ii) NMFS employees responsible for the collection, processing, and storage of the information or performing research that requires access to confidential information. Such persons are exempt from the provisions of paragraph (c)(1) of this section.
- (iii) Other NOAA employees on a demonstrable need-to-know basis.
- (iv) Persons that need access to confidential information to perform functions authorized under a Federal contract, cooperative agreement, or grant awarded by NOAA/NMFS.

(3) *Commission.* (i) Confidential information will be subject to disclosure to the Commission, but only if:

- (A) The information is required to be submitted to the Commission under the

requirements of the WCPF Convention or the decisions of the Commission;

(B) The provision of such information is in accord with the requirements of the Act, the WCPF Convention, and the decisions of the Commission, including any procedures, policies, or practices adopted by the Commission relating to the receipt, maintenance, protection or dissemination of information by the Commission; and

(C) The provision of such information is in accord with any agreement between the United States and the Commission that includes provisions to prevent public disclosure of the identity or business of any person.

(ii) The provisions of paragraph (c)(1) of this section do not apply to the release of confidential information to the Commission.

(4) *State employees.* Confidential information may be made accessible to a State employee only by written request and only upon the determination by NMFS that at least one of the following conditions is met:

- (i) The employee has a need for confidential information to further the Department of Commerce's mission, and the State has entered into a written agreement between the Assistant Administrator and the head of the State's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the State has confidentiality protection authority comparable to the Act and that the State will exercise this authority to prohibit public disclosure of the identity or business of any person.
- (ii) The employee enforces the Act or fishery management plans prepared under the authority of the Magnuson-Stevens Conservation and Management Act, and the State for which the employee works has entered into a fishery enforcement agreement with the Secretary and the agreement is in effect.

(5) *Marine Fisheries Commission employees.* Confidential information may be made accessible to Marine Fisheries Commission employees only upon written request of the Marine Fisheries Commission and only if the request demonstrates a need for confidential information to further the Department of Commerce's mission, and the executive director of the Marine Fisheries Commission has entered into a written agreement with the Assistant Administrator. The agreement shall contain a finding by the Assistant Administrator that the Marine Fisheries Commission has confidentiality protection policies and procedures to protect from public disclosure

information that would reveal the identity or business of any person.

(6) *Homeland and national security activities.* Confidential information may be made accessible to Federal employees for purposes of promoting homeland security or national security at the request of another Federal agency only if:

- (i) Providing the information promotes homeland security or national security purposes including the USCG's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)); and

(ii) The requesting agency has entered into a written agreement with the Assistant Administrator. The agreement shall contain a finding by the Assistant Administrator that the requesting agency has confidentiality policies and procedures to protect the information from public disclosure.

(7) *Observer and observer employer/observer provider.* Confidential information used for purposes other than those contained in this subpart or in part 600 of this title may only be used by observers and observer employers/observer providers in order:

- (i) To adjudicate observer certifications;
- (ii) To allow the sharing of observer information among the observers and between observers and observer employers/observer providers as necessary to train and prepare observers for deployments on specific vessels; or
- (iii) To validate the accuracy of the observer information collected.

(8) Persons having access to confidential information may be subject to criminal and civil penalties for unauthorized use or disclosure of confidential information. See 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216–100.

(d) *Control system.* (1) The Assistant Administrator maintains a control system to protect the identity or business of any person who submits information in compliance with any requirement or regulation under the Act. The control system:

- (i) Identifies those persons who have access to the information;
- (ii) Contains procedures to limit access to confidential information to authorized users; and
- (iii) Provides handling and physical storage protocols for safeguarding of the information.

(2) This system requires that all persons who have authorized access to the information be informed of the confidentiality of the information. These persons, with the exception of

employees and contractors of the Commission, are required to sign a statement that they:

- (i) Have been informed that the information is confidential; and
- (ii) Have reviewed and are familiar with the procedures to protect confidential information.

(e) *Release of information.* (1) The Assistant Administrator will not disclose to the public any confidential information, except:

(i) When the Secretary has obtained from the person who submitted the information an authorization to release the information to persons for reasons not otherwise provided for in this subpart. In situations where a person provides information through a second party, both parties are considered joint submitters of information and either party may request a release. The authorization to release such information will require:

(A) A written statement from the person(s) who submitted the information authorizing the release of the submitted information; and

(B) A finding by the Secretary that such release does not violate other requirements of the Act or other applicable laws.

(ii) Observer information as authorized by a fishery management plan (prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act) or regulations under the authority of the North Pacific Council to allow disclosure of observer information to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification.

(iii) When such information is required to be submitted for any determination under a limited access program.

(iv) When required by a court order.

