

WFOA Vessel Owners: December 16, 2015

NOTICE – New VMS Requirements & Safety Exam Reminder

NEW REGULATIONS - VMS: Fish Outside of 200nm? Or have an HSFCA permit for that area! VMS is now a requirement despite many objections from the fishing community of which all were ignored.

Thus, if you have a vessel over 24m in length (overall) you will need a VMS everywhere to fish HMS. If you have a vessel less than 24m you need one everywhere if you now have the offshore HSFCA permit which you probably paid \$129 for 5-years. If you do not have one and your boat is less than 24m then you are not required.

Some clarifications from NOAA on a few issues;

Many smaller US vessels obtained the HSFCA permits since they were first issued thinking they might need some evidence they fished in case effort controls or limited entry were imposed. many of these vessels have never fished outside of the US EEZ. Question - Since they have an HSFCA permit do they still have to obtain VMS even if they never fish outside? If so; can the vessel rescind the HSFCA permits, and be clear of the VMS requirement? As long as they stay inside of 200nm? and; Does this apply to US vessels fishing in Canadian waters which is outside the US EEZ?

If a vessel has a HSFCA permit, they will need VMS under these regulations. As you suggested, vessel owners can surrender their HSFCA permits if they do not fish on the high seas and do not intend to install a VMS unit. We recommend that vessel owners contact our permits person, Shannon (shannon.penna@noaa.gov), for more details on the process of surrendering a HSFCA permit.

If a vessel with an HSFCA permit does not have VMS by the effective date of the final rule, they can expect to be contacted by OLE at some point thereafter to confirm their circumstances and compliance with applicable VMS regulations. Any found to be non-compliant with VMS requirements after the implementation date would be at risk of enforcement action. We also note that, with VMS reimbursement funds being "first come, first served", those who anticipate needing a VMS would be well advised to get one before the implementation date.

In response to your question about VMS in Canadian waters, VMS is not required for vessels that are less than 24 meters in overall length, if they are inside the Canadian EEZ (i.e., not on the high seas).

The above pertains to vessels under 24 meters in length. The vessels that are 24 meter or more in overall length will be required to have VMS under separate regulations that apply inside the U.S. EEZ as well as the high seas. Contact "Rachael Wadsworth - NOAA Federal" <rachael.wadsworth@noaa.gov>

High Seas Fishery Compliance Act Permits - Compliance Guide for Revised Regulations, October 2015

NMFS has issued the enclosed final rule that will improve the administration of the High Seas Fishing Compliance Act (HSFCA) program and facilitate the monitoring of vessels operating on the high seas. The final rule includes, for all high seas fishing vessels, adjustments to permitting and reporting procedures. It includes requirements for the installation and operation of vessel monitoring system

units, placement of observers on vessels, and reporting of transshipments on the high seas to fill, for high seas areas, gaps in the monitoring, control, and surveillance of vessels and activities not covered by other fisheries-related regulations. Although varying, existing regulations govern fishing on the high-seas, this rule will establish a minimum set of requirements to facilitate monitoring and surveillance of all vessels operating on the high seas. Establishing minimum standards and closing regulatory gaps will improve the Agency's ability to enforce international conservation and management measures with respect to U.S. vessels operating on the high seas.

General

1. When will the revised high seas permit regulations go into effect?

The revised regulations will go into effect on January 14, 2016, 90 days after publication of the final rule.

2. Since the revised regulations will go into effect during active permit periods, will active permits become void until the new requirements are completed? Or will they apply when the permits are renewed?

After the final rule goes into effect, current permits will remain valid, however permit holders will need to be in compliance with the new requirements for observers, VMS, and transshipment described below. For new and renewed permits, the new requirements will be applied at the time of permit issuance.

3. Will there be any changes to the duration/cost of the permit and the permit application process?

The high seas permit will continue to be valid for five years and cost \$129.00 (note that this fee is subject to annual review by NOAA for recovery of administrative costs). Permit applications should continue to be sent to the regional NMFS office that you normally interact with on fishery matters.

In the revised permit application (enclosed), there is a new requirement to submit a recent color photo showing identifying markings of the high seas fishing vessel to be permitted.

Observer Requirement

4. Does the observer requirement apply to all vessels with a high seas permit?

The final rule allows NMFS to place an observer on board a high seas fishing vessel where observer coverage is not otherwise required by other regulations or relevant RFMO conservation and management measures, thus the requirement applies to all high seas fishing vessels. That being said, NMFS would carefully take into consideration both the scientific need for observer coverage as well as the characteristics of the fishery when designating high seas vessels for observer coverage under the revised regulations.

Transshipment Requirement

5. What is required to be in compliance with the new transshipment requirement?

In those instances where transshipment on the high seas is not prohibited under other legal authorities, the revised regulations require that U.S. high seas fishing vessels involved in transshipment on the high seas have on board a high seas fishing permit. The permitting requirement applies to both the vessel offloading the fish or fish product and the vessel receiving the fish or fish product. In addition to any other applicable requirements, the owner or operator of a U.S. vessel receiving or offloading fish or fish product on the high seas must notify NMFS at least 36 hours prior to each transshipment event, and submit a report on the transshipment event within 15 days after the vessel first enters into port, using the attached form.

