

expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610, FAR Case 2014-010, in correspondence.

#### IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Part 42

Government procurement.

Dated: September 9, 2014.

**William Clark,**

*Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 42 as set forth below:

#### PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 42 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 42.1502 by revising paragraph (a) to read as follows:

##### 42.1502 Policy.

(a) *General.* Past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed. Past performance evaluations are required for all contracts and orders that exceed the specified thresholds, including contracts and orders performed outside the United States. These evaluations are generally for the entity, division, or unit that performed the contract or order. Past performance information shall be entered into CPARS, the Governmentwide evaluation reporting tool for all past performance reports on contracts and orders. Instructions for submitting evaluations into CPARS are available at <http://www.cpars.gov/>.

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 660

[Docket No. 140528460-4460-01]

RIN 0648-BE25

##### Fisheries Off West Coast States; Highly Migratory Fisheries; California Swordfish Drift Gillnet Fishery; Vessel Monitoring System and Pre-Trip Notification Requirement

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

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

**SUMMARY:** NMFS is issuing a proposed rule to require use of a NMFS-approved vessel monitoring system (VMS) and institute a 48-hour pre-trip call-in notification requirement for West Coast Large-mesh Swordfish Drift Gillnet (DGN) vessel owners. The DGN fishery operates under authority of the Federal Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The VMS requirement is a mandatory term and condition in the 2013 Endangered Species Act (ESA) Section 7 biological opinion (Opinion) that authorizes the DGN fishery to take certain threatened and endangered species incidental to fishing operations. Installing and operating VMS on vessels in this fishery would provide NMFS and law enforcement personnel the ability to monitor the fishery for compliance with time/area closures, facilitate the deployment of agents to inspect vessels for compliance with conservation measures, and more closely examine and compare the distribution of observed and unobserved fishing effort in the fishery. The pre-trip notification would assist NMFS with timely and efficient placement of NMFS observers onboard DGN vessels.

**DATES:** Comments must be received on or before September 30, 2014.

**ADDRESSES:** You may submit comments on the proposed rule, identified by NOAA-NMFS-2014-2013-0131, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-2013-0131>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Craig Heberer, NMFS West Coast Region, 501 W. Ocean Blvd., Ste. 4200, Long Beach, CA 90802. Include the identifier "NOAA-NMFS-2014- in the comments.

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

Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available via the Federal e-Rulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-140528460-4460-01 or contact with the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Regional Office, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115-0070, or [RegionalAdministrator.WCRHMS@noaa.gov](mailto:RegionalAdministrator.WCRHMS@noaa.gov).

#### FOR FURTHER INFORMATION CONTACT:

Craig Heberer, NMFS, 706-431-9440 (#303), [craig.heberer@noaa.gov](mailto:craig.heberer@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The DGN fishery is managed under the HMS FMP, which was prepared by the Pacific Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801, et seq., by regulations at 50 CFR part 660.

#### Background

On September 4, 2013, NMFS published in the **Federal Register** a temporary rule (78 FR 54548) for emergency action to modify the DGN fishery for the 2013-2014 fishing season under authority of section 305(c)(1) of the MSA, 16 U.S.C. 1855(c). NMFS issued the temporary rule as a result of the observed entanglement of two Endangered Species Act (ESA) listed sperm whales by a DGN fishing vessel in 2010 and the recommendations made to NMFS by the Pacific Offshore Cetacean Take Reduction Team (TRT) to reduce sperm whale bycatch in the fishery for the 2013-2014 fishing

season, in accordance with the MSA, ESA, and the Marine Mammal Protection Act (MMPA). Implementation of the temporary regulations allowed NMFS to issue an MMPA section 101(a)(5)(E) permit authorizing the incidental take of sperm whales by the DGN fishery. The temporary regulations implemented, among other measures, mandatory monitoring (VMS) and observer requirements (pre-trip notification and a 100 percent deep water closure zone unless a NMFS-certified observer was on board), and would have immediately shut down the fishery for the calendar year in the event of a sperm whale interaction.