(2) All requests from the public for confidential information will be processed in accordance with the requirements of 5 U.S.C. 552a, 15 CFR parts 4 and 903, NAO 205-14, and Department of Commerce Administrative Orders DAO 205-12 and DAO 205-14. Nothing in this section is intended to confer any right, claim, or entitlement to obtain access to confidential information not already established by law.

(3) NMFS does not release or allow access to confidential information in its possession to members of advisory groups of the Regional Fishery Management Councils established under the Magnuson-Stevens Fishery Conservation and Management Act, except as provided by law.

■ 16. Section 300.221 is added to read as follows:

**§ 300.221 Facilitation of enforcement and inspection.**

In addition to the facilitation of enforcement provisions of § 300.5, the following requirements apply to this subpart.

(a) A fishing vessel of the United States with a WCPFC Area Endorsement or for which a WCPFC Area Endorsement is required, including the vessel's operator and each member of the vessel's crew shall, when in the Convention Area, be subject to the following requirements:

(1) The Federal Certificate of Documentation or State or other documentation for the vessel, or a copy thereof, shall be carried on board the vessel. Any license, permit or other authorization to use the vessel to fish, retain fish, transship fish, or land fish issued by a nation or political entity other than the United States, or a copy thereof, shall be carried on board the vessel. These documents shall be made available for inspection by any authorized officer. If the vessel is on the high seas, the above-mentioned licenses, permits, and authorizations shall also be made available for inspection by any WCPFC inspector. If the vessel is in an area under the jurisdiction of a member of the Commission other than the United States, they shall be made available for inspection by any authorized enforcement official of that member.

(2) For the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the members of the Commission, the operator shall ensure the continuous monitoring of the international safety and calling radio frequency 156.8 MHz (Channel 16, VHF-FM) and, if the vessel is equipped to do so, the international distress and calling radio frequency 2.182 MHz (HF).

(3) The operator shall ensure that an up-to-date copy of the International Code of Signals (INTERCO) is on board and accessible at all times.

(4) When engaged in transshipment on the high seas or in an area under the jurisdiction of a member of the Commission other than the United States, the operator and crew shall:

(i) Provide any WCPFC transshipment monitor with full access to, and use of, facilities and equipment which such authorized person may determine is necessary to carry out his or her duties to monitor transshipment activities, including full access to the bridge, fish on board, and all areas which may be used to hold, process, weigh and store

fish, and full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying;

(ii) Allow and assist any WCPFC transshipment monitor to collect and remove samples and gather any other information required to fully monitor transshipment activities.

(iii) Not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, interfere with, unduly obstruct or delay any WCPFC transshipment monitor in the performance of such person's duties, or attempt to do any of the same.

(b) The operator and crew of a fishing vessel of the United States, when on the high seas in the Convention Area, shall be subject to the following requirements:

(1) The operator and crew shall immediately comply with instructions given by an officer on board a WCPFC inspection vessel to move the vessel to a safe location and/or to stop the vessel, provided that the officer has, prior to the issuance of such instructions:

(i) Provided information identifying his or her vessel as a WCPFC inspection vessel, including its name, registration number, IRCS and contact frequency; and

(ii) Communicated to the vessel operator his or her intention to board and inspect the vessel under the authority of the Commission and pursuant to the boarding and inspection procedures adopted by the Commission.

(2) The operator and crew shall accept and facilitate prompt and safe boarding by any WCPFC inspector, provided that an officer on board the WCPFC inspection vessel has, prior to such boarding:

(i) Provided information identifying his or her vessel as a WCPFC inspection vessel, including its name, registration number, IRCS and contact frequency; and

(ii) Communicated to the vessel operator an intention to board and inspect the vessel under the authority of the Commission and pursuant to the boarding and inspection procedures adopted by the Commission.

(3) Provided that the WCPFC inspector has presented to the vessel operator his or her identity card identifying him or her as an inspector authorized to carry out boarding and inspection procedures under the auspices of the Commission, and a copy of the text of the relevant conservation and management measures in force pursuant to the WCPFC Convention in the relevant area of the high seas, the operator and crew shall:

(i) Cooperate with and assist any WCPFC inspector in the inspection of

the vessel, including its authorizations to fish, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the conservation and management measures in force pursuant to the WCPF Convention;

(ii) Allow any WCPFC inspector to communicate with the crew of the WCPFC inspection vessel, the authorities of the WCPFC inspection vessel and the authorities of the vessel being inspected;

(iii) Provide any WCPFC inspector with reasonable facilities, including, where appropriate, food and accommodation; and

(iv) Facilitate safe disembarkation by any WCPFC inspector.

(4) If the operator or crew refuses to allow a WCPFC inspector to board and inspect the vessel in the manner described in this paragraph, they shall offer to the WCPFC inspector an explanation of the reason for such refusal.

