

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

[Docket No. 0907141130-91224-01]

RIN 0648-AX80

Antarctic Marine Living Resources; Use of Centralized-Vessel Monitoring System and Importation of Toothfish; Re-export of Toothfish; Applications for Krill Fishing; Regulatory Framework for Annual Conservation Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: This regulation proposes to facilitate conservation and management of Antarctic Marine Living Resources (AMLR). It would: further detail current U.S. requirements to only allow importation and/or re-exportation of frozen toothfish or toothfish product with verifiable documentation that the harvesting vessel participated in the Centralized-Vessel Monitoring System (C-VMS) regardless of where the fish was harvested; revise the NMFS catch-documentation requirements for re-exporting toothfish and add requirements for exporting U.S.-caught toothfish; require applicants for an AMLR harvesting permit for krill to apply to NMFS no later than June 1 preceding the harvesting season for krill; and rescind the existing regulatory framework for annual management measures. The intent of the rule is to further detail requirements for importing and re-exporting toothfish, to facilitate enforcement, to fulfill U.S. obligations in the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR), and to simplify the process for informing the public of annual conservation measures.

DATES: Comments must be submitted in writing on or before December 28, 2009.

ADDRESSES: You may submit comments, identified by 0648-AX80 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>;
- Fax: 301-713-1193, Attn: Robert Gorrell; or
- Mail: Alan Risenhoover, Director, Office of Sustainable Fisheries, NMFS, Attn: CCAMLR Rulemaking, 1315 East-

West Highway, Silver Spring, MD 20910.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a 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.

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Robert B. Gorrell at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to David_Rostker@ob.eop.gov, or fax to (202) 395-7825.

FOR FURTHER INFORMATION CONTACT: Robert Gorrell at 301-713-2341.

SUPPLEMENTARY INFORMATION:**Background**

U.S. participation in Antarctic fisheries is managed under the authority of the Antarctic Marine Living Resources Convention Act of 1984 (Act) codified at 16 U.S.C. 2431 *et seq.* NMFS implements conservation measures developed by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and adopted by the United States, through regulations at 50 CFR part 300, subpart G. Changes to the existing regulations are necessary to facilitate compliance, to incorporate new conservation measures, to facilitate enforcement of new and existing conservation measures, and to simplify the process for informing the public of annual conservation measures.

Importing and/or Re-exporting Toothfish.

CCAMLR requires that all Contracting Parties ensure that their vessels fishing for *Dissostichus* (toothfish) under CCAMLR's purview are equipped with satellite-linked vessel monitoring devices to allow for continuous reporting to the CCAMLR Secretariat of their position while in Convention

waters. This requirement is intended to promote the objectives of the Convention, including combating illegal, unreported, and unregulated fishing of AMLR, and to further improve compliance with the relevant conservation measures adopted by CCAMLR. CCAMLR conservation measures call for the transmission of Vessel Monitoring System (VMS) positional data as soon as possible either to the CCAMLR Secretariat directly or to the CCAMLR Secretariat through the relevant Flag State, with positions reported no less than every 4 hours for most *Dissostichus* spp. fisheries.

The NMFS final rule, published in August 2007 (72 FR 48496, August 23, 2007), requires use of C-VMS for U.S. vessels harvesting AMLR and verifiable documentation of real-time centralized VMS (or C-VMS) use for dealers seeking preapproval to import toothfish into the United States. U.S. vessels seeking to harvest *Dissostichus* spp. are required to report their positions, via C-VMS, from the time the vessel leaves port to the time that the vessel returns to port and at all points in between (i.e., port-to-port). Likewise, dealers seeking to import frozen *Dissostichus* spp. into the U.S. market must submit information so that NMFS can verify that the harvesting vessel was reporting its positions, via real-time centralized VMS (or C-VMS), from the time the vessel left port to the time that the vessel returned to port and at all points in between (i.e., port-to-port). These data are fundamental to ensuring the legality of *Dissostichus* spp. harvested by U.S. flagged-vessels as well as fish imported into and/or re-exported from the United States. The use of C-VMS port-to-port allows NMFS to verify the vessel's position associated with the harvest of toothfish no matter where the fish was harvested.