The temporary rule expired on January 31, 2014, which corresponded with the traditional end of the DGN fishing season. At its March 2014 meeting, the Council requested that NMFS extend the emergency actions contained in the temporary rule while permanent rulemaking under the MMPA to reduce sperm whale interactions in the DGN fishery is under consideration. NMFS published in the **Federal Register** a second temporary rule (79 FR 29377, May 22, 2014) renewing the conservation measures contained in the original temporary rule. That rule expired on August 5, 2014. Since publication of the second emergency rule, the stock assessment for sperm whales and the methodology for estimating bycatch rates have been revised. The revisions are based on analyses prepared by scientists from the NMFS Southwest Fisheries Science Center and included in the proposed draft 2014 Stock Assessment Report presented at the NMFS Scientific Review Group meeting in April, 2014. Based on those revisions, on August 25, 2014, NMFS published in the **Federal Register** its draft amended Negligible Impact Determination (NID), for the proposed issuance of a MMPA section 101(a)(5)(E) permit for federally managed commercial fisheries off the U.S. West Coast. The **Federal Register** notice regarding the proposed NID explains the analyses and rationale for determining that mortality and serious injury incidental to commercial fisheries, including the DGN fishery, will have a negligible impact on the stock of sperm whales on which the emergency regulations had been focused. Because the stock assessments and bycatch estimates for sperm whales have been revised, using peer-reviewed and scientifically sound methodology, restrictions on the DGN fishery which had been implemented in the emergency regulations are not required

under the draft amended NID. In addition, under section 118 of the MMPA, the Pacific Offshore Cetacean Take Reduction Plan continues to meet its mandated short-term goal of reducing serious injury/mortality of strategic stocks, including sperm whales, to below the Potential Biological Removal levels.

The revisions to the sperm whale stock assessment and bycatch methodologies also prompted the TRT to reconvene and revisit their February recommendations to NMFS. At their June 2014 meeting, the Council recommended that NMFS move forward with the VMS and pre-trip notification requirements suggested in the original TRT recommendation and promulgate regulations to make those requirements permanent under the MSA. Based on the Council recommendation and because the VMS requirement addresses a mandatory term and condition specified in the Opinion issued on May 2, 2013, NMFS is proposing this rule to make permanent the VMS and the pre-trip notification requirements so that these measures are in place for the 2014–2015 DGN fishing season, which typically commences after August 15 of each year. Certain restrictions on the DGN fishery that had been implemented in the emergency regulations, but are no longer required under the draft amended NID, are not incorporated in this rule. The TRT is continuing to meet and discuss recommendations to NMFS for any additional conservation measures that would further benefit the stocks in question.

Information for current NMFS type-approved VMS units can be obtained by contacting: NMFS, Office of Law Enforcement (OLE), 1315 East West Hwy, Suite 3301, Silver Spring, MD 20910–3282; telephone: (888) 210–9288; fax: (301) 427–0049. Or, by contacting NMFS OLE VMS Helpdesk: telephone: (888) 219–9228; email: [ole.helpdesk@noaa.gov](mailto:ole.helpdesk@noaa.gov). The business hours of the VMS Helpdesk are: Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

The vessel owner would be responsible for all costs associated with the purchase, installation, and maintenance of the VMS mobile transceiver unit (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. The unit cost, physical size, available features, transmission fees, and service packages vary among the different type-approved VMS mobile transceiver units. Vessel owners may choose the type-approved VMS unit that best fits their

needs. Federal funds are currently available for reimbursement of type-approved VMS units up to \$3,100, as determined within the VMS Reimbursement Program. The availability of these funds for reimbursement for the cost of purchasing a VMS unit is not guaranteed, but is anticipated to be available on a first-come first-served basis. To be eligible to receive reimbursement, the owner must submit proof of professional installation of the VMS unit to NMFS Office of Law Enforcement (OLE) in compliance with the requirements of the VMS Reimbursement Program. More information on the VMS Reimbursement Program can be obtained by calling the NMFS OLE VMS Helpdesk: telephone: (888) 219–9228, and online: <http://www.psmfc.org/program/vessel-monitoring-system-reimbursement-program-vms?pid=17>.

Prior to fishing, the vessel owner, or the vessel operator on the owner's behalf, will be required to send an activation report to NMFS OLE to verify that the VMS unit was installed correctly and has been activated. Activation of a VMS unit would be required any time the unit is installed or reinstalled, any time the mobile communications service provider has changed, and any other time directed by NMFS. Activation would involve submitting to NMFS a report via mail, facsimile or email 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. For issues related to day-to-day operation of VMS units, including declaration reports, activation reports and exemption reports, the (Special Agent-in-Charge's (SAC's) designee is the OLE VMS Program Manager's office located at 7600 Sand Point Way NE., Seattle, WA 98115–6349; phone: (888) 585–5518; fax: (206) 526–6528; and email: [wcd.vms@noaa.gov](mailto:wcd.vms@noaa.gov).

