

(i) Any inventions are subject inventions;  
(ii) The Contractor has established procedures required by paragraph (e)(5) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor shall be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph (j) shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(k) *Withholding of payment (this paragraph does not apply to subcontracts).*

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, is set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (e)(8) of this clause.

(2) The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Government will not make final payment under this contract before the Contractor delivers to the Contracting Officer—

(i) All disclosures of subject inventions required by paragraph (c)(1) of this clause;

(ii) An acceptable final report pursuant to paragraph (e)(7)(ii) of this clause; and

(iii) All past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized in paragraph (k)(1) of this clause. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(l) *Subcontracts.* (1) The Contractor—

(i) Shall include the substance of the Patent Rights-Ownership by the Contractor clause set forth at 52.227-11 of the Federal Acquisition Regulation (FAR), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization; and

(ii) Shall include the substance of this clause, including this paragraph (l), in all other subcontracts for experimental, developmental, or research work, unless a

different patent rights clause is required by FAR 27.303.

(2) For subcontracts at any tier—

(i) The patents rights clause included in the subcontract shall retain all references to the Government and shall provide to the subcontractor all the rights and obligations provided to the Contractor in the clause. The Contractor shall not, as consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions; and

(ii) The Government, the Contractor, and the subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Government with respect to those matters covered by this clause. However, nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (h) of this clause.

(End of clause)

*Alternate I (DEC 2007).*

As prescribed in 227.303(2)(ii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: \_\_\_\_\_\*.

*[\* Contracting Officer to complete with the names of applicable existing treaties or international agreements. This paragraph is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]*

*Alternate II (DEC 2007).*

As prescribed in 227.303(2)(iii), add the following paragraph (b)(2)(v) to the basic clause:

(v) The agency reserves the right to—

(A) Unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract; and

(B) Exercise those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under any treaties or international agreement with respect to subject inventions made after the date of the amendment.

■ 6. Section 252.227-7039 is amended by revising the introductory text to read as follows:

**§ 252.227-7039 Patents—Reporting of Subject Inventions.**

As prescribed in 227.303(1), use the following clause:

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 070703215-7530-02]

RIN 0648-AU08

**Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Vessel Monitoring System; Open Access Fishery**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to require all vessels fishing pursuant to the harvest guidelines, quotas, and other management measures governing the open access groundfish fishery, and all trawl vessels to provide declaration reports and to activate and use a vessel monitoring system (VMS) transceiver while fishing off the coasts of Washington, Oregon and California. NMFS has implemented a series of large-scale geographically-defined closed areas intended to: minimize the bycatch of overfished groundfish species, minimize the bycatch of protected salmon species, and protect Essential Fish Habitat (EFH) from harm through contact with fishing gear. This action is intended to improve the monitoring of compliance with those closed areas through regular VMS transmissions of vessel locations for those vessels subject to groundfish closed area restrictions.

**DATES:** Effective February 4, 2008.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Finding of No Significant Impact (FONSI), Final Regulatory Flexibility Analysis (FRFA), and the Small Entity Compliance Guide are available from D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, phone: 206-526-6150.

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 D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, and by e-mail to [DavidRostker@omb.eop.gov](mailto:DavidRostker@omb.eop.gov), or by fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:**

Becky Renko (Northwest Region, NMFS), phone: 206-526-6110; fax: 206-526-6736 and; e-mail: [becky.renko@noaa.gov](mailto:becky.renko@noaa.gov).

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

This final rule is accessible via the Internet at the Office of the **Federal Register's** Web site at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html). Background information and documents are available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov> and at the Pacific Fishery Management Council's (Council) Web site at <http://www.pcouncil.org>.

**Background**

On August 8, 2007, NMFS published a proposed rule to implement a VMS program for the West Coast groundfish open access fisheries (72 FR 44469,) requesting public comments through September 7, 2007. During the comment period, NMFS received eight emails of comment, which are addressed later in the preamble to this final rule. See the preamble to the proposed rule for additional background information on the VMS program and the open access fishery.

A VMS transceiver is an electronic device that is installed on a vessel to monitor the vessel's position in relation to geographically defined areas. The Council has determined that implementation of VMS requirements is necessary to monitor and enforce the extensive system of depth- and habitat-based closed areas employed in West coast groundfish management. This final rule requires all open access vessels to have a type-approved VMS transceiver unit that is properly activated and used from the time a vessel leaves port on a trip in which: groundfish is taken and retained in the EEZ; groundfish is possessed while operating in the EEZ (including transiting); or groundfish taken in the EEZ is landed. In addition, this final rule requires any vessel fishing in the EEZ with non-groundfish trawl gear to have a type-approved VMS transceiver unit properly installed and activated prior to leaving port. Once the VMS unit is activated, it must remain on throughout the remainder of the fishing year, unless such vessel is granted an exemption to the requirements for continuous operation. This final rule supplements the VMS program implemented on January 1, 2004, for the limited entry groundfish fisheries (November 4, 2003; 68 FR 62374).

**Comments and Responses**

During the comment period for the proposed rule for this action, NMFS received eight comments by email, which are addressed here:

*Comment 1:* One commenter supports the proposed requirements that all vessels fishing for groundfish carry a VMS transceiver unit to enhance the ability to enforce depth-based management measures.

*Response:* NMFS agrees that the proposed VMS requirements for the open access fisheries will allow enforcement resources to be used more efficiently and effectively to ensure the integrity of management areas that were implemented to restrict fishing mortality on overfished species and to protect EFH.

*Comment 2:* The current list of type-approved VMS transceiver units for the Pacific Coast Groundfish fishery includes basic units that are only capable of one-way communications. These basic VMS transceiver units are small and capable of transmitting a vessel's position without requiring additional on-board computer support. Two commenters expressed concern that the basic VMS transceiver units will be removed from the list of type-approved VMS units and not available for use in the OA fishery. The commenters believe that the majority of the OA fleet would choose to purchase the basic units. If the basic VMS transceiver units are not available to open access fishers, the commenters are concerned that many of the smallest OA vessels (many vessels are less than 26 feet (8 meters) in length), with minimal electronic support, would be unable to comply with the requirements and would need to leave the fishery.

*Response:* To assure compatibility with the national monitoring center, NMFS requires that VMS systems meet defined standards (58 FR 49285, September 23, 1993; March 31, 1994, 59 FR 15180; October 27, 2005, 70 FR 61941; and 72 FR 60826, October 6, 2007), while recognizing the need to promulgate regulations and approve systems on a fishery-by-fishery basis. VMS transceiver units approved for use by NMFS are referred to as type-approved. On November 17, 2003 (68 FR 64860), NMFS published a notice identifying VMS transceiver units and communication service providers that are type-approved for the Pacific Coast groundfish fishery.

The commenters are correct that the current list of VMS units type-approved for use in the Pacific Coast groundfish fishery includes small VMS transceiver units that are only capable of one way

communications. At this time, NMFS Office for Law Enforcement is considering revising the list of type-approved units to include only units capable of two-way communications. The reason for considering such a revision is that the VMS transceiver units are valuable tools that can also be used to transmit other necessary fisheries management data to and from the vessels. There are VMS transceiver units that are capable of two-way communications that are similar in size and cost to the one-way units that are currently type-approved for the Pacific coast groundfish fishery.

*Comment 3:* One commenter suggested that minimum performance parameters need to be specified for VMS transceiver units, rather than type-approving specific units. The minimum performance parameters should require VMS transceiver units to be capable of supporting text messaging and email so the system is capable of transmitting other types of data such as vessel logbooks and observer data.