The proposed rule would not change current practices under existing regulations but would add definitions for "Centralized Vessel Monitoring System (C-VMS)", "port-to-port", and "real-time" and further detail the U.S. requirement that importation, re-exportation, and/or exportation of frozen toothfish is allowed only with verifiable documentation that the harvesting vessel participated in real-time C-VMS port-to-port. Shipments of frozen *Dissostichus* spp. are required to have such verifiable documentation except where the *Dissostichus* spp. being shipped was harvested during a fishing trip that began prior to September 24, 2007, when NMFS' final rule became effective (72 FR 48496, August 23, 2007). The preapproval requirement for imports of frozen

toothfish remains unchanged. (See Reporting and recordkeeping requirements § 300.107(c)(5) and (6)). Existing § 300.107(a)(4) and § 300.117(bb)(9) would be revised to use the new terms C-VMS, port-to-port, and real-time.

Also, the existing definition of “Vessel Monitoring System (VMS)” would be revised to clarify that the VMS system that uses a mobile transceiver unit on board foreign-flagged vessels does not need to be approved by NMFS. Similarly, the heading for existing § 300.116 “Requirements for a vessel monitoring system” would be revised to read “Requirements for a vessel monitoring system for U.S. vessels”.

Participation in C-VMS that would result in verifiable documentation of use of real-time C-VMS port-to-port entails the harvesting vessel having reported its positions at least every 4 hours, either directly to the CCAMLR Secretariat or to the CCAMLR Secretariat through the relevant Flag State, with no more than a 4-hour delay, from the time the vessel leaves port to the time that the vessel returns to port and at all points in between (port-to-port). CCAMLR conservation measures require the use of C-VMS when inside the Convention Area, whereas U.S. regulations for the importation and/or re-exportation of toothfish require C-VMS reporting at least every 4 hours both while inside and outside the Convention waters. In the absence of verifiable documentation of the use of real-time C-VMS port-to-port, imports, exports, re-exports, as well as the shipment, transportation, sale or offer for sale, purchase, custody, control, or possession of frozen *Dissostichus* species are prohibited. Under the proposed rule preapproval would not be issued without verifiable documentation of the use of real-time C-VMS port-to-port by the vessel that harvested the *Dissostichus* species except for *Dissostichus* spp. harvested during fishing trips that began prior to September 24, 2007 (see Dealer permits and preapproval § 300.114(d)).

The proposed rule would revise the catch-documentation requirements for re-exporting toothfish by clarifying that the application for a *Dissostichus* species re-export document must identify: (1) the container number for the shipment if the shipment is to be re-exported by vessel; (2) the flight number and airway bill/bill of lading if shipment is to be re-exported by air; (3) the truck registration number and nationality if the shipment is to be re-exported by ground transportation; or (4) the railway transport number if the shipment is to be re-exported by rail. The proposed rule would make clear

that the exporter would receive an electronically generated *Dissostichus* species re-export document.

The proposed rule would also add a new paragraph § 300.107(c)(7) identifying reporting and recordkeeping requirements for exports of *Dissostichus* species. These requirements are nearly identical to requirements for re-exports and pertain to U.S. caught toothfish that dealers want to export.

Krill Fishing

At its 25th meeting in Hobart, Tasmania, October 23 to November 3, 2006, CCAMLR adopted a measure requiring that all Contracting Parties with vessels intending to fish for krill in the Convention Area notify the Secretariat no later than 4 months in advance of the regular annual meeting of CCAMLR, immediately prior to the season in which their vessels intend to fish. The krill fishing season runs from December 1 of one year through November 30 of the next year. The proposed rule would require applicants for an AMLR harvesting permit for krill to submit an application to the Assistant Administrator for NMFS no later than June 1 prior to the krill season opening on December 1 of the same year (see Harvesting Permits § 300.112). In addition to the information already required of an applicant for an AMLR harvesting permit, the applicant for a permit to harvest krill would also be required by the proposed rule to identify, to the extent possible, the products to be derived from the anticipated catch of krill.

Framework for Annual Measures

The proposed rule would rescind the existing regulatory framework for annual management measures to ease the administrative burden and cost of publishing conservation measures that are readily available on the CCAMLR website at <http://www.ccamlr.org>. If the United States should formally object to any conservation measure adopted by CCAMLR, notice of that objection will be published in the **Federal Register**. NMFS will publish in the **Federal Register** any regulatory measure that it believes is necessary to implement its responsibilities under the Antarctic Marine Living Resources Convention Act of 1984 and may implement conservation measures adopted by CCAMLR either through the imposition of permit conditions or through rulemaking, as appropriate.