#### Classification

Pursuant to the MSA, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the HMS FMP and its amendments, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

#### National Environmental Policy Act

This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216–6. A memorandum for the file that sets forth the decision to use a categorical

exclusion will be prepared prior to the issuance of a final rule.

### Executive Order 12866

#### *Regulatory Flexibility Act (RFA)*

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule would apply to the large-mesh drift gillnet (DGN) fishery in California. Temporary regulations (78 FR 54548, September 4, 2013, and 79 FR 29377, May 22, 2014) required owners and operators of DGN vessels to install and operate VMS units and to notify NMFS 48 hours in advance of a fishing trip, for which NMFS may assign an observer, during the 2013–2014 fishing season. DGN fishermen complied with the temporary provisions for operating VMS units and notifying NMFS prior to departure. These temporary regulations expired in August of 2014.

Under the proposed rule, all DGN vessels will be required to install and operate VMS units and notify NMFS 48 hours prior to taking a fishing trip. The small entities that would be affected by the proposed action are all fishing vessels operating as part of the DGN fleet. The U.S. Small Business Administration (SBA) defines small fishing businesses as vessels with annual revenues of or below \$19 million from finfish fishing; however, this definition changed to \$20.5 million effective on July 14, 2014 following a recent final rule published by the SBA on June 12, 2014 (79 FR 33647). The vessels in the DGN fleet have never achieved annual revenue of \$20.5 million per vessel from finfish fishing whether considering an individual vessel or per vessel average. The aggregate annual ex-vessel revenues for the entire fleet during the last 15 years have been fewer than three million dollars. In recent years (2008 through 2013), about 26 DGN vessels of 65 current permits (active and latent) have been operating annually under the *Fishery Management Plan for the U.S. West Coast Fisheries for Highly Migratory Species*. From 2008 through 2013, the average annual per vessel revenue for the DGN fleet from finfish fishing has been about \$126,000, a number well below a threshold value of \$20.5 million from finfish fishing to be considered a large business per the SBA size definition.

All of the entities impacted by this proposed rule are considered small business entities. All impacted vessels will be affected in a similar way and disproportional economic effect between small and large businesses will not exist. The VMS units that have been type-approved range in cost and service features. This allows the vessel owner flexibility in choosing the model that best fits the needs of their vessel. Compliance for each of the projected small entities would involve the following approximate annualized costs: \$1,000 for the purchase and installation of VMS units (based on \$4,000 per unit and a lifespan of 4 years per unit), \$250 for VMS unit maintenance, and, based on estimated communication costs of about \$1.50 per day (based on hourly reporting cost of some service providers), \$547.50 for VMS unit operation (i.e., the transmission of automatic vessel position reports to NOAA). Thus, the total compliance cost (during the 4-year lifespan of VMS unit) and annualized compliance cost would be about \$7,190 and \$1,797.50 per vessel, respectively. The analysis assumes that vessel owners will pay for the required VMS units. However, Federal funds may be available for reimbursement of certain costs associated with type-approved units up to \$3,100 (or \$775 annualized amount).<sup>1</sup> The recurring financial burden to a fisherman after a subsidy on the VMS unit will be about \$1,025 annually, or about 0.81 percent of the annual average fishing revenue. In the absence of a VMS subsidy, the recurring financial burden to a fisherman would be about 1.42 percent of the annual average fishing revenue. Based on these figures, none of the DGN small business entities will be significantly impacted by the provisions in the proposed rule. Further, NMFS concludes that all of these small business entities will be affected in similar ways. The average revenue of \$126,000 per annum during 2008–13 is representative of the fishery. While outlier vessel revenue values have ranged from about three to five times the average annual per vessel revenue during 2008–13, variability among the small entities is not very large since the mean and standard deviation of the annual revenues among fishermen are nearly similar in each year during 2008–13.

The financial burden of operating a VMS unit is trivial relative to the average annual gross revenue that a

<sup>1</sup> The availability of these funds for reimbursement for the cost of purchasing a VMS unit is not guaranteed, but the funds are anticipated to be available on a first-come first-served basis.