(5) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, interfere with, unduly obstruct or delay any WCPFC inspector in the performance of such person's duties, or attempt to do any of the same.

(c) When a fishing vessel of the United States that is used for commercial fishing for HMS is in the Convention Area and is either on the high seas without a valid WCPFC Area Endorsement or is in an area under the jurisdiction of a nation other than the United States without an authorization by that nation to fish in that area, all the fishing gear and fishing equipment on the fishing vessel shall be stowed in a manner so as not to be readily available for fishing, specifically:

(1) If the fishing vessel is used for purse seining and equipped with purse seine gear, the boom must be lowered as far as possible so that the vessel cannot be used for fishing but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and the launches must be secured.

(2) If the fishing vessel is used for longlining and equipped with longline gear, the branch or dropper lines and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(3) If the fishing vessel is used for trolling and equipped with troll gear, no lines or hooks may be placed in the water; if outriggers are present on the vessel, they must be secured in a

vertical position; if any power-operated haulers are located on deck they must be covered in such a manner that they are not readily available for use.

(4) If the fishing vessel is used for pole-and-line fishing and equipped with pole-and-line gear, any poles rigged with lines and hooks must be stowed in such a manner that they are not readily available for use.

(5) For any other type of fishing vessel, all the fishing gear and equipment on the vessel must be stowed in a manner so as not to be readily available for use.

(d) For the purpose of this section, the meaning of transshipment does not include transfers that exclusively involve fish that have been previously landed and processed.

■ 17. In § 300.222, paragraphs (a) through (u) are added to read as follows:

**§ 300.222 Prohibitions.**

\* \* \* \* \*

(a) Fail to obtain and have on board a fishing vessel a valid WCPFC Area Endorsement as required in § 300.212.

(b) Fail to report a change in the information required in an application for a WCPFC Area Endorsement as required in § 300.212(g).

(c) Fail to provide information on vessels and fishing authorizations or fail to report changes in such information as required in § 300.213.

(d) Fish for, retain on board, or land fish, including HMS, in areas under the jurisdiction of a nation other than the United States without authorization by such nation to do so, as provided in § 300.214(a)(1) and (b)(1).

(e) Operate a fishing vessel in violation of, or fail to ensure the vessel crew complies with, the applicable national laws of a member of the Commission other than the United States, including any laws related to carrying vessel observers or the operation of VMS units, as provided in § 300.214(a)(2) and (b)(2).

(f) Fail to carry, allow on board, or assist a WCPFC observer as required in § 300.215.

(g) Assault, obstruct, resist, delay, refuse boarding to, intimidate, harass, or interfere with a WCPFC observer, or attempt to do any of the same, or fail to provide a WCPFC observer with food, accommodation or medical facilities, as required in § 300.215.

(h) Offload, receive, or load fish from a purse seine vessel at sea in the Convention Area, in contravention of § 300.216.

(i) Fail to mark a fishing vessel or a boat, skiff, or other watercraft on board the fishing vessel as required in

§ 300.217, or remove, obscure, or obstruct such markings, or attempt to do so.

(j) Fail to maintain and report catch and effort information or transshipment information as required in § 300.218.

(k) Fail to install, activate, or operate a VMS unit as required in § 300.219(c).

(l) In the event of VMS unit failure or interruption, fail to repair or replace a VMS unit, fail to notify the SAC and follow the instructions provided, or otherwise fail to act as provided in § 300.219(c)(4).

(m) Disable, destroy, damage or operate improperly a VMS unit installed under § 300.219, or attempt to do any of the same, or fail to ensure that its operation is not impeded or interfered with, as provided in § 300.219(e).

(n) Fail to make a VMS unit installed under § 300.219 or the position data obtained from it available for inspection, as provided in § 300.219(f) and (g).

(o) Fail to carry on board and monitor communication devices as required in § 300.219(h).

(p) Fail to carry on board and make available the required vessel documentation and authorizations as required in § 300.221(a)(1).

(q) Fail to continuously monitor the specified radio frequencies as required in § 300.221(a)(2).

(r) Fail to carry on board, and keep accessible, an up-to-date copy of the International Code of Signals as required in § 300.221(a)(3).

(s) Fail to provide access to, or fail to allow and assist, a WCPFC transshipment monitor as required in § 300.221(a)(4).

(t) Fail to comply with the instructions of, or fail to accept and facilitate prompt and safe boarding by, a WCPFC inspector, or fail to cooperate and assist a WCPFC inspector in the inspection of a fishing vessel, as provided in § 300.221(b).

(u) Fail to stow fishing gear or fishing equipment as required in § 300.221(c).

\* \* \* \* \*

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1115

#### Guidelines and Requirements for Mandatory Recall Notices

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.