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Dated: June 13, 2011.

Rachel Jacobson,

*Acting Assistant Secretary for Fish and
Wildlife and Parks.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110520295-1295-01]

RIN 0648-BA64

Atlantic Highly Migratory Species; Vessel Monitoring Systems

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

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes to require replacement of currently

required Mobile Transmitting Unit (MTU) Vessel Monitoring System (VMS) units with Enhanced Mobile Transmitting Unit (E-MTU) VMS units in Atlantic HMS fisheries; implement a declaration system that requires vessels to declare target fishery and gear type(s) possessed on board; and require that a qualified marine electrician install all E-MTU VMS units. This proposed rulemaking would remove dated MTU VMS units from service in Atlantic HMS fisheries, make Atlantic HMS VMS requirements consistent with other VMS-monitored Atlantic fisheries, provide the National Marine Fisheries Service Office of Law Enforcement (NMFS Enforcement) with enhanced communication with HMS vessels at sea. This rule would affect all HMS pelagic longline (PLL), bottom longline (BLL), and shark gillnet fishermen who

are currently required to have VMS onboard their vessels.

DATES: Comments on this proposed rule must be submitted by August 1, 2011. NMFS will hold three public hearings for this proposed rule in July 2011. For specific dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: The public hearings will be held in Florida, Louisiana, and New Jersey. For specific locations see the **SUPPLEMENTARY INFORMATION** section of this document.

You may submit comments, identified by 0648-BA64, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.
- *Fax:* 301-713-1917, Attn: Michael Clark.
- *Mail:* Highly Migratory Species Management Division (SF1), 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Atlantic Highly Migratory Species Management Division and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285

FOR FURTHER INFORMATION CONTACT: Greg Fairclough, (phone: 727-824-5399, fax: 727-824-5398) or Michael Clark (phone: 301-713-2347, fax: 301-713-1917).

Copies of this proposed rule and related documents, including the Regulatory Impact Review and Initial Regulatory Flexibility Analysis, can be obtained by writing to the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910, visiting the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/>, or by

contacting Greg Fairclough or Michael Clark.

SUPPLEMENTARY INFORMATION:

Background

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

Maintaining NMFS's VMS monitoring program ensures compliance with both international and domestic requirements while facilitating enforcement of Atlantic HMS fisheries regulations. As a Contracting Party of ICCAT, the United States is required to collect biological statistics for research purposes (fishing effort and catch) and to implement, maintain, and monitor a viable VMS program for vessels in certain Atlantic HMS fisheries. Requirements to use VMS in the PLL fishery were implemented (June 25, 2003, 68 FR 37772) prior to ICCAT Recommendation's (03-14 and 04-11) that concern VMS usage in the convention area.

In addition, NMFS issued a rule on December 24, 2003 (68 FR 74746), which required VMS operation for vessels with BLL gear onboard between 33°00' N. latitude and 36°30' N. latitude to ensure compliance with the mid-Atlantic shark closed area. This same rule extended VMS requirements for shark gillnet vessels operating during the right whale calving season. This rule was implemented in December 2003 for purposes of domestic Atlantic shark management.

Properly functioning MTU VMS units aid NMFS enforcement agents in monitoring and enforcing closed or restricted areas implemented to reduce bycatch of undersized swordfish, sharks, sea turtles, and other species necessary to comply with the Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Standard 9 (bycatch and bycatch mortality reduction) of the MSA. There are numerous areas closed to fishing with PLL and BLL gear. Additionally, the location of all shark

gillnet vessels is monitored using VMS between November 15 and April 15 to protect right whales consistent with legal requirements. NMFS has implemented complementary regulations enforcing closed areas that were created by the Gulf of Mexico, Caribbean, and South Atlantic Fishery Management Councils. The effectiveness of traditional methods of monitoring and surveillance, such as vessel and aerial patrols, is increased tremendously through the addition of VMS—particularly where large geographic areas are involved. VMS has been required in various HMS fisheries since 2003.

The MTU VMS unit is currently required to report positions on an hourly basis when HMS fishing vessels carrying PLL, BLL, or shark gillnet gear are away from port. The MTU VMS units report vessel position only, and, in some instances, do not even indicate whether the unit is on and functioning properly. The MTU VMS unit technology is dated, and NMFS enforcement has reported that these units have failed to report while vessels are at sea. NMFS enforcement agents have also reported difficulty communicating with vessels when needed, such as when closed areas change due to an emergency rule. The newer E-MTU VMS units use more recent technology that, in addition to reporting vessel position, allows for two-way communication. By requiring that E-MTU VMS units be professionally installed and used to replace the dated MTU VMS units, NMFS will ensure that newer, more reliable, technology is in use, improve fisheries monitoring and enforcement of regulations, and provide NMFS enforcement agents with the ability to communicate directly with vessels at sea via electronic messaging and other means. With this newer technology, NMFS enforcement agents could: notify vessel operators of emergency changes to closed areas; provide notice of fishery closures in real time; inform operators of environmental disasters (oil rig fires/oil spills); send notice of dangerous weather; and receive distress or emergency transmissions.