Classification

The Act

This proposed rule is published under the authority of, and consistent with, the Antarctic Marine Living Resources Convention Act of 1984, codified at 16 U.S.C. 2431 *et seq.*

Executive Order 12866

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

Regulatory Flexibility Act (RFA)

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would further detail current U.S. requirements to only allow importation and/or re-exportation of frozen toothfish or toothfish product with verifiable documentation that the harvesting vessel participated in the C-VMS regardless of where the fish was harvested; revise the NMFS catch-documentation requirements for re-exporting toothfish and add requirements for exporting U.S.-caught toothfish; require applicants for an AMLR harvesting permit for krill to apply to NMFS no later than June 1 preceding the harvesting season for krill; and rescind the existing regulatory framework for annual management measures.

During the past several years, there have been 5 vessels (2 for toothfish, 2 for krill, and 1 for crab) and 80 dealers who could fall within the scope of NMFS regulations to implement CCAMLR conservation measures. All U.S. vessels and U.S. dealers are considered small entities under the “Small Business Size Regulations” established by the SBA under 13 CFR 121.201. However, the only costs associated with this proposed rulemaking are for: (1) dealers providing mode-of-shipment information on applications for toothfish re-export and export documents; and (2) for applicants for krill harvesting permits to provide information on the products to be derived from krill catch. The costs and time associated with these proposed requirements is de minimis. The C-VMS aspects of the proposed rule would not change current practices and rescinding the framework for annual measures would not impose any economic impact on small business entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act (PRA)

This proposed rule contains two new collection-of-information requirements subject to review and approval by OMB under the PRA: providing mode-of-shipment information on applications for toothfish re-export documents; and providing information, to the extent possible, on the products to be derived from krill catch on applications for krill harvesting permits. These new requirements are not expected to change the currently approved burden under OMB Control Number 0648-0194 of 295 hours.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall 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. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

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

Dated: November 20, 2009.

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 300, subpart G is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart G—Antarctic Marine Living Resources

1. The authority citation for 50 CFR part 300, subpart G, continues to read as follows:

Authority: 16 U.S.C. 2431 et seq., 31 U.S.C. 9701 et seq.

2. In § 300.101, the definitions of “Centralized Vessel Monitoring System (C-VMS)”, “Port-to-port”, and “Real-time” are added, and the definition of “Vessel Monitoring System (VMS)” is revised, in alphabetical order to read as follows:

§ 300.101 Definitions.

* * * * *

Centralized Vessel Monitoring System (C-VMS) means a system that uses satellite-linked vessel monitoring devices to allow for the reporting of vessel positional data, either directly to the CCAMLR Secretariat or to the CCAMLR Secretariat through the relevant Flag State.

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Port-to-port means from the time the vessel leaves port to the time that the vessel returns to port and at all points in between.

Real-time means as soon as possible, but at least every 4 hours with no more than a 4-hour delay.

* * * * *

Vessel Monitoring System (VMS) means a system that uses a mobile transceiver unit on vessels that take AMLR, and that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels, to receive automatic transmission of positional and other information, consistent with relevant CCAMLR conservation measures.

3. In § 300.107, paragraphs (a)(4), (c)(5)(i) introductory text, (c)(5)(i)(A), (c)(5)(iii), and (c)(6) are revised, and new paragraph (c)(7) is added, to read as follows:

§ 300.107 Reporting and recordkeeping requirements.

* * * * *

(a) * * *

(4) Install a NMFS approved VMS unit on board U.S. vessels harvesting AMLR for use in real-time C-VMS port-to-port reporting to a NMFS-designated land-based fisheries monitoring center or centers. The requirements for the installation and operation of the VMS are set forth in § 300.116.

* * * * *

(c) * * *

(5) * * *

(i) In order to import frozen Dissostichus species into the United States, any dealer must:

(A) Submit a preapproval application including the document number and export reference number on the DCD corresponding to the intended import shipment and, if necessary, additional information for NMFS to verify the use of real-time C-VMS port-to-port regardless of where the fish were harvested; and receive preapproval from NMFS.

* * * * *

(iii) Any dealer who imports fresh Dissostichus species must complete a report of each shipment and submit the report to NMFS within 24 hours following importation. Verification of the use of real-time C-VMS port-to-port is not required for imports of fresh Dissostichus species.