Vessel Monitoring System (VMS)/Enhanced Mobile Transceiver Unit (EMTU) Requirement

6. I already have a type-approved VMS/EMTU on my vessel. Do I need to purchase a new VMS/EMTU to be in compliance with the new regulations?

Many vessels permitted to fish on the high seas are already required to operate EMTUs when at sea because they participate in fisheries with domestic EMTU requirements. Satisfying those requirements will satisfy the new high seas permit requirement if the EMTU is type-approved by NOAA for high seas fisheries, operating at all times, providing hourly position reports while on the high seas, and if EMTU activation and power-down/power-up procedures are the same or are more restrictive than the high seas permit requirements.

7. If a permitted high seas vessel does not currently have a type-approved VMS/EMTU, how long do I have to get one? Is there a conditional period where permitted high seas vessels will not be cited for not yet having one?

All high seas vessel owners that do not currently have a VMS unit type-approved by NOAA for use on the high seas will need to purchase and install one by the effective date of this rule, January 14, 2016.

Please see question number 9 below for additional important information regarding procedures and deadlines for reimbursement for the purchase of VMS/EMTU units.

8. What are the VMS/EMTU units type-approved for use on the high seas?

The following units have been type-approved by the NOAA Office of Law Enforcement (OLE) for use on the high seas:

Faria Watchdog 750 VMS

CLS America Thorium TST A2.0

CLS America LEO A2.0

Network Innovations Sailor VMS Gold

Network Innovations Sailor VMS Gold Plus

Skymate I1500 VMS

Please check the NOAA Office of Law Enforcement website prior to purchase for the most up to date list: (www.nmfs.noaa.gov/ole/about/our_programs/vessel_monitoring.html, click “Approved VMS Units”).

The NOAA Office of Law Enforcement’s VMS Helpdesk provides both instructions for VMS installation and a list of the current type-approved VMS units and mobile communications service providers.

9. If I need to purchase a VMS unit, will NMFS reimburse me for the cost?

The vessel owner and operator are responsible for all costs associated with the purchase, installation, and maintenance of the VMS unit, and for all charges levied by the mobile communications service provider. However, federal funds may be available to vessel owners or operators for reimbursement of the cost of purchasing type-approved VMS units.

Vessel owners are reimbursed on a first-come, first-served basis until funds for the reimbursement program are exhausted. The standard processing time is within 30 days of a completed application. Since funding for reimbursements is only available until the end of 2015, NOAA recommends VMS installations/activations be made no later than November 15, 2015, and all applications for reimbursement be submitted to the Pacific States Marine Fisheries Commission no later than November 30, 2015. After the VMS unit has been installed and activated, please use the attached “VMS Installation and Activation Form” to notify NOAA’s Office of Law Enforcement.

Information on both the VMS Reimbursement Program and the steps required for reimbursement is available online: www.psmfc.org/program/vessel-monitoring-system-reimbursement-program-vms?pid=17.

10. Can the VMS/EMTUs be turned off while in the EEZ?

In an effort to minimize the regulatory burden associated with the new EMTU requirement, high seas vessels are exempt from EMTU requirements and can power down the EMTU if either of the following sets of conditions are met: (1) the vessel remains at a dock or permanent mooring for more than 72 consecutive hours (referred to as the in-port exemption), or (2) the vessel participates exclusively in a domestic fishery within the U.S. EEZ, for 30 or more consecutive days, and there are no other applicable requirements for any EMTU or VMS unit operation for those activities or fishery (referred to as the long-term exemption). Outside of these two exemptions, however, high seas vessels must operate their EMTUs in the EEZ. If a high seas vessel operator is unsure whether his vessel’s operations will qualify for the second exemption (exclusively participating in a domestic fishery within the U.S. EEZ for 30 or more consecutive days) because there is a possibility that the vessel may operate on the high seas for a portion of the trip, the high seas vessel operator should power up and operate the EMTU in the EEZ to insure compliance with these regulations.

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Vessel Safety Exams now Required:

As of October 15, 2015, the law requires completion of a mandatory dockside safety exam on certain CFVs at least once every five years. (See the answer to first question below to determine if your CFV must comply.)

- Any affected CFV that has not successfully completed a dockside exam on or after January 1, 2013 must get an exam to be in compliance with the law.
- Any affected CFV found not in compliance with the safety exam requirement could be subject to civil penalty action or operational controls.
- We will continue to use the “two-year” Safety Decal for all successful exams, mandatory or otherwise.
- We understand that many vessels have been getting exams more frequently than once every five years, and we will continue to offer a free exam whenever requested or required for another reason.
- We will develop regulations that include the requirement for us to issue a Certificate of Compliance to document a five-year mandatory exam. Until then, we will use the two-year Safety Decal to demonstrate compliance with any exam requirement.
- We still highly encourage you to get an exam every two years to ensure all of your vessel’s safety and survival equipment are up to date and installed properly.