NMFS is also proposing that, two hours prior to leaving port, fishermen provide NMFS enforcement with notice of the beginning of a fishing trip and a declaration of the target fishery and gear onboard. In addition, this proposed rule would require vessel operators to provide a minimum of three hours' advance notice of landing. Currently, vessel operators are required to turn on the VMS unit two hours before leaving port. Under this proposed rule, vessel

operators would also need to declare the species being targeted and the gear being used. Creating a fishery declaration system would facilitate enforcement and compliance monitoring. Vessels may be permitted to participate in multiple fisheries that authorize numerous fishing gears. The declaration system would provide NMFS enforcement with advance notice of the target fishery and gear possessed onboard which provides enforcement with critical information concerning which regulations apply to that particular vessel during that trip.

Any new declaration system would be compatible with the capabilities of newly required E-MTU VMS units and consistent with declaration protocols currently employed in Council-managed fisheries. Additionally, the requirement to notify NMFS enforcement at least three hours prior to returning to port provides notification that fishing activities are being completed, gear is no longer being deployed, and the vessel is transiting back to port.

Additionally, vessels with E-MTU VMS units would be able to communicate through electronic messages with shore-based fishery personnel, which could allow fishery participants to: Communicate directly with NMFS enforcement in the case of a power disruption; download updated E-MTU software without removal of the device; communicate with manufacturers to remedy malfunctions; receive required software upgrades with little interference; communicate with vessel owners and fish houses; and send distress calls to monitoring companies in the event of an emergency. Although some of these features are potentially useful functions, they are not the primary purpose of VMS and, it is important that fishermen not see them as a substitute for required safety equipment such as a properly installed and functioning Emergency Position Indicating Radio Beacon (EPIRB).

Currently, an installation and activation checklist must be submitted by the vessel owner to NMFS enforcement after installation of a VMS unit. This proposed rulemaking would require that this checklist be filled out and signed by a qualified marine electrician and returned to NMFS enforcement by the vessel owner in order to demonstrate that the unit was installed properly. The installation and activation checklist is available from NMFS.

On January 31, 2008, NMFS published in the **Federal Register** a type-approval notice listing the specifications for approved E-MTU VMS units (73 FR 5813). These type-approval notices may be updated in the future as specifications change and/or new units become approved. Currently, if an existing MTU VMS unit fails and is not able to be repaired, the vessel owner in Atlantic HMS fisheries that are subject to VMS regulations would be required to purchase and use E-MTU VMS units that are approved by NMFS.

Reimbursement funds are available for participants upgrading to E-MTU VMS units in HMS fisheries, subject to limitations. Reimbursement funds will be distributed on a first come, first served basis. Furthermore, individuals that have previously received reimbursement funds for an E-MTU VMS unit required in another fishery would not be eligible for additional funds.

Request for Comments

NMFS is requesting comments on any of the measures or analyses described in this proposed rule. Furthermore, NMFS also requests comments related to the potential economic impacts of this proposed action, including:

1. A delayed implementation date or date by which vessel owners would be required to start using E-MTU VMS units to provide participants with ample opportunity to procure a unit and have

it installed while still having the opportunity to take advantage of reimbursement funds. Currently, NMFS is considering requiring that vessel owners have an E-MTU VMS unit installed and operational within 90 days of publication of the final rule.

2. The time and costs associated with having the E-MTU VMS units installed by a qualified marine electrician.

3. The advance notice timeframes associated with the proposed hail-out and hail-in requirements (*i.e.*, the two hour notice before leaving port and the three hour notice before returning to port).

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax. Comments may also be submitted at a public hearing (see **DATES** and **ADDRESSES**). NMFS solicits comments on this proposed rule until August 1, 2011. NMFS will hold two public hearings for this proposed rule. The hearing locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Greg Fairclough at 727-824-5399, at least 7 days prior to the meeting. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.*, alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose. Attendees are expected to respect the ground rules and, if they do not, they will be asked to leave the hearing.