* * * * *

(6) Re-export. (i) In order to re-export Dissostichus species, any dealer must:

(A) Submit to NMFS a completed paper-based NMFS application for a Dissostichus re-export document that includes the following information:

(1) The species, product type, and amount from the original DCD(s) that is requested for export in the particular export shipment;

(2) The number of the original DCD(s);

(3) The name and address of the importer and point of import for the original import into the United States, or by submitting a copy of the preapproval issued for the original import;

(4) One of the following:

(i) The Container Number for the shipment if shipment is to be re-exported by vessel;

(ii) The Flight Number and Airway Bill/Bill of Lading if shipment is to be re-exported by air;

(iii) The Truck Registration Number and Nationality if shipment is to be re-exported by ground transportation; or

(iv) The Railway Transport Number if shipment is to be re-exported by rail.

(5) The dealer/exporter’s name, address, and AMLR permit number; and

(6) The dealer’s signature.

(B) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically generated Dissostichus re-export document.

(ii) For frozen Dissostichus species, re-export documents will be generated upon verification of the use of real-time C-VMS port-to-port except for Dissostichus species harvested during fishing trips that began prior to September 24, 2007.

(iii) Dealers must include the original validated *Dissostichus* re-export document with the re-export shipment.

(iv) Any dealer who re-exports *Dissostichus* species must retain a copy of the re-export document at his/her place of business for a period of 2 years from the date on the DCD.

(7) *Export.* (i) In order to export U.S.-harvested *Dissostichus* species, any dealer must:

(A) Submit to NMFS a completed paper-based NMFS application for a *Dissostichus* export document that includes the following information:

(1) The species, product type, and amount from the original DCD(s) that is requested for export in the particular export shipment;

(2) The number of the original DCD(s);

(3) One of the following:

(i) The Container Number for the shipment if shipment is to be exported by vessel;

(ii) The Flight Number and Airway Bill/Bill of Lading if shipment is to be exported by air;

(iii) The Truck Registration Number and Nationality if shipment is to be exported by ground transportation; or

(iv) The Railway Transport Number if shipment is to be exported by rail.

(4) The dealer/exporter's name, address, and AMLR permit number;

(5) For frozen *Dissostichus* species, verification of the use of real-time C-VMS port-to-port except for

Dissostichus species harvested during fishing trips that began prior to September 24, 2007; and

(6) The dealer's signature.

(B) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically generated *Dissostichus* export document.

(ii) Dealers must include the original validated *Dissostichus* export document with the export shipment.

(iii) Any dealer who exports *Dissostichus* species must retain a copy of the export document at his/her place of business for a period of 2 years from the date on the DCD.

§ 300.111 [Removed and Reserved]

4. Section 300.111 is removed and reserved.

5. In § 300.112 paragraph (c) is revised to read as follows:

§ 300.112 Harvesting permits.

* * * * *

(c) *Application.* Application forms for harvesting permits are available at www.nmfs.noaa.gov/gpea_forms.htm.

(1) A separate fully completed and accurate application must be completed and received by NMFS for each vessel for which a harvesting permit is requested.

(2) Applications for permits to harvest species other than krill must be received by NMFS at least 90 days before the date anticipated for the beginning of harvesting.

(3) Applications for a permit to harvest krill must be received by NMFS no later than June 1 immediately prior to the season in which the harvesting would occur. The applications must, to the extent possible, identify the products to be derived from the anticipated krill catch.

* * * * *

6. In § 300.114 paragraph (d) is revised to read as follows:

§ 300.114 Dealer permits and preapproval.

* * * * *

(d) *Issuance.* NMFS may issue a dealer permit or preapproval if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any CCAMLR conservation measure or in

violation of any regulation in this subpart. No preapproval will be issued for *Dissostichus* species without verifiable documentation, to include VMS reports with vessel location and messages, of the use of real-time C-VMS port-to-port by the vessel that harvested such *Dissostichus* species, except for *Dissostichus* species harvested during fishing trips that began prior to September 24, 2007.

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7. In § 300.116 the heading is revised to read as follows:

§ 300.116 Requirements for a vessel monitoring system for U.S. vessels.

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8. In § 300.117 paragraph (bb)(9) is revised and paragraphs (gg) and (hh) are added to read as follows:

§ 300.117 Prohibitions.

* * * * *

(bb)* * *

(9) Fail to use real-time C-VMS port-to-port on board U.S. vessels harvesting AMLR in the Convention Area.

* * * * *

(gg) Harvest any AMLR in Convention waters without a harvesting permit required by this subpart.

(hh) Ship, transport, offer for sale, sell, purchase, import, export, re-export or have custody, control, or possession of, any frozen *Dissostichus* species without verifiable documentation of the use of real-time C-VMS port-to-port by the vessel that harvested such *Dissostichus* species unless the *Dissostichus* species was harvested during a fishing trip that began prior to September 24, 2007.

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