

(iii) Late spring and summer subsurface water temperatures between 15 and 25 °C (59 and 78 °F), with natural diurnal and seasonal variation.

Dated: April 2, 2010.

**Sara Prigan,**

*Federal Register Liaison, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 0907141130-0112-02]

RIN 0648-AX80

#### **Antarctic Marine Living Resources; Use of Centralized-Vessel Monitoring System and Importation of Toothfish; Re-export and 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:** Final rule.

**SUMMARY:** NMFS (on behalf of the Secretary of Commerce) issues this final rule to facilitate conservation and management of Antarctic Marine Living Resources (AMLR). The regulations: 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:** This final rule is effective May 10, 2010.

**ADDRESSES:** Alan Risenhoover, Director, NMFS Office of Sustainable Fisheries, Attn: CCAMLR Rulemaking, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

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 Alan Risenhoover 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](mailto:David_Rostker@ob.eop.gov), or fax to (202) 395-7825.

This **Federal Register** document is also accessible via the Internet at: <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

**FOR FURTHER INFORMATION CONTACT:** Robert Gorrell at 301-713-2341 or via e-mail at [robert.gorrell@noaa.gov](mailto:robert.gorrell@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS published the proposed rule for this action in the **Federal Register** on November 27, 2009 (74 FR 62278), with a public comment period through December 28, 2009. NMFS received only one comment and it was outside the scope of the rulemaking. Because no substantive comments on the proposed rule were received and because no new information dictates otherwise, no changes have been made to the regulatory text published in the proposed rule.

#### **Background**

U.S. participation in Antarctic fisheries, and in the trade of species managed by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), 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 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.

This final rule further details 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. This final rule also revises the NMFS catch-documentation requirements for re-exporting toothfish and adds requirements for exporting U.S.-caught toothfish. In addition, this final rule requires applicants for an AMLR harvesting permit for krill to apply to NMFS no later than June 1 preceding the harvesting season for krill. Lastly, this final rule rescinds the existing regulatory framework for annual management measures. Some discussion of these measures appears below, but for a more detailed discussion of these measures, please see the preamble to the proposed rule published on November 27, 2009 (74 FR 62278).

#### *Importing and/or Re-exporting Toothfish*

This final rule does not change current requirements for U.S. vessels harvesting AMLR to use real-time centralized VMS (or C-VMS) and for dealers seeking preapproval to import toothfish into the United States to submit to NMFS verifiable documentation of C-VMS use. NMFS will use the information submitted by dealers seeking to import frozen *Dissostichus* spp. into the U.S. market to 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).

This final rule adds definitions for “Centralized Vessel Monitoring System (C-VMS)”, “port-to-port”, and “real-time” and further details 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.

Also, the existing definition of “Vessel Monitoring System (VMS)” is 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” is revised to read “Requirements for a vessel monitoring system for U.S. vessels”.

This final rule revises 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 the 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. This final rule makes clear that the exporter would receive an electronically-generated *Dissostichus* species re-export document.

This final rule also adds 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*

This final rule requires applicants for an AMLR harvesting permit for krill to submit an application to the Assistant Administrator for Fisheries, 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 is required by this final rule to identify, to the extent possible, the products to be derived from the anticipated catch of krill.

#### *Framework for Annual Measures*

This final rule rescinds 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.

#### **Changes From the Proposed Rule**

There are no changes from the proposed rule.

#### **Classification**

The Antarctic Marine Living Resources Convention Act of 1984

The Assistant Administrator for Fisheries, NMFS, determined that this final rule is consistent with the Antarctic Marine Living Resources Convention Act of 1984, codified at 16 U.S.C. 2431 *et seq.*

#### *Executive Order 12866*

The final 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) during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

This final rule further details current U.S. requirements to only allow importation and/or re-exportation of frozen toothfish or toothfish product with verifiable vessel 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 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 requirements is de minimis. The C-VMS aspects of the rule would not change current practices and rescinding the framework for annual measures would not impose any economic impact on small business entities.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none has been prepared.

#### *Paperwork Reduction Act (PRA)*

This final rule contains two new collection-of-information requirements subject to review and approval by the

Office of Management and Budget (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 collection-of-information requirements have been approved by OMB under OMB Control Number 0648-0194 and these new requirements are not expected to change the currently approved burden under OMB Control Number 0648-0194 of 294 hours.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information 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: April 6, 2010.