Location	Date	Time	Address
St. Petersburg, FL	July 7, 2011	6:00–8:00 p.m. ...	NOAA, Southeast Regional Office 263 13th Ave. S., St. Petersburg, FL 33701.
New Orleans/Kenner, LA	July 13, 2011	2:00–5:00 p.m. ...	901 Airline Drive, Kenner, LA 70062.
Atlantic City, NJ	July 28, 2011	5:45–7:45 p.m. ...	Atlantic County Library System, Brigantine Branch 201 15th St. South, Brigantine, NJ 08203.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS Fishery Management Plan and its amendments, the MSA and National

Standards, and other applicable law, subject to further consideration after public comment.

This proposed rule would modify a collection-of-information requirement associated with VMS use in Atlantic

HMS fisheries subject to the Paperwork Reduction Act (PRA), and that has been approved by the Office of Management and Budget (OMB) under control number (0648-0372). The proposed modifications are subject to review and

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

Public comment is sought regarding the estimated burden hours associated with installation of the new E-MTU VMS units (4 hours per vessel). Furthermore, comments are also sought concerning whether this proposed collection of information is necessary for the proper performance of the functions of NMFS, including whether the information would have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Greg Fairclough, the Highly Migratory Species Management Division, at the **ADDRESSES** above, and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285. Comments submitted in response to this proposed modification to an existing information collection will be summarized and/or included in the request for OMB approval of this information collection and will also be included in the public record.

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.

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

Environmental impacts are not expected and the action is within the scope of that previously analyzed when existing VMS requirements were implemented. This action would not directly affect fishing effort, quotas, fishing gear, authorized species, interactions with threatened or endangered species, or other relevant parameters.

NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by 5 U.S.C. 603 of the Regulatory Flexibility Act, to analyze the economic impacts that this proposed rule could have on small entities. A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained in the preamble to this proposed rule. A summary of the analysis follows. A copy of the complete analysis is available from NMFS (see **ADDRESSES**).

Section 603(b)(1) of the Regulatory Flexibility Act requires that the Agency describe the reasons the action is being considered. The purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to aid NMFS in monitoring and enforcing fisheries regulations, including those implemented at 50 CFR part 635 pertaining to HMS. Requiring that an E-MTU VMS unit be installed by a qualified marine electrician and implementing a declaration system would provide NMFS enforcement with improved communication capabilities with vessels at sea and fishing for HMS. The declaration system would also provide valuable information concerning target species and gear possessed onboard vessels to ensure enforcement of closed or restricted areas and other regulations.

Section 603(b)(2) of the Regulatory Flexibility Act requires a succinct statement of the objectives of, and legal basis for, the proposed rule. The objectives of this proposed rulemaking are to consider changes to the HMS regulations at 50 CFR part 635 requiring the use of VMS in Atlantic HMS fisheries. Requiring E-MTU VMS units in Atlantic HMS fisheries would represent a technological improvement over the MTU VMS units currently in use. By removing dated MTU VMS units from HMS fishing vessels and requiring that E-MTU VMS units be professionally installed, NMFS would improve fisheries monitoring and enforcement of regulations and provide

NMFS the ability to communicate directly with individual vessels at sea via electronic messaging and other means.

Under 5 U.S.C. 603 (b)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) standards for a "small" versus "large" business entity are entities that have average annual receipts less than \$4.0 million for fish-harvesting; average annual receipts less than \$6.5 million for charter/party boats; 100 or fewer employees for wholesale dealers; or 500 or fewer employees for seafood processors. Under these standards, NMFS considers all HMS permit holders subject to this rulemaking to be small entities. NMFS estimates that this proposed rule would require 329 vessel owners deploying either PLL, BLL, or gillnet gear in HMS fisheries to have an E-MTU VMS unit installed by a qualified marine electrician. All of these vessel owners are considered small entities and are already required to have MTU VMS units. Depending on the fishing gear possessed on board, vessels would continue to use VMS units when away from port to provide location reports consistent with existing regulations. These vessels would also be required to declare target species and gear types possessed on board to NMFS enforcement prior to leaving port and then provide NMFS enforcement advanced notice of landing. The fishery declaration and return reports must be sent via an E-MTU VMS unit.

This proposed rule contains some modifications to existing reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603 (b)(4)). This proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the MSA, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, and the Coastal Zone Management Act. NMFS does not believe that the new regulations proposed to be implemented would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. The Regulatory Flexibility Act (5 U.S.C. 603

(c) (1)–(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. The new proposed requirements to have an updated E–MTU VMS unit installed by a qualified marine technician and expand reporting requirements to include a declaration system is expected to improve the reliability of VMS transmissions and provide NMFS enforcement with additional information to accurately monitor fishing activities. NMFS does not specify a particular manufacturer or model of VMS unit that vessel owners would need to procure to comply with the proposed action. There are several models available that meet the specifications described in the latest type approval notice (January 31, 2008; 73 FR 5813). NMFS performance standards are outlined in type approval notices published periodically by NMFS.