*Response:* NMFS does not believe that performance standards alone would be adequate. Due to the need to have reliable VMS transceiver units that are suitable for fisheries applications, NMFS uses a type-approval process. With a type-approval process, VMS manufacturing companies submit for type-approval VMS transceiver units that meet minimum standards. The VMS transceiver units are field tested to assure that it will meet minimum performance requirements. NMFS believes it is necessary to conduct field testing on each model to determine if they will perform adequately over time in a harsh marine environment and in remote conditions before fishers invest in the equipment and before fisheries managers and enforcement are dependent on the data for managing the fisheries. New units may be added to the type approved list for a particular fishery as new equipment becomes available and is tested.

The open access fleet consists of smaller sized vessels, with most being under 40 feet (metric equiv), fishery management and enforcement may benefit from having smaller units capable of two-way communications. However, the extremely limited space, minimal electronic support for a system, and difficulty in protecting electronic equipment from the marine environment on a large portion of vessels in the open access fleet was considered in the initial type-approval of VMS transceiver units for the Pacific Coast groundfish fishery (68 FR 64860; November 17, 2003). At this time NMFS is considering revising the list of type-

approved VMS transceiver units to include only VMS transceiver units that are capable of two-way communications which could support email or vessel logbooks(see comment 2 above).

*Comment 4:* One commenter recommended that NMFS refine the regulatory language requiring the VMS unit to be on the vessel and operational at all times to specifically state that the VMS unit must be energized at all times and cannot be turned on and off.

*Response:* NMFS believes that the language at § 660.312 (d)(3) regarding the vessel owner's responsibility to operate the mobile transceiver unit continuously 24 hours a day throughout the calendar year, unless such vessel is specifically exempted, adequately states that the VMS unit must be on at all times.

*Comment 5:* One commenter recommended that regulatory language be added to require vessels to contact NMFS before each departure to ensure that the VMS transceiver unit is operating properly. The commenter suggested that NMFS develop back-up procedures for reporting vessel positions using other communications such as cell phone, satellite phone, or radio, for vessels whose VMS transceiver units fail while the vessel is at sea. The commenter also suggests that NMFS provide back-up VMS units for vessels when their VMS transceiver units are being serviced.

*Response:* Declaration reports are used by NMFS to identify the fisher's intent to use the vessel to participate in a particular fishery with a specific gear. Because area restrictions are specific to the gear type and target fisheries, declaration reports are needed to adequately assess the vessel's activity in relation to the area restrictions. In the development of this action, NMFS considered measures that could be taken to reduce the reporting burden on the fishing industry, while still meeting the needs of NMFS. Because a single gear type is typically used for multiple trips, to reduce the reporting burden NMFS determined that it was adequate for each declaration report to be valid until a new declaration is made or until an exemption report is received. Unlike other fisheries with VMS, where vessels are at sea for extended periods, most of the participants in the open access fisheries make very short fishing trips (1–3 days). If a VMS transceiver unit fails, the vessel can be required to remain in port until the unit is repaired or they may use a replacement unit providing they register it with NMFS Office of Law Enforcement. Given the fishing behavior of the fleet and the added burden of reporting, NMFS does

not believe that it is necessary to require vessels to provide declaration reports on every trip.

*Comment 6:* One commenter suggests that VMS position data be provided to fisheries managers so it can be compared to logbook and observer data. The commenter believes that restricting access to VMS data for enforcement purposes only will affect managers' ability to address bycatch issues.

*Response:* NMFS agrees that VMS data may provide much needed effort data to fisheries managers. Therefore, VMS data is available to fisheries managers upon request, providing the confidentiality standards set out in the Magnuson-Stevens Fishery Conservation and Management Act(Magnuson-Stevens Act) and policies established by NMFS Office for Law Enforcement are followed.

*Comment 7:* One commenter did not believe it was fair to require fishers to purchase VMS units until limited access restrictions for the open access fishery and quotas are decided.

*Response:* In the near future, the Council is scheduled to consider a license limitation program for the open access fisheries as well as harvest specifications and management measures for 2009 and 2010. Reasonably foreseeable future action by NMFS, including license limitation and future harvest specifications, were considered in the cumulative effects section (Section 4.4) of the environmental assessment for this action. The VMS is being required for open access vessels to aid in maintaining the integrity of existing depth-based management measures which were adopted for 2003 and are currently in effect in the open access fishery. NMFS believes it is necessary to adopt new measures to effectively and efficiently manage the existing fishery. If future NMFS action is taken that results in fishers leaving the open access fishery, provisions of this rulemaking allow the ownership to the VMS receiver units to transfer from one vessel owner to another vessel owner providing all the required documents are provided to NMFS OLE.

*Comment 8:* One commenter indicated that VMS was designed for monitoring big factory ships and large fleets that harvest millions of pounds of fish to be sure they are not overstepping their boundaries. The commenter does not believe that VMS is appropriate for the small class of vessels with small catches like the open access fishery.

*Response:* NMFS disagrees with the commenter. VMS is an effective enforcement tool for monitoring vessel location in relationship to geographical areas regardless of the class of vessel it

is being used on. There are many open access vessels fishing near areas that are closed to reduce the catch of overfished species or to protect EFH.

*Comment 9:* Two commenters expressed concern about the cost of purchasing new VMS equipment and the cost to replace existing VMS equipment that may not be type-approved for the fishery. The commenters' concern was the relationship between the cost of the VMS equipment and the value of the open access catch, particularly for small scale fisheries that operate only a few months of the year.

*Response:* The cost burden of VMS includes the costs for installation, VMS transceiver unit, annual maintenance, replacement cost, cost to transmit hourly positions and declaration reports. The initial cost of the VMS transceiver units, including installation, vary from \$1,200-\$2,700 (\$3,800 with a computer that meets the minimum specifications) per vessel. At this time, funds are available to reimburse fishers for the cost of purchasing a type-approved VMS transceiver unit to comply with requirements that become effective in 2007. However, these funds are available on a first-come first-served basis and not all fishers may be able to take advantage of this reimbursement program. Fishers who purchased VMS transceiver units before this rule was published will not be reimbursed for existing VMS transceivers, but could be reimbursed for new VMS transceivers.

The value of the fishery to the individual vessels and the individual fisher's ability to recover the costs associated with VMS varies widely between vessels and target fisheries. In part this is because the fishery is split between vessels targeting groundfish (directed OA fishery vessels) and vessels targeting other species but landing groundfish that were caught incidentally while targeting a non-groundfish species (incidental OA fishery vessels). The incidental commercial open access groundfish fishery consists of vessels fishing for Pacific halibut, California halibut, Dungeness crab, spot prawn, ridgeback prawn, California Sheephead, sea cucumber, pink shrimp, salmon and HMS that do not necessarily depend on revenue from the sale of groundfish as their a major source of income. However, it's difficult to segregate the fishery into directed and incidental vessels, and vessels may move between the categories with the choice depending on the intention of the fisher. Over the course of a year or during a single trip, a fisher may engage in different strategies and may switch

between directed and incidental fishing categories.

Incidental fixed gear open access fishers who only land small amounts of incidentally caught groundfish may well choose to discard incidentally caught groundfish, rather than incur the cost of VMS and the burden of installation. Similarly, some fixed gear fishers may also choose to stay in state waters throughout the year rather than incur the cost of VMS and the burden of installation. NMFS recognizes that those vessels that are more actively engaged in the directed open access fishery and open access trawl fisheries will likely incur higher VMS costs than those that are not actively engaged in the directed open access fishery. However, without depth-based management, the open access fishery would likely be managed under very restrictive cumulative trip limits and seasons, which would result in much lower gross revenues for directed open access vessels, and greater restriction for incidental fishers.

*Comment 10:* One commenter indicted that the open access fishery did not need any further government regulations.

