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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 120201087-6529-01]

RIN 0648-BB86

International Affairs; Antarctic Marine Living Resources Convention Act

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes revising the regulations that implement conservation measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR or Commission). These revisions would be in addition to those proposed on December 29, 2015, that would revise procedures and requirements for filing import, export, and re-export documentation for certain fishery products, to integrate the collection of trade documentation within the government-wide International Trade Data System (ITDS) and require electronic information collection. The purposes of the revisions in this proposed rule are to streamline and clarify the regulations, shift deadlines for advance notice of intended fishing activities, distinguish between first receivers and dealers of Antarctic marine living resources (AMLR), reduce the time for advance notice of imports of *Dissostichus* species, and add transshipment notification requirements. The sections of these regulations would be reorganized to group requirements related to the trade of Antarctic marine living resources and those that apply

to fishing activities. Additionally, this action would update the regulations to reflect Commission adopted revisions to existing conservation measures and changes made to the Antarctic Marine Living Resources Convention Act through the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015.

DATES: Written comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments on this action, identified by NOAA-NMFS-2016-0076, may be submitted by either of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0076, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Mail: Mi Ae Kim, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Mi Ae Kim, Office of International Affairs and Seafood Inspection, NMFS (phone 301-427-8365, fax 301-713-2313, or email *mi.ae.kim@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

The United States is a Contracting Party to the Convention on the Conservation of Antarctic Marine Living Resources (Convention). Under Article VII of the Convention, contracting parties established and agreed to maintain the Commission to give effect to the Convention's objective—conservation of AMLR. The United States, along with 23 other countries and the European Union, are members of the Commission and meet annually to formulate, adopt and revise conservation measures. Article IX(6) of the Convention requires the Commission to notify conservation measures to all members and, 180 days thereafter, such measures become binding. If a member objects to a measure within 90 days of notification, the measure is not binding on that member, and Article IX(6)(d) of the Convention includes a procedure that allows other members to notify that they can no longer accept that measure.

The Antarctic Marine Living Resources Convention Act of 1984 (AMLRCA), codified at 16 U.S.C. 2431, *et seq.*, provides the statutory authority for the United States to carry out its obligations under the Convention, including implementation of Commission adopted conservation measures. AMLRCA section 305(a)(1) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce and the Director of the National Science Foundation, to decide whether the United States is unable to accept or can no longer accept a Commission adopted conservation measure (16 U.S.C.

2434(a)(1)). AMLRCA also gives the Secretary of Commerce authority to promulgate regulations as necessary and appropriate to implement the Act. This authority has been delegated to the Assistant Administrator for Fisheries (Assistant Administrator), who has implemented Commission adopted conservation measures that are binding on the United States under Article IX of the Convention through regulations at 50 CFR part 300, subpart G (AMLR regulations).

Through the “Illegal, Unreported, and Unregulated Fishing Enforcement Act” (IUU Fishing Enforcement Act), Public Law 114-81 (2015), Congress amended AMLRCA section 306, 16 U.S.C. 2435, which specifies unlawful activities; section 307, 16 U.S.C. 2436, which provides the Secretary of Commerce authority to promulgate regulations that are necessary and appropriate to implement AMLRCA; and section 308(a), 16 U.S.C. 2437(a), which specifies the penalties available for violations of the Act. Public Law 114-81 (2015), Title I, 106(1)–(2). The amendments to sections 306 and 307 are further discussed below; no regulatory changes are necessary to implement the amendments to section 308(a).

At each annual meeting, the Commission may adopt new conservation measures or revise existing measures. The current and past versions of the conservation measures are available on the Commission website: <http://www.ccamlr.org>. The conservation measures are organized by categories, including compliance, general fishery matters, fishery regulations, and protected areas, with each category designated by a two-digit code. While all conservation measures are subject to revision at the annual meeting, some (particularly those in the fishery regulation category) expire after one or two fishing seasons and so must be revised annually or biennially, to reflect management or

monitoring needs identified during Commission deliberations, changes in catch limits or bycatch limits, or other considerations.

Through this action, NMFS would reorganize, streamline, and update the regulations that implement AMLRCA and Commission adopted conservation measures. These revisions would be in addition to those proposed in 80 FR 81251, December 29, 2015, hereinafter referred to as the rule for electronic reporting of trade documentation, which integrates the collection of trade documentation within the government-wide ITDS and requires electronic information collection. Certain sections are rearranged so that regulations applicable to the trade of AMLR are grouped together while other sections that are obsolete are removed. This action removes sections that implement annual measures which generally will be implemented through vessel permits if applicable to the permitted fishing activities. Table 1 identifies how the sections of the current regulations will be designated by this action.