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

Under the no action alternative, vessels that are required to use VMS would be able to continue to use the MTU VMS units currently being

employed in the PLL, BLL, and gillnet fisheries or access reimbursement funds (\$3,100 per VMS unit) to replace these units with E–MTU VMS units. The decision to replace existing units with E–MTU VMS units would be at the discretion of individual vessel owners. Costs for individual E–MTU VMS units that meet the type approval specifications start at approximately \$3,100 per unit depending on the manufacturer, model, and additional features of the unit. In the event that existing units failed beyond repair, E–MTU VMS units would need to be installed, and owners would be eligible for reimbursement funds (\$3,100 per VMS unit) to offset the initial costs of the unit. NMFS expects that any vessel owner who applies for reimbursement funds will receive those funds, however reimbursement funds are not guaranteed and are subject to limitations and distributed on a first come, first served basis. In the event of necessary replacement, the E–MTU VMS units would need to be procured by vessel owners before returning to fishing activities, consistent with existing regulations, depending on the gear possessed onboard the vessel, timing, and location of the fishing activity. This alternative would not require that the new units be installed by a qualified marine electrician, rather, the new units could be installed by vessel owners/operators and an installation checklist would need to be completed and sent to NMFS enforcement per existing requirements.

Existing units are not capable of sending or receiving electronic messages, therefore, vessel owners or operators would not be required to provide NMFS enforcement with information concerning target species and gear possessed on board prior to leaving port to engage in fishing activities. Furthermore, vessel owners or operators would not be required to provide NMFS enforcement with advanced notice of departure and landing. Vessels would still be required to provide hourly position reports, starting two hours before leaving port, when away from port. It is estimated that these reports would continue to cost \$1.00 per day assuming 24 reports are sent. Maintenance costs for these units are estimated at \$500 per vessel per year. Some vessels may be committed to long-term service contracts with communication service providers and maintaining the status quo would not require vessels to break these contracts, avoiding any early termination fees.

Under the preferred alternative, participants would be required to install E–MTU VMS units, but they would be able to access reimbursement funds (\$3,100 per VMS unit) to offset the initial costs of the units. Reimbursement funds would be subject to limitations and distributed on a first come, first served basis. Furthermore, individuals that have previously received reimbursement funds for an E–MTU VMS unit required in another fishery would not be eligible for additional funds. The proposed action would also require that the units are installed by a qualified marine electrician (\$200 per installation) to ensure that units are installed and operating properly to avoid transmission failures that may occur when vessels are away from port and subject to VMS requirements. Marine electricians are capable of providing information on E–MTU VMS use and troubleshooting during the installation process. NMFS is also considering a delayed implementation date of 90 days after the final rule publishes to allow vessel owners time to procure and have an E–MTU VMS unit installed by a qualified marine electrician and operational on their vessels, thereby avoiding any early termination fees that may incur. The exact cost of termination fees are difficult to calculate as the terms of service contracts vary according to service providers and are likely to be vessel specific. Finally, unlike the MTU VMS units, which could have maintenance costs of approximately \$500 per year, E–MTU VMS units have very low to no maintenance costs.

Costs of compliance with the preferred alternative for vessel owners are estimated to be \$3,771; \$3,630; \$3,537 per vessel for PLL, BLL, and shark gillnet vessels, respectively, in the first year (Table 1). These are the costs of compliance, pre-reimbursement. Reimbursement funds of \$3,100 per VMS unit would reduce the costs to \$546 per vessel, on average, across all fisheries. Costs in year two (and beyond) would be limited to the costs of sending/receiving declaration reports (\$0.06 per report) and providing vessel location information on an hourly basis (\$1.56 per vessel per day) and is estimated to be \$471; \$331; and \$237 per vessel for PLL, BLL, and shark gillnet vessels respectively.