*Response:* When the Council recommended the adoption of depth-based management measures for 2003, the Council also recommended that NMFS take simultaneous action to implement a VMS monitoring program to ensure the integrity of the depth-based areas. Consistent with the Council's recommendation, NMFS implemented a pilot program in the limited entry fishery at the start of 2004 with the intention of expanding the program to the Open access fishery. This action follows the Council's original direction. As discussion in the response to comment 9, without VMS, depth-based management measures would need to be reconsidered.

#### Changes From the Proposed Rule

No changes were made from the regulatory text presented in the proposed rule as a result of the comments. One minor edit to remove the word "and" was made in § 660.312 (d)(4)(vii).

#### Classification

NMFS has determined that this final rule is consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

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

A final regulatory flexibility analysis (FRFA) was prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts described in the

IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the complete FRFA is available from NMFS (see **ADDRESSES**).

*Statement of Objective and Need:* A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

*Summary of Significant Issues Raised in Public Comments:* There were no significant issues raised by the public that were specific to the IRFA. However, two comments relate to the economic impacts of the rule. Comments 8 and 9 can be found along with their responses in the Comment and Response section of this preamble.

*A description and an estimate of the number of small entities to which the rule will apply or an explanation why no such estimate is available:* This action requires all commercial fishing vessels not registered to a limited entry groundfish permit that take and retain or possess groundfish in the EEZ (including transiting), or that land groundfish taken in the EEZ and all vessels using non-groundfish trawl gear to fish in the EEZ to have and use VMS. The installation of VMS equipment is projected to affect approximately 1,610 vessels, including: 322 vessels using longline gear (282 directed groundfish, 38 Pacific halibut, and 2 CA halibut); 193 vessels using pot gear (145 directed groundfish, 6 prawn, 21 Dungeness crab and 21 CA sheephead); 131 vessels using non-groundfish trawl gear (23 ridgeback prawn, 14 sea cucumber, and 40 CA halibut, and 54 pink shrimp vessels); 892 vessels using line gear (590 groundfish directed, 58 CA halibut, 10 HMS vessels, and 234 salmon troll vessels); and 72 vessels using net gear (25 HMS and 47 CA halibut). All of the affected entities are considered to be small businesses.

*A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record:* In addition to obtaining VMS units, to support the VMS monitoring program, the following information must be submitted to NMFS: (1) VMS transceiver installation/activation certification reports, (2) hourly position reports, (3) exemption reports, and (4) declaration reports. Installation/activation reports require

vessel owners and operators to follow specific procedures when installing or re-installing a VMS transceiver unit. For example, upon activation, the VMS installer must complete, sign, and return a certification form to NMFS. The form contains information on the VMS hardware and satellite communications services that are provided by private communications companies approved by NMFS. Hourly position reports are automatically transmitted to NMFS via satellite once the VMS transceiver unit is installed and activated. Vessels that are required to have VMS must operate the mobile transceiver unit continuously 24 hours a day. Exemption reports are optional. The exemption reports are sent by the vessel owner or operator when they want their vessel to be excused from the requirement to continuously operate the mobile transceiver unit 24 hours a day throughout the fishing year. Declaration reports are submitted to NMFS Office for Law Enforcement by telephone and are valid until revised by the vessel operator. Vessel operators making declaration reports receive a confirmation number that verifies that the reporting requirements were satisfied. After a vessel has made a declaration report to NMFS and has been confirmed for a specific gear category, it cannot fish with any gear other than a gear type that has been declared for the vessel.

The VMS units that are currently type-approved for this fishery range in cost and service features. This range allows the vessel owner flexibility in choosing the model that best fits the needs of their vessel. Vessels that have already purchased VMS transceiver units for other fisheries or for personal purposes have been given consideration. Vessels will be allowed to retain existing VMS transceivers provided they are on the list of type-approved models and have been upgraded, if necessary, to the level required for the fishery. Per vessel costs for a transceiver unit with installation are \$1,200-\$2,700 (\$3,800 with a computer that meets the minimum specifications) in Year 1, and \$250-\$625 in subsequent years. Annual operating cost to harvesters include: maintenance \$60-\$160, and transmission fees \$192-\$730. Estimated purchase cost of VMS services to the fishing industry if all vessels remain in the fishery is \$2,241,120 - \$7,293,300 in year 1, and \$309,120 - \$1,175,300 in subsequent years. The added cost of VMS may result in vessels, likely those vessels with the lowest ex-vessel revenue from groundfish, choosing to not retain groundfish to avoid VMS

requirements. The analysis assumes that vessels will pay for VMS. However, Federal funds have been identified for VMS reimbursements in 2007. The availability of these funds for reimbursement for the cost of purchasing a VMS transceiver unit is not guaranteed, but funds are anticipated to be available to open access fishers on a first-come first-served basis.

The benefits of VMS to the fishery participants include the potential for future increases in groundfish catch because the likelihood of Rockfish Conservation Area (RCA) integrity being maintained is increased. This would result in greater stability in the fishery and be of greatest benefit to fishers with a high degree of dependency on groundfish. VMS would allow for greater flexibility in the use of management rules, because accurate pot, longline, non-groundfish trawl, line and net gear fishing location data will be readily available for modeling total catch and making groundfish management decisions. VMS data could be used along with declaration reports, observer data, survey information, and fish ticket data to better refine estimates of total fishing mortality and reduce the uncertainty in managing the fishery inseason to stay within the harvest guidelines and OYs. For vessels that participate in the incidental open access fisheries, accurate VMS fishing location data may be beneficial to non-groundfish target fisheries management. Because pink shrimp vessels are currently permitted to fish in the RCAs, there is no increased benefit to the pink shrimp fishery over status quo, but there is benefit to the groundfish fishers from the increased protection that this provision will provide to groundfish Essential Fish Habitat.

Vessels required to carry VMS transceiver units will provide installation/activation reports, hourly position reports, exemption reports, and declaration reports. The installation and activation reports include contact information from open access vessels because there are no Federal permit requirements for open access fishery participants. Having contact information is necessary in the event that there are transmission problems, where NMFS will need to have ready access to contact information and installation information. The submission of declaration reports was initially proposed as per trip reports. Following consultation with fishery participants, it was determined that the needs of NMFS OLE and the United States Coast Guard (USCG) could be met with less frequently made declaration reports.

Therefore, it was determined that a declaration report identifying the type of gear being used by a vessel would remain valid until revised by the vessel operator or an exemption report was sent. This results in a significant reduction in the number of reports.

*A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities, consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and the reason that each one of the other significant alternatives to the rule considered by the agency was rejected:* Through Council processes including several public hearings along the coast, many alternatives were considered and crafted that weighed conservation and management needs against the economic impacts upon various components of the open access fleets.

Following consultation with fishery participants prior to implementation of the pilot VMS program in the limited entry fisheries, it was determined that some vessel owners may prefer to reduce the costs of reporting when leaving the EEZ off the coasts of Washington, Oregon, and California. Because a substantial number of permitted vessels also fish in waters off Alaska and in areas outside the EEZ, and because vessels are commonly pulled out of the water for extended periods, a VMS hourly report exemption option was added, which included an exemption report.

During the development of the expanded VMS program, additional exemptions were considered and proposed for vessels that transfer the limited entry permit from the vessel and do not engage in any fishing off the West Coast for the remainder of the year, vessels that depart the open access fishery for an extended period after the end of the fishing year, and for vessels that have had an emergency situation that resulted in vessel damage such as fire, flooding or other extensive physical damage that would require the VMS or power source to be disconnected. The exemption reports allow flexibility to the industry participants while providing NMFS OLE with the information needed to determine why a position report is not being received from the vessel.