DGN fisherman generates from fishing. The financial cost to a fisherman, either with the subsidy or without, is less than two percent of the annual average fishing revenue, which does not constitute a significant impact. In addition, the DGN fleet has already been operating under (now-expired) emergency rules that required the use of VMS units, so vessel owners are already aware of and complying with these requirements.

### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 9, 2014.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

### PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for 50 CFR part 660 continues to read as follows:

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

■ 2. In § 660.702, the definitions for “Regional Administrator,” “Special Agent-In-Charge (SAC),” and “Vessel monitoring system unit (VMS unit)” are revised to read as follows:

#### § 660.702 Definitions.

\* \* \* \* \*

*Regional Administrator* means the Regional Administrator for the West Coast Region, National Marine Fisheries Service, or a designee.

*Special Agent-In-Charge (SAC)* means the Special Agent-In-Charge, NMFS, Office of Enforcement, West Coast Region, or a designee of the Special Agent-In-Charge.

\* \* \* \* \*

*Vessel monitoring system unit (VMS unit)* means an automated, remote system and mobile transceiver unit that is approved by NMFS and 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.

\* \* \* \* \*

■ 3. In § 660.705, paragraphs (l), (o), and (p) are revised and paragraphs (rr) and (ss) are added to read as follows:

#### § 660.705 Prohibitions.

\* \* \* \* \*

(l) Fail to install, activate, repair, replace, carry, operate or maintain a

VMS unit as required under § 660.712 and § 660.713.

\* \* \* \* \*

(o) Fish for, catch, or harvest HMS with longline or drift gillnet gear without an operating VMS unit on board the vessel after installation of the VMS unit.

(p) Possess on board a vessel without an operating VMS unit HMS harvested with longline or drift gillnet gear after installation of the VMS unit.

\* \* \* \* \*

(rr) Fail to notify NMFS or the NMFS-designated observer provider at least 48 hours prior to departure on a fishing trip using drift gillnet gear as required under § 660.713.

(ss) Fail to submit a declaration report to the NMFS Office of Law Enforcement prior to departure on a fishing trip using drift gillnet gear as required under § 660.713.

■ 4. In § 660.713, paragraphs (f) and (g) are added to read as follows:

**§ 660.713 Drift gillnet fishery.**

\* \* \* \* \*

*(f) Pre-trip Notification Requirements.*

(1) Drift gillnet vessel owners or operators are required to notify NMFS or the NMFS designated observer provider at least 48 hours prior to departing on each fishing trip. The vessel owners or operators must communicate to the observer provider: the owner or operator's name, contact information, vessel name, port of departure, and estimated date and time of departure, and a telephone number at which the owner or operator may be contacted during the business day (Monday through Friday between 0800 and 1700 Pacific Time) to indicate whether an observer will be required on the subject fishing trip. Contact information for the current observer provider can be obtained by calling the NMFS West Coast Region Sustainable Fisheries Division at 562-980-4030.

(2) The drift gillnet vessel owners or operators must provide the NMFS West Coast Region Office of Law Enforcement (OLE) with a declaration report before the vessel leaves port to fish for thresher shark/swordfish with large-mesh drift gillnet gear in the state and federal waters between 0 and 200 nm offshore of California, Oregon, or Washington. OLE's declaration hotline is 1-888-585-5518. The business hours for the OLE are Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m., Pacific Standard Time; voice messages left on the hotline will be retrieved at the start of the next business day.

(g) *Vessel Monitoring System (VMS) Requirements.* Drift gillnet vessel

owners are required to install an OLE type-approved VMS mobile transceiver unit (VMS unit) and to arrange for a OLE type-approved communications service provider to receive and relay transmissions to the OLE prior to fishing for thresher shark/swordfish with large-mesh drift gillnet gear.

(1) *What is a VMS?* A VMS consists of an OLE type-approved VMS unit that automatically determines the vessel's position and transmits it to an OLE type-approved communications service provider. The communications service provider receives the transmission and relays it to the OLE.

(2) *What Vessels are Required to Have a VMS?* Any vessel registered for use with a limited entry California state large-mesh thresher shark/swordfish drift gillnet permit and a federal highly migratory species permit that fishes in state or Federal waters off the coasts of California, Oregon, or Washington (0–200 nm offshore).