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

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

	Pelagic longline vessels	Shark bottom longline vessels	Shark gillnet vessels
E-MTU VMS Unit	\$3,100	\$3,100	\$3,100.
Estimated Installation Costs (one-time)	\$50–400 (\$200 used for estimation purposes).	\$50–400 (\$200 used for estimation purposes).	\$50–400 (\$200 used for estimation purposes)
Daily Position Report Costs (Hourly, 24/day) (\$0.06/report * 24 reports/day).	\$1.44	\$1.44	\$1.44.
Estimated Days Fishing/Year	324	212	152.
Annual Position Report Costs/Vessel (\$1.44/day * days fishing/year).	\$466.56/vessel	\$305.28/vessel	\$218.88/vessel.
Annual Number of Fishing Trips	36	212	152.
Annual Gear/Spp. Declaration Costs (\$0.12/trip)/Vessel (\$0.12/trip * trips/year) ¹ .	\$4.32	\$25.44	\$18.24.
Total Estimated Costs/Vessel (Year 1) (VMS unit + installation + position reports + declaration reports).	\$3,770.88	\$3,630.72	\$3,537.12.
Number of Affected Vessels	249	50	30.
Total Costs by Fishery (Year 1) (Total Estimated Costs/Vessel * Number of Affected Vessels).	\$938,949	\$181,536	\$106,113.
Gross Cost of Compliance, Year One (all HMS vessels combined).	\$1,226,598
Potential Reimbursement Funds (\$3,100/vessel * Number of Affected Vessels).	\$1,019,900
Compliance Costs (Year 1) (avg. cost/vessel) (installation + position reports + declaration reports).	\$670/vessel	\$530/vessel	\$437/vessel.
Compliance Costs/Vessel (Year 2 and Beyond) (position reports + declaration reports).	\$470/vessel	\$330/vessel	\$237/vessel.

¹ The declaration costs per trip will vary based upon the number of gear types possessed onboard as operators would be required to submit one declaration for each fishing gear possessed.

There are benefits associated with the proposed action relative to the no-action alternative. Requiring that an E-MTU VMS unit be installed by a qualified marine electrician would improve the reliability of VMS data transmitted from HMS vessels. Implementing a declaration system would enhance NMFS communication with HMS vessels at sea and provide valuable information concerning target species and gear type(s) possessed onboard vessels to ensure sound enforcement of closed areas and other regulations. Furthermore, the delayed implementation date associated with the preferred alternative would allow more time for fishermen to make the transition to the new VMS units and a declaration system. NMFS is seeking comment from the public regarding the implementation date and costs for installation to ensure that economic impacts are accurate. One of the objectives of this proposed action is to modify the requirements in order to ensure that small entities affected can access the reimbursement funds and make the transition to E-MTU VMS gradually.

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

List of Subjects in 50 CFR Part 635

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

Dated: June 14, 2011.
John Oliver,
Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

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

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time/area and fishery closures, an owner or operator of a commercial vessel, permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic or bottom longline or gillnet gear, is required to install a NMFS-approved enhanced mobile transmitting unit vessel monitoring system (VMS) on board the vessel and operate the VMS unit under the following circumstances:
 * * * * *

(d) *Installation and activation.* Only a VMS unit that has been approved by NMFS for the applicable fishery may be used, and the VMS unit must be installed by a qualified marine electrician. When the NMFS-approved VMS unit is installed and activated or reinstalled and reactivated, the vessel owner or operator must—

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

(2) Submit to NMFS, Office of Enforcement, Southeast Region, a

statement certifying compliance with the checklist, as prescribed on the checklist.

(3) Submit to NMFS, Office of Enforcement, Southeast Region, the checklist, completed by a qualified marine electrician, which is available from NMFS, Office of Enforcement, Southeast Region. Vessels fishing prior to NMFS' receipt of the completed checklist and compliance certification statement will be in violation of the VMS requirement.

(e) *Operation.* (1) Owners or operators of vessels permitted, or required to be permitted, to fish for HMS, that have pelagic or bottom longline gear or gillnet gear on board, and that are required to have a VMS unit installed, as specified in paragraph (a) of this section, must activate the VMS unit to submit automatic position reports at least 2 hours prior to leaving port and continuing until the vessel returns to port. While at sea, the unit must always be on, operating and reporting without interruption, and NMFS enforcement

must receive position reports without interruption. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(2) At least 2 hours prior to departure for each trip, a vessel owner or operator must report to NMFS any HMS fishery in which the vessel will participate on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel. If the vessel will be participating in multiple HMS fisheries, or multiple gears will be possessed on board the vessel, the vessel owner or operator must submit multiple electronic reports to NMFS. This information must be reported to NMFS using an attached VMS terminal.

(3) A vessel owner or operator must report advance notice of landing to NMFS. For the purposes of this

paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The vessel owner or operator is responsible for ensuring that NMFS is contacted at least 3 hours in advance of landing. This information must be reported to NMFS using an attached VMS terminal.

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

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