Declaration reports have been required since January 1, 2004, for non-groundfish trawl vessels that are used to fish in any trawl RCAs or the Cowcod Conservation Areas (CCAs). Requiring declaration reports for all fishing, not just fishing in any trawl RCA or the

CCA, will be an additional burden for these vessels. Non-groundfish trawl gear includes vessels fishing for pink shrimp, spot and ridgeback prawns, California halibut and sea cucumber.

At the Council's June 2005 meeting, measures to protect groundfish EFH were considered, as mandated by the Magnuson-Stevens Act. Though the habitat protection measures have been developed as a separate action from the VMS program, monitoring measures such as VMS were considered as a tool for monitoring incursions into the many new habitat protection areas. As part of the habitat protection measures, the Council requested that VMS requirements for pink shrimp trawlers operating in the open access sector (those pink shrimp trawl vessels that are registered to limited entry permits are already required to have VMS) be included in the open access VMS analysis. Therefore, Alternative 4B was added to the EA/RIR/IRFA, with the difference being the inclusion of all pink shrimp trawl vessels.

A range of 13 alternatives, discussed in sections 2.0 and 4.0 of the EA for this action, was considered. The alternatives ranged from Alternative 1, status quo, which required declaration reports from open access non-groundfish trawl vessels that fish within a trawl RCA to Alternative 11, the preferred alternative being implemented by this final rule. The coverage levels identified as Alternatives 2-4A and 5A were based on different combinations of the open access gear groups. In order of coverage priority, the open access sectors initially identified as needing VMS coverage were: longline, groundfish pot, trawl (excluding shrimp), and line (excluding salmon). Alternative 2 requires all vessels using longline gear to have and use a VMS transceiver. Each of the Alternatives 3, 4 and 5A built on the previous alternative by adding the next open access gear group in order of priority.

At its September 2004 meeting, the Council recommended that NMFS expand the range to eight alternatives (Alternatives 1-4A, 5A, 5B, 6A and 7) and conduct further analysis. Alternative 5B was added and is based on Enforcement Consultants recommendations to the Council. Alternative 5B excludes vessels in fisheries where incidental catch of overfished species was considered to be very low; however, it includes salmon troll vessels. Alternative 6A, though modified by the Council, was based on the Groundfish Advisory Panel's (GAP) majority view. Under Alternative 6A, VMS would be required on any commercial fishing vessel for which an

RCA restriction applied. This alternative was viewed by the GAP as a simple and straightforward way to maintain the integrity of the RCAs. Alternative 7 is the GAP minority alternative, and is basically the same as Alternative 6A, except that vessels under 12 feet (ft) (3.7 meters) in length are excluded. Alternative 6B was recommended by the Ad Hoc VMS Committee. Alternative 6B is the same as Alternative 6A, except that only salmon troll vessels north of 40°10' N. lat. that fish pursuant to the harvest guidelines, quotas, and other management measures governing the open access fishery for groundfish species other than yellowtail rockfish would be required to carry and use a VMS transceiver and provide declaration reports.

At its April 2005 meeting, the Council specifically asked that NMFS examine new alternatives with thresholds for identifying vessels that land insignificant amounts of groundfish and low impact fisheries that could be considered as exceptions to the VMS requirement. In addition, concerns were expressed by the Council about the cost of a VMS system to maintain the integrity of the RCA management regime for the open access fisheries being borne by industry. As a result of Council discussion, NMFS developed three new alternatives, identified as Alternatives 8–10. Alternative 8 was intended to exclude low impact OA fisheries from the VMS requirements. These low impact target fisheries and gear included: Dungeness crab pot, spot prawn pot, sea cucumber trawl, ridgeback prawn trawl, HMS line, and California sheephead pot. Alternative 9 was intended to identify vessels that directly targeted open access species. Vessels that land more than 500 lb (227 kilograms) of groundfish in a fishing year would have been included in the VMS and declaration requirements. Under Alternative 10, RCA management areas defined at 660.383 (c) would be discontinued and trip limits and seasons adjusted accordingly.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0478. Public reporting burden for this collection of information is estimated to average as follows: 4 minutes per response for each declaration report at an estimated time burden on the public of 2,848 hours annually for all 2,034 respondents; At 4 hours per response for installation (installation occurs one time

every four years because VMS units have a 4 year service life) of the VMS transceiver unit and 5 minutes per response to send the installation/activation report with an estimated time burden to the public from all 2,034 respondents of 2,034 hours for installation of the VMS transceiver units and 41 hours annually for sending the installation/activation report; At 5 seconds per response for each hourly position report that is sent automatically by the VMS transceiver unit, the expected time burden on the public from all 2,034 respondents would be 24,747 hours annually; and at 4 minutes per response for each exemption report the expected time burden on the public from 500 respondents would be 64 hours annually. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, 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.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the

destruction or adverse modification of critical habitat.

NMFS reinitiated a formal ESA section 7 consultation in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new West Coast Groundfish Observer Program data became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook Evolutionarily Significant Units (ESUs) most likely affected by the whiting fishery have generally improved in status since the 1999 ESA section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior “no jeopardy” conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) and the Southern Distinct Population Segment of green sturgeon (71 FR 17757, April 7, 2006) were recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the Council’s Groundfish FMP. After reviewing the available information, NMFS concluded that, in keeping with

section 7(a)(2) of the ESA, allowing the fishery to continue under this action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. Pursuant to Executive Order 13175, this action was developed through the Council process with meaningful collaboration with tribal officials from the area covered by the FMP. The tribal representative on the Council did not make a motion on this action for tribal fisheries because this action does not apply to tribal fishers.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: December 1, 2007.

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 amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

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

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

2. In § 660.302, the definitions for "Closure", "Exempted gear" and "Groundfish Conservation Area or GCA" are removed, the definitions for "Fishing gear" paragraph (11) introductory text, "Open access fishery" and "Open access gear" are revised, and the definitions for "Closure or closed", "Conservation area(s)" and "Continuous transiting or transit through" are added to read as follows:

§ 660.302 Definitions.

\* \* \* \* \*

Closure or closed means, when referring to closure of a fishery or a closed fishery, that taking and retaining, possessing, or landing the particular species or species group covered by the fishing closure is prohibited. Unless otherwise announced in the Federal Register or authorized in this subpart, offloading must begin before the closure time.

\* \* \* \* \*

Conservation area(s) means either a Groundfish Conservation Area (GCA),

an Essential Fish Habitat Conservation Area (EFHCA), or both.

(1) Groundfish Conservation Area or GCA means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. GCAs are created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species. Regulations at § 660.390 define coordinates for these polygonal GCAs: Yelloweye Rockfish Conservation Areas, Cowcod Conservation Areas, waters encircling the Farallon Islands, and waters encircling the Cordell Banks. GCAs also include Rockfish Conservation Areas or RCAs, which are areas closed to fishing by particular gear types, bounded by lines approximating particular depth contours. RCA boundaries may and do change seasonally according to the different conservation needs of the different overfished species. Regulations at § 660.390 through 660.394 define RCA boundary lines with latitude/longitude coordinates; regulations at Tables 3 5 of Part 660 set RCA seasonal boundaries. Fishing prohibitions associated with GCAs are in addition to those associated with EFH Conservation Areas.

(2) Essential Fish Habitat Conservation Area or EFHCA means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. EFHCAs are created and enforced for the purpose of contributing to the protection of West Coast groundfish essential fish habitat. Regulations at §§ 660.396 - .399 define EFHCA boundary lines with latitude/longitude coordinates. Fishing prohibitions associated with EFHCAs, which are found at § 660.306, are in addition to those associated with GCAs.