(3) *How are VMS Units and Communications Service Providers Approved by OLE?*

(i) VMS unit manufacturers or communication service providers will submit products or services to the OLE for evaluation based on the published specifications.

(ii) OLE will publish a list of OLE type-approved VMS units and communication service providers for the DGN fishery in the **Federal Register** or notify the public through other appropriate media; and the OLE may publish amendments to the list as necessary.

(4) *What are the Vessel Owner's Responsibilities?* If you are a vessel owner that must participate in the VMS program, you or the vessel operator on your behalf must:

(i) Obtain an OLE type-approved VMS unit and have it installed on board your vessel in accordance with the instructions provided by the OLE. You may obtain a copy of the VMS installation and operation instructions from the Special-Agent-In-Charge (SAC).

(ii) Activate the VMS unit, submit an activation report, and receive confirmation from OLE that the VMS transmissions are being received at least 72 hours prior to leaving port on a fishing trip for which VMS is required. Instructions for submitting an activation report may be obtained from the SAC. An activation report must again be submitted to the OLE following reinstallation of a VMS unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

(A) *Activation reports.* If you are a vessel owner who must use VMS and

you are activating a VMS unit for the first time or reactivating a VMS unit following a reinstallation or change in service provider, you or the vessel operator on your behalf must fax to the OLE an activation report that includes: vessel name, vessel owner's name, address and telephone number, vessel operator's name, address and telephone number, USCG vessel documentation number/state registration number; and, if applicable, the relevant state and federal permit numbers for which vessel or owner is registered, VMS unit manufacturer, VMS communications service provider, VMS unit identification, and a statement signed and dated by the vessel owner confirming compliance with the installation procedures provided by the SAC and identifying whether the VMS unit is primary or backup.

(B) *Transferring ownership of the VMS unit.* Ownership of the VMS unit may be transferred from one vessel owner to another vessel owner if all of the following documents are provided to the OLE: a new activation report, which identifies that the VMS unit was previously registered to another vessel, a notarized bill of sale showing proof of ownership of the VMS unit, and documentation from the communications service provider showing proof that the service agreement for the previous vessel was terminated and that a service agreement was established for the new vessel.

(iii) Continuously operate and maintain the VMS unit in good working order, 24 hours a day throughout the fishing year. The VMS unit must accurately transmit a signal indicating the vessel's position at least once every hour, 24 hours a day throughout the year, unless a valid exemption report, as described in paragraph (g)(4)(iv)(F) of this section, has been confirmed by the OLE. Less frequent position reporting, at least once every 4 hours, may be authorized by OLE when a vessel remains in port for an extended period of time.

(iv) Submit an exemption report to be confirmed by the OLE as valid, as described at paragraph (g)(4)(iv)(F) of this section, and comply with all conditions and requirements of the VMS exemption identified in this section and specified in the exemption report for a vessel to be exempted from the requirement of continuously operating and maintaining the VMS unit 24 hours a day throughout the fishing year.

(A) *Haul out exemption.* When it is anticipated that a vessel will be continuously out of the water for more than 7 consecutive days and the OLE has confirmed a valid exemption report

has been received for the vessel, electrical power to the VMS unit may be removed and transmissions may be discontinued. Under this exemption, VMS transmissions can be discontinued from the time the vessel is removed from the water until the time that the vessel is placed back in the water.

(B) *Outside areas exemption.* When the vessel will be continuously operating seaward of the U.S. exclusive economic zone (EEZ; beyond 200 nm) off the coasts of California, Oregon, or Washington for more than 7 consecutive days and the OLE has confirmed a valid exemption report has been received for the vessel, the VMS unit transmissions may be reduced or discontinued from the time the vessel leaves the EEZ off the coasts of California, Oregon, or Washington until the time that the vessel re-enters the EEZ off the coasts of California, Oregon, or Washington. If the vessel is equipped with a VMS unit that OLE has approved for this exemption and after the OLE has received an exemption report for the vessel, the vessel owner or operator can request that the OLE reduce or discontinue the VMS transmissions.

(C) *Long-term departure exemption.* A vessel participating in the DGN fishery that is required to have VMS under paragraph (g) of this section may be exempted from VMS provisions after the end of the fishing season in which it fished, provided that a completed exemption report including a statement signed by the vessel owner indicating that the vessel will not be used to take and retain or possess or land swordfish taken in state or federal waters off the coasts of California, Oregon, or Washington during the upcoming fishing year is submitted to OLE.