What CFVs are affected by the Exam requirement? A mandatory exam was required by the Coast Guard Authorization Act of 2010 and the Coast Guard and Maritime Transportation Act of 2012, the latter of which required a period of at least once every five years. This applies to State-registered and Federally-documented CFVs that: 1) operate beyond 3 nautical miles from the territorial sea Baseline or Great Lakes coastline; 2) operate anywhere with more than 16 persons on board (including within 3 miles of the Baseline or Great Lakes coastline); or 3) are fish tender vessels engaged in the Aleutian trade. Additional background is in our bulletin of December 2014 and our open letter of August 2015. Both references are available at www.fishsafe.info.

When must I have last had an exam? To meet the mandatory five-year dockside safety exam requirement, a CFV must have successfully completed an exam on or after January 1, 2013. A CFV that has never been examined must have completed an exam prior to October 15, 2015 to be in compliance. A CFV that successfully completed an exam after January 1, 2013 has five years from the date of that successful exam to complete another exam under the law. Please note that other requirements may mean more frequent exams. Fish processing vessels and fish tender vessels engaged in the Aleutian trade require an exam every two years. (See 46 CFR Part 28, Subparts F and G). Also, NOAA’s National Marine Fisheries Service requires vessels that carry a NOAA Fisheries Observer to have passed an exam within the past 2 years or the Observer will not deploy, which may restrict the vessel from fishing. [See 50 CFR, Part 600.746(b)-(d)]. We will schedule and provide a free exam and issue a two-year Safety Decal to meet any requirement whenever requested.

This release has been issued for public information and notification purposes only.

How will the Coast Guard know I’m in compliance with any exam requirement and what happens when a vessel doesn’t meet the mandatory exam requirement? Until regulations are developed creating a

Certificate of Compliance, our boarding officers will determine compliance with the five-year mandatory exam requirement by checking the issue date on the decal, or by viewing the exam report/booklet (CG-5587) for the date the exam was successfully completed. If it is within the last five years and on or after January 1, 2013, the vessel meets the requirement. If a vessel is boarded and it hasn't had the required five-year mandatory or other required exam, the operator or vessel could be subject to civil penalty action or operational controls.

Why is the Coast Guard going to eventually issue a Certificate of Compliance? The law that mandated the dockside safety exams also directed that a Certificate of Compliance be issued to a vessel that meets the requirements of Chapter 45, Title 46 United States Code. A Certificate of Compliance for commercial fishing vessels is still being developed. Until that time, the safety decal will demonstrate compliance with the exam requirement. Note: A copy of the exam report/booklet, also known as Form CG-5587, signed by the examiner and showing the decal number is provided to the owner and/or operator of the vessel after successfully completing an exam. This form also will demonstrate compliance with the exam requirement.

Are Voluntary Exams still offered? Yes. As we have for over 20 years, we will continue to conduct no-cost, no-fault voluntary dockside safety exams on CFVs, issuing a decal valid for two years upon successful completion of the exam. The decal shows compliance with applicable requirements at the time. A voluntary exam is offered as frequently as requested. This program is not changing. We highly recommend every CFV, even those not subject to mandatory exams, maintain a current two-year Safety Decal, which could facilitate a more streamlined safety check if we board you at sea. Please note that we may board you at any time or frequency to ensure compliance with safety and survival equipment and other requirements for your vessel, as well as for fisheries enforcement.

Are the Mandatory and Voluntary Exams the same? Yes. The safety and survival equipment and systems requirements that are checked for compliance on a vessel are the same whether it is a required exam or one voluntarily requested, and a safety decal will be issued in either case when completed successfully.

How do I request a Dockside Safety Exam? Request and schedule an exam by contacting your local Coast Guard Fishing Vessel Safety Examiner directly, or via a link on the Coast Guard's CFV Program web site at www.fishsafe.info. Third party organizations are also authorized to conduct dockside safety exams and issue decals on behalf of the Coast Guard; they include American Bureau of Shipping (ABS), Det Norske Veritas/ Germanischer Lloyd (DNV/GL), Society of Accredited Marine Surveyors (SAMS), National Association of Marine Surveyors (NAMS), NAVTECH US Surveyors Association, and Bowditch Marine, Inc. These organizations should be contacted directly to schedule an exam. They can conduct the mandatory exam, a required exam, or a voluntary exam.

Who should I contact if I have questions? Please contact the Coast Guard Office of Commercial Vessel Compliance, Fishing Vessels Division (CG-CVC-3) at 202-372-1249 or by email at CGCVC@uscg.mil. Or, you may also contact your local Coast Guard District Fishing Vessel Safety Coordinator or local Sector Fishing Vessel Safety Examiner. The points of contact for these individuals can be found on the web site, www.fishsafe.info, by selecting the "Locate Examiners" tab.