Continuous transiting or transit through means that a fishing vessel crosses a groundfish conservation area or EFH conservation area on a constant heading, along a continuous straight line course, while making way by means of a source of power at all times, other than drifting by means of the prevailing water current or weather conditions.

\* \* \* \* \*

Fishing gear \* \* \*

(11) Trawl gear means a cone or funnel-shaped net that is towed through the water, and can include a pair trawl that is towed simultaneously by two boats. Groundfish trawl is trawl gear that is used under the authority of a valid limited entry permit issued under this subpart endorsed for trawl gear. It

does not include any type of trawl gear listed as non-groundfish trawl gear. Non-groundfish trawl gear is any trawl gear other than the Pacific Coast groundfish trawl gear that is authorized for use with a valid groundfish limited entry permit. Non-groundfish trawl gear includes pink shrimp, ridgeback prawn, California halibut south of Pt. Arena, and sea cucumbers south of Pt. Arena.

\* \* \* \* \*

Open access fishery means the fishery composed of commercial vessels using open access gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the harvest of open access allocations (detailed in § 660.320 and Tables 1–2 of this subpart) or governing the fishing activities of open access vessels (detailed in § 660.383 and Table 5 of this subpart.) Any commercial vessel that is not registered to a limited entry permit and which takes and retains, possesses or lands groundfish is a participant in the open access groundfish fishery.

Open access gear means all types of fishing gear except:

- (1) Longline or trap (or pot) gear fished by a vessel that has a limited entry permit affixed with a gear endorsement for that gear.
(2) Groundfish trawl.

\* \* \* \* \*

3. In § 660.303, paragraph (d) is revised to read as follows:

§ 660.303 Reporting and recordkeeping.

\* \* \* \* \*

(d) Declaration reporting requirements—(1) Declaration reports for vessels registered to limited entry permits. The operator of any vessel registered to a limited entry permit must provide NMFS OLE with a declaration report, as specified at paragraph(d)(5)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to fish in U.S. ocean waters between 0 and 200 nm offshore of Washington, Oregon, or California.

(2) Declaration reports for all vessels using non-groundfish trawl gear. The operator of any vessel that is not registered to a limited entry permit and which uses non-groundfish trawl gear to fish in the EEZ (3–200 nm offshore), must provide NMFS OLE with a declaration report, as specified at paragraph(d)(5)(iv) of this section, before the vessel leaves port to fish in the EEZ.

(3) Declaration reports for open access vessels using non-trawl gear (all types of open access gear other than non-groundfish trawl gear). The operator of

any vessel that is not registered to a limited entry permit, must provide NMFS with a declaration report, as specified at paragraph(d)(5)(iv) of this section, before the vessel leaves port on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ.

(4) *Declaration reports for tribal vessels using trawl gear.* The operator of any tribal vessel using trawl gear must provide NMFS with a declaration report, as specified at paragraph (d)(5)(iv) of this section, before the vessel leaves port on a trip in which fishing occurs within the trawl RCA.

(5) *Declaration reports.*

(i) The operator of a vessel specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section must provide a declaration report to NMFS OLE prior to leaving port on the first trip in which the vessel meets the requirement specified at § 660.312 (b) to have a VMS.

(ii) The vessel operator must send a new declaration report before leaving port on a trip in which a gear type that is different from the gear type most recently declared for the vessel will be used. A declaration report will be valid until another declaration report revising the existing gear declaration is received by NMFS OLE.

(iii) During the period of time that a vessel has a valid declaration report on file with NMFS OLE, it cannot fish with a gear other than a gear type declared by the vessel.

(iv) Declaration reports will include: the vessel name and/or identification number, and gear type (as defined in paragraph(d)(5)(iv)(A) of this section). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration requirement was met is the responsibility of the vessel owner or operator. Vessels using non-trawl gear may declare more than one gear type, however, vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(5)(iv)(A) of this section on any trip and may not declare non-trawl gear on the same trip in which trawl gear is declared.

(A) One of the following gear types must be declared:

- (1) Limited entry fixed gear,
- (2) [Reserved]
- (3) Limited entry midwater trawl,
- (4) Limited entry bottom trawl, not including demersal trawl,
- (5) Limited entry demersal trawl,

(6) Non-groundfish trawl gear for pink shrimp,

(7) Non-groundfish trawl gear for ridgeback prawn,

(8) Non-groundfish trawl gear for California halibut,

(9) Non-groundfish trawl gear for sea cucumber,

(10) Open access longline gear for groundfish,

(11) Open access Pacific halibut longline gear,

(12) Open access groundfish trap or pot gear,

(13) Open access Dungeness crab trap or pot gear,

(14) Open access prawn trap or pot gear,

(15) Open access sheephead trap or pot gear,

(16) Open access line gear for groundfish,

(17) Open access HMS line gear,

(18) Open access salmon troll gear,

(19) Open access California Halibut line gear,

(20) Open access net gear,

(21) Other gear, and

(22) Tribal trawl.

(B) [Reserved]

\* \* \* \* \*

■ 4. In § 660.306, paragraphs (h)(4) through (h)(10) are redesignated as (h)(5) through (h)(11), paragraphs (h)(1) through (h)(3) are revised, and a new paragraph (h)(4) is added, paragraphs (i)(7), (i)(8), (j)(1), and (j)(6) are revised, and (j)(7) and (j)(8) are added to read as follows:

**§ 660.306 Prohibitions.**

\* \* \* \* \*

(h) \* \* \*

(1) Operate any vessel registered to a limited entry permit with a trawl endorsement and trawl gear on board in a applicable GCA (as defined at § 660.381 (d)), except for purposes of continuous transiting, with all groundfish trawl gear stowed in accordance with § 660.381(d), or except as authorized in the groundfish management measures published at § 660.381.

(2) Operate any vessel registered to a limited entry permit with a longline or trap (pot) endorsement and longline and/or trap gear onboard in an applicable GCA (as defined at § 660.382(c)), except for purposes of continuous transiting, with all groundfish longline and/or trap gear stowed in accordance with § 660.382(c) or except as authorized in the groundfish management measures at § 660.382.

(3) Operate any vessel with non-groundfish trawl gear onboard in any

applicable GCA (as defined at § 660.383 (c)) except for purposes of continuous transiting, with all trawl gear stowed in accordance with § 660.383 (c), or except as authorized in the groundfish management measures published at § 660.383.

(4) Operate any vessel in an applicable GCA (as defined at § 660.383 (c)) that has non-trawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, possess or land groundfish taken in the EEZ, except for purposes of continuous transiting, with all groundfish non-trawl gear stowed in accordance with § 660.383(c), or except as authorized in the groundfish management measures published at § 660.383.

\* \* \* \* \*

(i) \* \* \*

(7) Fail to provide departure or cease fishing reports specified at § 660.314 (c)(2).

(8) Fail to meet the vessel responsibilities specified at § 660.314 (d).

(j) \* \* \*

(1) Use any vessel required to operate a VMS unit under § 660.312 (b) unless that vessel carries a NMFS OLE type-approved mobile transceiver unit and complies with all the requirements described at § 660.312.

\* \* \* \* \*

(6) Register the same VMS transceiver unit to more than one vessel at the same time.

(7) Falsify any VMS activation report or VMS exemption report that is authorized or required, as specified at § 660.312.

(8) Falsify any declaration report that is required, as specified at § 660.303.

■ 5. In § 660.312, paragraphs (b),(d)(1),(d)(2) introductory text, (d)(2)(ii),(d)(3),(d)(4) introductory text, and (d)(4)(iii) and (iv) are revised, and (d)(4)(v) through (d)(4)(vii) are added to read as follows:

**§ 660.312 Vessel Monitoring System (VMS) requirements.**

\* \* \* \* \*

(b) *Who is required to have VMS?* The following vessels are required to install a NMFS OLE type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to fishing:

(1) Any vessel registered for use with a limited entry permit that fishes in state or Federal waters seaward of the



baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

(2) Any vessel that uses non-groundfish trawl gear to fish in the EEZ.