(D) *Emergency exemption.* Vessels required to have VMS under paragraph (g) of this section may be exempted from VMS provisions in emergency situations that are beyond the vessel owner's control, including but not limited to: Fire, flooding, or extensive physical damage to critical areas of the vessel. A vessel owner may request an emergency exemption from the VMS requirements specified in paragraph (g) of this section for his/her vessel by contacting the OLE and submitting the following information in writing: The reasons for seeking an exemption including any supporting documents (e.g., repair invoices, photographs showing damage to the vessel, insurance claim forms, etc.), the time period for which the exemption is requested, and the location of the vessel while the exemption is in effect. The OLE will issue a written

determination granting or denying the emergency exemption request. A vessel will not be covered by the emergency exemption until the OLE issues a determination granting the exemption. If an exemption is granted, the duration of the exemption will be specified in the OLE determination.

(E) *Submission of exemption reports.* Long-term departure exemption reports must be signed by the vessel owner and submitted by fax or by emailing an electronic copy of the actual report to the OLE. If an emergency exemption request will be submitted, initial contact with OLE must be made by telephone, fax or email within 24 hours from when the emergency incident occurred. All emergency exemption requests must be submitted in writing within 72 hours from when the incident occurred. Submission methods for exemption reports, except long-term departures and emergency exemption requests, may include email, facsimile, or telephone. OLE will provide, through appropriate media, instructions to the public on submitting exemption reports. Instructions and other information needed to make exemption reports may be mailed to the vessel owner's address of record. Owners of vessels required to use the VMS who do not receive instructions by mail are responsible for contacting OLE during business hours at least 3 days before the exemption is needed to obtain information necessary for exemption reports. OLE must be contacted during business hours (Monday through Friday, except Federal holidays, between 0800 and 1700 Pacific Time). Any other categories of exemptions that have not been specified in paragraph (g) of this section may be submitted to OLE through the VMS unit or another method deemed appropriate by OLE. Before a request for a new category of exemption can be approved by OLE, it must be announced in the **Federal Register**.

(F) *Valid exemption reports.* For an exemption report to be valid, it must be received by OLE at least 2 hours and not more than 24 hours before the exempted activities defined at paragraphs (g)(4)(iv)(A) through (D) of this section occur and confirmed by OLE. An exemption report is valid until NMFS receives a report canceling the exemption. An exemption cancellation must be received at least 2 hours before the vessel re-enters the EEZ following an outside areas exemption; at least 2 hours before the vessel is placed back in the water following a haul out exemption; or at least 2 hours before a vessel resumes fishing with a large-

mesh drift gillnet after a long-term departure exemption. If a vessel is required to submit an activation report under paragraph (g)(4)(ii) of this section before returning to fish, that report may substitute for the exemption cancellation. After an emergency situation occurs that disrupts the VMS transmission, initial contact must be made with OLE within 24 hours and a written emergency exemption request submitted within 72 hours from when the incident occurred. If the emergency situation, upon which an emergency exemption is based, is resolved before the exemption expires, an exemption cancellation must be received by OLE at least 2 hours before the vessel resumes fishing.

(v) When aware that transmission of automatic position reports has been interrupted, or when notified by OLE that automatic position reports are not being received, contact OLE and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating the vessel's position to a location designated by OLE or returning to port until the VMS unit is operable.

(vi) After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the VMS unit prior to the vessel's next fishing trip. Repair or reinstallation of a VMS unit or installation of a replacement unit, including any changes in communications service providers shall be in accordance with the instructions provided by OLE.

(vii) Make the VMS units available for inspection by OLE personnel, USCG personnel, state enforcement personnel or any authorized officer.

(viii) Ensure that the VMS unit is not tampered with, disabled, destroyed, operated, or maintained improperly.

(ix) Pay all charges levied by the communication service provider as necessary to ensure continuous operation of the VMS units.

(5) *What is the contact information for the OLE SAC?* For issues related to day-to-day operation of VMS units, including declaration reports, activation reports and exemption reports, the SAC's designee is the OLE VMS Program Manager's office located at 7600 Sand Point Way NE., Seattle, WA 98115-6349; phone: (888) 585-5518; fax: (206) 526-6528; and email: [wcd.vms@noaa.gov](mailto:wcd.vms@noaa.gov).

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