#### **Eric C. Schwaab,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 300, subpart G is 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 in alphabetical order, and the definition of "Vessel Monitoring System (VMS)" is revised, 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.

\* \* \* \* \*

*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.

4. Section 300.111 is removed and reserved.

§ 300.111 [Amended]

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.

\* \* \* \* \*

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

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

\* \* \* \* \*

■ 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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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 0912081429-0114-02]

RIN 0648-XS55

**Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2010 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements 17 sector operations plans and contracts for fishing year (FY) 2010. In order to be considered for approval on a parallel

track with Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP), representatives from 17 sectors submitted operations plans and sector contracts, and requested an allocation of stocks regulated under the FMP for FY 2010. NMFS received sector operations plans and contracts from the Northeast Fishery Sectors (NFS) II through XIII, the Sustainable Harvest Sector (SHS), the Tri-State Sector (TSS), the Northeast Coastal Communities Sector (NCCS), the Georges Bank Cod Fixed Gear Sector (FGS), and the Port Clyde Community Groundfish Sector (PCCGS).

Following approval of the Amendment 16 sector measures and provisions, the Administrator, NE Region, NMFS (Regional Administrator) has partially approved the operations plans and contracts, and allocated an annual catch entitlement (ACE) of certain NE multispecies stocks to the NFS II–XIII, the FGS, the SHS, the TSS, the PCCGS, and the NCCS.

**DATES:** Effective May 1, 2010 through April 30, 2011.

**ADDRESSES:** Copies of each sector's final operations plan, contract, and environmental assessment (EA), and the Final Regulatory Flexibility Analysis (FRFA) are available from the NMFS Northeast Regional Office: Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Sector Policy Analyst, phone (978) 281-9182, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** A proposed rule soliciting public comment on 17 sector operations plans and contracts was published in the **Federal Register** on December 22, 2009 (74 FR 68015), with public comments accepted through January 21, 2010. After review of the public comments, NMFS has partially approved the 17 sector operations plans and contracts, determining the operations plans to be consistent with the goals of the FMP, as described in Amendment 16 and other applicable laws, and in compliance with the proposed measures that govern the development and operation of a sector as specified in Section 4.2.3 of Amendment 16.

**Background**

While the Amendment 13 final rule (69 FR 22906, April 27, 2004) implemented the Georges Bank (GB) Cod Hook Sector in 2004, and the

Framework Adjustment (FW) 42 final rule (71 FR 62156, October 23, 2006) implemented the FGS in 2006, Amendment 16 revises and expands the rules for these two existing sectors and authorizes an additional 17 new sectors, including the NFS I through XIII, the SHS, the TSS, the NCCS, and the PCCGS. Managers of two (2) of the 19 sectors authorized under Amendment 16 did not submit an operations plan for FY 2010.

Three separate actions associated with Amendment 16 are applicable to NE multispecies permit holders for FY 2010: A proposed rule that contains implementing regulations for the partially approved Amendment 16 (74 FR 69382, December 31, 2009) includes rebuilding programs for NE multispecies stocks newly classified as being overfished and subject to overfishing; revisions to existing management measures necessary to end overfishing, rebuild overfished stocks, and mitigate adverse economic impacts of increased effort controls; and significant revisions to existing sector management measures. In accordance with Amendment 16, a proposed rule specific to sectors published on December 22, 2009, (74 FR 68015) and discussed authorization of 17 sector operations plans and contracts for FY 2010. This final rule implements the approved operations plans. Also in accordance with Amendment 16, a third proposed rule for FW 44 published on February 1, 2010 (75 FR 5016), which proposed specifications of catch levels for FY 2010–2012, in accordance with the process specified in Amendment 16, and detailed additional management measures to augment Amendment 16.

Thus, the final rules for Amendment 16, sector operations, and FW 44 are closely related, and each rule relies on the other two. It is necessary to employ all three rules to implement Amendment 16 as intended by the New England Fishery Management Council (Council). While Amendment 16 implements management measures and processes for the FMP, FW 44 specifies catch levels according to the policies and procedures in Amendment 16, and this sector operations rule authorizes the operation of sectors. For example, Amendment 16 must be implemented for the 17 new sectors to be authorized. FW 44 specifies overfishing levels, acceptable biological catches, annual catch limits (ACLs) and allocates catch among components of the fishery, including the division of the catch between sector and common pool vessels according to the Amendment 16 ACL specification process. Final rules for the three actions, if all are approved,