(3) Any vessel that uses open access gear to take and retain, or possess groundfish in the EEZ or land groundfish taken in the EEZ.

\* \* \* \* \*

(d) \* \* \*

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may obtain a copy of the VMS installation and operation instructions from the NMFS OLE Northwest, VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115–6349, phone: (206) 526–6133.

(2) Activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a trip in which VMS is required, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS, Northwest OLE VMS Program Manager upon request at 7600 Sand Point Way NE., Seattle, WA 98115–6349, phone: (206)526–6133. An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may participate in a fishery requiring the VMS.

\* \* \* \* \*

(ii) *Transferring ownership of VMS unit.* Ownership of the VMS transceiver unit may be transferred from one vessel owner to another vessel owner if all of the following documents are provided to NMFS OLE: a new activation report, which identifies that the transceiver unit was previously registered to another vessel; a notarized bill of sale showing proof of ownership of the VMS transceiver unit; 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.

(3) *Transceiver unit operation.* Operate and maintain in good working order the mobile transceiver unit continuously 24 hours a day throughout the fishing year, unless such vessel is exempted under paragraph (d)(4) of this section. The mobile transceiver unit must transmit a signal accurately

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 (b)(4) of this section, has been received by NMFS OLE. Less frequent position reporting at least once every four hours is authorized when a vessel remains in port for an extended period of time, but the mobile transceiver unit must remain in continuous operation at all times unless the vessel is exempted under this section.

(4) *VMS exemptions.* A vessel that is required to operate the mobile transceiver unit continuously 24 hours a day throughout the fishing year may be exempted from this requirement if a valid exemption report, as described at paragraph (d)(4)(vii) of this section, is received by NMFS OLE and the vessel is in compliance with all conditions and requirements of the VMS exemption identified in this section and specified in the exemption report.

\* \* \* \* \*

(iii) *Permit transfer exemption.* If the limited entry permit has been transferred from a vessel (for the purposes of this section, this includes permits placed into "unidentified" status) the vessel may be exempted from VMS requirements providing the vessel is not used to fish in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore) for the remainder of the fishing year. If the vessel is used to fish in this area for any species of fish at any time during the remaining portion of the fishing year without being registered to a limited entry permit, the vessel is required to have and use VMS.

(iv) *Long-term departure exemption.* A vessel participating in the open access fishery that is required to have VMS under § 660.312 (b)(2) or 660.312 (b)(3) may be exempted from VMS provisions after the end of the fishing year in which it participated in the open access fishery, providing the vessel submits a completed exemption report signed by the vessel owner that includes a statement signed by the vessel owner indicating that the vessel will not be used to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ during the new fishing year.

(v) *Emergency exemption.* Vessels required to have VMS under 660.312(b) 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 apply for an emergency exemption from the VMS requirements specified in § 660.312(b) for his/her vessel by sending a written request to NMFS OLE specifying the following information: 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. NMFS OLE will issue a written determination granting or denying the emergency exemption request. A vessel will not be covered by the emergency exemption until NMFS OLE issues a determination granting the exemption. If an exemption is granted, the duration of the exemption will be specified in the NMFS OLE determination.

(vi) *Submission of exemption reports.* Signed long-term departure exemption reports must be submitted by fax or by emailing a electronic copy of the actual report. In the event of an emergency in which an emergency exemption request will be submitted, initial contact with NMFS OLE must be made by telephone, fax or email within 24 hours from when the incident occurred. Emergency exemption requests must be requested in writing within 72 hours from when the incident occurred. Other exemption reports must be submitted through the VMS or another method that is approved by NMFS OLE and announced in the **Federal Register**. Submission methods for exemption requests, except long-term departures and emergency exemption requests, may include email, facsimile, or telephone. NMFS 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. NMFS will bear no responsibility if a notification is sent to the address of record for the vessel owner and is not received because the vessel owner's actual address has changed without notification to NMFS, as required at § 660.335(a)(2). Owners of vessels required to use VMS who do not receive instructions by mail are responsible for contacting NMFS OLE during business hours at least 3 days before the exemption is required to obtain information needed to make exemption reports. NMFS OLE must be contacted during business hours (Monday through Friday between 0800 and 1700 Pacific Time).

(vii) *Valid exemption reports.* For an exemption report to be valid, it must be

received by NMFS at least 2 hours and not more than 24 hours before the exempted activities defined at paragraph (d)(4)(i) through (iv) of this section occur. 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; at least 2 hours before the vessel resumes fishing for any species of fish in state or Federal waters off the States of Washington, Oregon, or California after it has received a permit transfer exemption; or at least 2 hours before a vessel resumes fishing in the open access fishery after a long-term departure exemption. If a vessel is required to submit an activation report under § 660.312(d)(2)(i) before returning to fish, that report may substitute for the exemption cancellation. Initial contact must be made with NMFS OLE not more than 24 hours after the time that an emergency situation occurred in which VMS transmissions were disrupted and followed by a written emergency exemption request 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 NMFS at least 2 hours before the vessel resumes fishing.

\* \* \* \* \*

■ 6. In § 660.335, paragraph (f)(1) is revised to read as follows:

**§ 660.335 Limited entry permits – renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.**

\* \* \* \* \*

(f) \* \* \*

(1) A permit owner may designate the vessel registration for a permit as “unidentified,” meaning that no vessel has been identified as registered for use with that permit. No vessel is authorized to use a permit with the vessel registration designated as “unidentified.” A vessel owner who removes a permit from his vessel and registers that permit as “unidentified” is not exempt from VMS requirements at § 660.312 unless specifically authorized by that section.

\* \* \* \* \*

■ 7. In § 660.381, paragraph (b)(4), (c)(4), (d) introductory text, (d)(4) and (d)(5) are revised to read as follows:

**§ 660.381 Limited entry trawl fishery management measures.**

\* \* \* \* \*

(b) \* \* \*

(4) *Large footrope trawl gear.* Large footrope gear is bottom trawl gear with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope). Fishing with bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling or tied along the length of the footrope) is prohibited anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.395.

\* \* \* \* \*

(c) \* \* \*

(4) *More than one type of trawl gear on board.* The cumulative trip limits in Table 3 (North) or Table 3 (South) of this subpart must not be exceeded.

(i) The following restrictions apply to vessels operating north of 40°10' N. lat.:

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom trawl gear and midwater trawl gear onboard simultaneously. A vessel may have more than one type of limited entry bottom trawl gear on board, either simultaneously or successively, during a cumulative limit period.

(B) If a vessel fishes exclusively with large or small footrope trawl gear during an entire cumulative limit period, the vessel is subject to the small or large footrope trawl gear cumulative limits and that vessel must fish seaward of the RCA during that limit period.

(C) If a vessel fishes exclusively with selective flatfish trawl gear during an entire cumulative limit period, then the vessel is subject to the selective flatfish trawl gear cumulative limits during that limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(D) If more than one type of bottom trawl gear (selective flatfish, large footrope, or small footrope) is on board, either simultaneously or successively, at any time during a cumulative limit period, then the most restrictive cumulative limit associated with the bottom trawl gear on board during that cumulative limit period applies for the entire cumulative limit period, regardless of whether the vessel is fishing shoreward or seaward of the RCA.

(E) If a vessel fishes both north and south of 40°10' N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count

toward the cumulative trip limit for that gear (See crossover provisions at § 660.370(h)(8).)

(F) Midwater trawl gear is allowed only for vessels participating in the primary whiting season.

(ii) The following restrictions apply to vessels operating south of 40°10' N. lat.:

(A) A vessel may not have both groundfish trawl gear and non-groundfish trawl gear onboard simultaneously. A vessel may not have both bottom trawl gear and midwater trawl gear onboard simultaneously. A vessel may not have small footrope trawl gear and any other type of bottom trawl gear onboard simultaneously.

(B) For vessels using more than one type of trawl gear during a cumulative limit period, limits are additive up to the largest limit for the type of gear used during that period. (Example: If a vessel harvests 300 lb (136 kg) of chilipepper rockfish with small footrope gear, it may harvest up to 11,700 lb (5,209 kg) of chilipepper rockfish with large footrope gear during July and August 2007, because the largest cumulative limit for chilipepper rockfish during that period is 12,000 lb (5,443 kg) for large footrope gear.)

(C) If a vessel fishes both north and south of 40°10' N. lat. with any type of small footrope gear onboard the vessel at any time during the cumulative limit period, the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear (See crossover provisions at § 660.370(h)(8).)

(d) *Groundfish Conservation Areas (GCAs) applicable to trawl vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.390 through 660.394. A vessel that is fishing within a GCA listed in this paragraph(d) with trawl gear authorized for use within a GCA may not have any other type of trawl gear on board the vessel. The following GCAs apply to vessels participating in the limited entry trawl fishery.

\* \* \* \* \*

(4) *Trawl rockfish conservation areas.* The trawl RCAs are closed areas, defined by specific latitude and longitude coordinates which are specified at §§ 660.390 through 660.394. Boundaries for the trawl RCAs applicable to groundfish trawl vessels throughout the year are provided in the header to Table 3 (North) and Table 3 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c).

(j) It is unlawful to operate a vessel with trawl gear onboard within the trawl RCA, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in this section. It is lawful to fish with groundfish trawl gear within the trawl RCA only under the following conditions: vessels fishing with mid-water trawl gear on Pacific whiting trips during the primary whiting season, provided a valid declaration report has been filed with NMFS OLE, as required at § 660.303(d); and vessels fishing with demersal seine gear between 38° N. lat. and 36° N. lat. shoreward of a boundary line approximating the 100 fm (183 m) depth contour as defined at § 660.393, provided a valid declaration report has been filed.

(ii) Trawl vessels may transit through an applicable GCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with midwater trawl gear for whiting during a primary season.

(iii) It is unlawful to take and retain, possess, or land groundfish taken with limited entry trawl gear within the trawl RCA, unless otherwise authorized in this section.

(iv) If a vessel fishes in the trawl RCA, it may not participate in any fishing on that trip that is prohibited within the trawl RCA. [For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supercedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

(5) *Essential Fish Habitat Conservation Areas.* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.395 through 660.399, where specified types of fishing are prohibited in accordance with § 660.306. EFHCAs apply to vessels using bottom trawl gear or to vessels using “bottom contact gear,” which is defined at § 660.302 to include bottom trawl gear, among other gear types.

(i) The following EFHCAs apply to vessels operating within the West Coast EEZ with bottom trawl gear:

(A) *Seaward of a boundary line approximating the 700-fm (1280-m) depth contour.* Fishing with bottom trawl gear is prohibited in waters of depths greater than 700 fm (1280 m) within the EFH, as defined by specific latitude and longitude coordinates at § 660.395 and § 660.396.

(B) *Shoreward of a boundary line approximating the 100-fm (183 m) depth contour.* Fishing with bottom trawl gear with a footrope diameter greater than 8 inches (20 cm) is prohibited in waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour, as defined by specific latitude and longitude coordinates at § 660.393.

(C) *EFHCAs for all bottom trawl gear.* Fishing with bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.397 - .398: Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(D) *EFHCAs for all bottom trawl gear, except demersal seine gear.* Fishing with bottom trawl gear except demersal seine gear (defined at § 660.302) is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.399: Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(ii) *EFHCAs for bottom contact gear, which includes bottom trawl gear.* Fishing with bottom contact gear, including bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.398 through 660.399: Thompson Seamount, President Jackson Seamount, Cordell Bank (50 fm (91 m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with

bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined with specific latitude and longitude coordinates at § 660.395.

■ 8. In § 660.382, paragraph (c) introductory text, and paragraphs (c)(4)(i), (c)(4)(ii), (c)(5), and (c)(8) are revised to read as follows:

**§ 660.382 Limited entry fixed gear fishery management measures.**

\* \* \* \* \*

(c) *Groundfish Conservation Areas applicable to limited entry fixed gear vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.390 through 660.394. A vessel that is authorized by this paragraph to fish within a GCA (e.g. fishing for “other flatfish” using no more than 12 hooks, “Number 2” or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the limited entry fixed gear fishery.

\* \* \* \* \*

(4) \* \* \*  
(i) Fishing for “other flatfish” is permitted within the CCAs under the following conditions: when using no more than 12 hooks, “Number 2” or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line; and provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

(5) *Non-trawl Rockfish Conservation Areas (RCA).* The non-trawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.390 through 660.394) designed to approximate specific depth contours, where fishing for groundfish with non-trawl gear is prohibited. Boundaries for the non-trawl RCA throughout the year are provided in the header to Table 4 (North) and Table 4 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c).

(i) It is unlawful to operate a vessel with limited entry non-trawl gear in the non-trawl RCA, except for the purpose of continuous transit, or when the use of limited entry non-trawl gear is authorized in Part 660. It is unlawful to

take and retain, possess, or land groundfish taken with limited entry non-trawl gear within the non-trawl RCA, unless otherwise authorized in Part 660.

(ii) Limited entry non-trawl vessels may transit through the non-trawl RCA, with or without groundfish on board, provided all groundfish non-trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The non-trawl RCA restrictions in this section apply to vessels registered to fixed gear limited entry permits fishing for species other than groundfish with non-trawl gear on trips where groundfish species are retained. Unless otherwise authorized by Part 660, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the non-trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-trawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the non-trawl RCA. [For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.]

(iv) It is lawful to fish within the non-trawl RCA with limited entry fixed gear only under the following conditions: when fishing for "other flatfish" off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.91 kg) weights per line when trip limits authorize such fishing, provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

\* \* \* \* \*

(8) *Essential Fish Habitat Conservation Areas*. An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.396 through 660.399, where specified types of fishing are prohibited in accordance with § 660.306. EFHCAs apply to vessels using "bottom contact gear," which is defined at § 660.302 to include limited entry fixed gear (longline and pot/trap,) among other gear types. Fishing with all bottom contact gear, including longline and pot/trap gear, is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.398 and § 660.399: Thompson Seamount, President Jackson

Seamount, Cordell Bank (50 fm (91 m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined by specific latitude and longitude coordinates at § 660.395.

■ 9. In § 660.383, paragraphs (b)(1), (c) introductory text, (c)(5)(i), (c)(5)(ii), (c)(6), (c)(7), and (c)(10) are revised to read as follows:

**§ 660.383 Open access fishery management measures.**

\* \* \* \* \*

(b) \* \* \*

(1) *Non-groundfish trawl gear*. Non-groundfish trawl gear is any trawl gear other than limited entry groundfish trawl gear as described at § 660.381(b) and as defined at § 660.302 for trawl vessels with limited entry groundfish permits. Non-groundfish trawl gear is generally trawl gear used to target pink shrimp, ridgeback prawn, California halibut and sea cucumber. Non-groundfish trawl gear is exempt from the limited entry trawl gear restrictions at § 660.381(b). Fishing with bottom trawl gear with a footrope diameter greater than 19 inches (48 cm) (including rollers, bobbins, or other material encircling ro tied along the length of the footrope) is prohibited anywhere in EFH within the EEZ, as defined by latitude/longitude coordinates at § 660.395.

\* \* \* \* \*

(c) *Groundfish Conservation Areas Affecting Open Access Vessels*. A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. A vessel that is authorized by this paragraph to fish within a GCA (e.g. fishing for "other flatfish" using no more than 12 hooks, "Number 2" or smaller), may not simultaneously have other gear on board the vessel that is unlawful to use for fishing within the GCA. The following GCAs apply to vessels participating in the open access groundfish fishery.

\* \* \* \* \*

(5) \* \* \*

(i) Fishing for "other flatfish" is permitted within the CCAs under the following conditions: when using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line; and provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour within the CCAs when trip limits authorize such fishing, and provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

(6) *Non-trawl Rockfish Conservation Areas for the open access fisheries*. The non-trawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.390 through 660.394) designed to approximate specific depth contours, where fishing for groundfish with non-trawl gear is prohibited. Boundaries for the non-trawl RCA throughout the year are provided in the open access trip limit tables, Table 5 (North) and Table 5(South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c).

(i) It is unlawful to operate a vessel in the non-trawl RCA that has non-trawl gear onboard and is not registered to a limited entry permit on a trip in which the vessel is used to take and retain or possess groundfish in the EEZ, or land groundfish taken in the EEZ, except for the purpose of continuous transiting, or when the use of non-trawl gear is authorized in part 660.

(ii) On any trip on which a groundfish species is taken with non-trawl open access gear and retained, the open access non-trawl vessel may transit through the non-trawl RCA only if all groundfish non-trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all lines, so that it is rendered unusable for fishing.

(iii) The non-trawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by Part 660, a vessel may not retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the non-trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-trawl RCA, it may not participate in any fishing for groundfish on that trip that is prohibited within the non-trawl RCA. [For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.]

(iv) Fishing for "other flatfish" off California (between 42° N. lat. south to the U.S./Mexico border) is permitted within the non-trawl RCA with fixed gear only under the following conditions: when using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44

inches) point to shank, and up to two 1-lb (0.91 kg) weights per line when trip limits authorize such fishing; and provided a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE.

(7) *Non-groundfish Trawl Rockfish Conservation Areas for the open access non-groundfish trawl fisheries.* The non-groundfish trawl RCAs are closed areas, defined by specific latitude and longitude coordinates (specified at §§ 660.390 through 660.394) designed to approximate specific depth contours, where fishing for groundfish with non-trawl gear is prohibited. Boundaries for the non-trawl RCA throughout the year are provided in the open access trip limit tables, Table 5 (North) and Table 5 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c).

(i) It is unlawful to operate in the non-groundfish trawl RCA with non-groundfish trawl gear onboard, except for the purpose of continuous transiting, or when the use of trawl gear is authorized in part 660. It is unlawful to take and retain, possess, or land groundfish taken with non-groundfish trawl gear within the non-trawl RCA, unless otherwise authorized in part 660.

(ii) Non-groundfish trawl vessels may transit through the non-groundfish trawl RCA, with or without groundfish on board, provided all non-groundfish trawl gear is stowed either: below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors.

(iii) The non-groundfish trawl RCA restrictions in this section apply to vessels taking and retaining or possessing groundfish in the EEZ, or landing groundfish taken in the EEZ. Unless otherwise authorized by Part 660, it is unlawful for a vessel to retain any groundfish taken on a fishing trip for species other than groundfish that occurs within the non-groundfish trawl RCA. If a vessel fishes in a non-groundfish fishery in the non-groundfish trawl RCA, it may not participate in any fishing on that trip that is prohibited within the non-groundfish trawl RCA. [For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in

the DTS fishery seaward of the RCA.] Nothing in these Federal regulations supercedes any state regulations that may prohibit trawling shoreward of the fishery management area (3–200 nm).

(iv) It is lawful to fish with non-groundfish trawl gear within the non-groundfish trawl RCA only under the following conditions:

(A) Pink shrimp trawling is permitted in the non-groundfish trawl RCA when a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE. Groundfish caught with pink shrimp trawl gear may be retained anywhere in the EEZ and are subject to the limits in Table 5 (North) and Table 5 (South) of this subpart.

(B) When the shoreward line of the trawl RCA is shallower than 100 fm (183 m), vessels using ridgeback prawn trawl gear south of 34°27.00' N. lat. may operate out to the 100 fm (183 m) boundary line specified at § 660.393 when a valid declaration report as required at § 660.303(d) has been filed with NMFS OLE. Groundfish caught with ridgeback prawn trawl gear are subject to the limits in Table 5 (North) and Table 5 (South) of this subpart.

\* \* \* \* \*

(10) *Essential Fish Habitat Conservation Areas.* An EFHCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude at §§ 660.396 through 660.399, where specified types of fishing are prohibited in accordance with § 660.306. EFHCAs apply to vessels using bottom trawl gear and or vessels using “bottom contact gear,” which is defined at § 660.302 and includes, but is not limited to: beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom.

(i) The following EFHCAs apply to vessels operating within the West Coast EEZ with bottom trawl gear:

(A) *Seaward of a boundary line approximating the 700-fm (1280-m) depth contour.* Fishing with bottom trawl gear is prohibited in waters of depths greater than 700 fm (1280 m) within the EFH, as defined by specific latitude and longitude coordinates at § 660.395 and § 660.396.

(B) *Shoreward of a boundary line approximating the 100-fm (183-m) depth contour.* Fishing with bottom trawl gear with a footrope diameter greater than 8 inches (20 cm) is

prohibited in waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour, as defined by specific latitude and longitude coordinates at § 660.393.

(C) *EFHCAs for all bottom trawl gear.* Fishing with all bottom trawl gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.397 through 660.398: Olympic 2, Biogenic 1, Biogenic 2, Grays Canyon, Biogenic 3, Astoria Canyon, Nehalem Bank/Shale Pile, Siletz Deepwater, Daisy Bank/Nelson Island, Newport Rockpile/Stonewall Bank, Heceta Bank, Deepwater off Coos Bay, Bandon High Spot, Rogue Canyon.

(ii) *EFHCAs for all bottom trawl gear, except demersal seine gear.* Fishing with all bottom trawl gear except demersal seine gear (defined at § 660.302) is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at § 660.399: Eel River Canyon, Blunts Reef, Mendocino Ridge, Delgada Canyon, Tolo Bank, Point Arena North, Point Arena South Biogenic Area, Cordell Bank/Biogenic Area, Farallon Islands/Fanny Shoal, Half Moon Bay, Monterey Bay/Canyon, Point Sur Deep, Big Sur Coast/Port San Luis, East San Lucia Bank, Point Conception, Hidden Reef/Kidney Bank (within Cowcod Conservation Area West), Catalina Island, Potato Bank (within Cowcod Conservation Area West), Cherry Bank (within Cowcod Conservation Area West), and Cowcod EFH Conservation Area East.

(iii) *EFHCAs for bottom contact gear, which includes bottom trawl gear.* Fishing with bottom contact gear is prohibited within the following EFHCAs, which are defined by specific latitude and longitude coordinates at §§ 660.398–.399: Thompson Seamount, President Jackson Seamount, Cordell Bank (50-fm (91-m) isobath), Harris Point, Richardson Rock, Scorpion, Painted Cave, Anacapa Island, Carrington Point, Judith Rock, Skunk Point, Footprint, Gull Island, South Point, and Santa Barbara. Fishing with bottom contact gear is also prohibited within the Davidson Seamount EFH Area, which is defined by specific latitude and longitude coordinates at § 660.395.

\* \* \* \* \*