Table 1. Proposed Reorganization of 50 CFR part 300, subpart G

| Current structure | Proposed designation |
|---|---|
| 300.100 Purpose and scope. | Same |
| 300.101 Definitions. | Same |
| 300.102 Relationship to other treaties, conventions, laws, and regulations. | Same |
| 300.103 Procedure for according protection to CEMP Sites. | Moved to 300.113 |
| 300.104 Scientific research. | Moved to 300.103 |
| 300.105 Initiating a new fishery. | Moved to 300.109 |
| 300.106 Exploratory fisheries. | Moved to 300.110 |
| 300.107 Reporting and recordkeeping requirements. | DCD Requirements moved to 300.106 and first receiver and vessel reporting and recordkeeping requirements moved to 300.104 and 300.107, respectively |
| 300.108 Vessel and gear identification. | Same |
| 300.109 Gear disposal. | Removed |
| 300.110 Mesh size. | Removed |
| 300.112 Harvesting permits. | Moved to 300.107 |

| | |
|---|---|
| 300.113 Scientific observers. | Moved to 300.111 |
| 300.114 Dealer permits and preapproval. | Moved to 300.104 (permits) and 300.105 (preapprovals) |
| 300.115 Appointment of a designated representative. | Removed |
| 300.116 Requirements for a vessel monitoring system for U.S. vessels. | Moved to 300.112 |
| 300.117 Prohibitions. | Moved to 300.114 |
| 300.118 Facilitation of enforcement and inspection. | Moved to 300.115 |
| 300.119 Penalties. | Moved to 300.116 |

This proposed rule would delete all references from the current version of the AMLR regulations to section 300.111 which was removed and reserved by a final rule published on April 9, 2010 (75 FR 18111).

Definitions

This action would remove the following definitions from 50 CFR 300.101:

“Antarctic finfish” would be removed because the list of species in the current definition contains only a subset of all Antarctic finfish species and also because the AMLR regulations do not reference this term.

“Directed fishing” would be removed because the sections that refer to this term, gear disposal and mesh size provisions, are being removed through this rulemaking for reasons stated below.

“Port State” would be removed because the AMLR regulations do not reference this term.

This action would revise the following definitions in 50 CFR 300.101:

“Centralized Vessel Monitoring System (C-VMS)” and “Vessel Monitoring System (VMS)” would be revised and updated to more accurately describe these systems. For example, C-VMS is operated by the Secretariat of CCAMLR and receives position

and other information from mobile transceiver units on vessels, either directly or through the flag State, but these aspects are not reflected in the current definition. The updated VMS definition would reflect the current use of enhanced mobile transceiver units, which have replaced mobile transceiver units. The revised definition reflects how such units are linked to satellites and provide automatic reports of positional and other information.

“Convention waters” would be revised to “Convention Area” throughout the subpart to be consistent with terminology used in the Convention and in Commission adopted conservation measures.

“Dealer” is currently defined as the person who first receives AMLR from a harvesting vessel or transshipment vessels or who imports AMLR into, or re-exports AMLR from, the United States. It would be modified to mean the person who imports AMLR into, or exports or re-exports AMLR from, the United States. It would no longer include persons that first receive AMLR from a harvesting vessel or transshipment vessel. See below for explanation of a new definition of “first receiver.”

“Dissostichus catch document (DCD)” would be revised to update the term to reflect changes in Conservation Measure 10-05. These revisions are explained further below.

“Landing or landed” would be revised, for purposes of catch documentation requirements to be implemented under section 300.106, in accordance with the definition provided in Conservation Measure 10-05.

“Mobile transceiver unit” would be changed to “enhanced mobile transceiver unit or EMTU” to reflect the current technology of these systems which includes two-way communication functionality.

“Real-time” would be revised to reflect revisions to Conservation Measure 10-04 that were adopted at the 2015 annual CCAMLR meeting. Conservation Measure 10-04 had required all vessels in the Convention Area to report positions at 4-hour intervals, but now requires position reporting from vessels in the Convention Area on an hourly basis for finfish fisheries and, as of December 1, 2019, for all other fisheries.

“Scientific research activity” would be removed for consistency with proposed changes to § 300.103 which applies to scientific research conducted in the Convention Area. As discussed further below, revisions to regulations on scientific research conducted in the Convention Area are necessary to implement Conservation Measure 24-01 which sets forth how conservation measures apply to scientific research and requires reporting of certain research activities to the Commission.

“Transship or transshipment” which currently, with some exceptions, means the transfer of fish or fish products from one vessel to another would be revised to reflect how that term is defined in Conservation Measure 10-09, the measure that requires notification of transshipment activities in the Convention Area. The definition would be further revised to be consistent with the definition of transshipment, provided in Conservation Measure 10-05, for purposes related to catch documentation to be implemented under proposed § 300.106.

The action would add the following definitions:

“First receiver” would be defined as the person who first receives AMLRs landed from a vessel licensed under § 300.107 at a U.S. port. This term is added to make a clear distinction between dealers and first receivers. This distinction is needed because dealers of AMLR will be subject to permitting requirements under the rule for electronic

reporting of trade documentation (80 FR 81251, December 29, 2015) when that rule is finalized. As explained further below, first receivers of AMLR will continue to be subject to permitting requirements under the AMLRCA regulations.

“Dissostichus export document (DED)” and “Dissostichus re-export document (DRED)” would be added to implement revisions to Conservation Measure 10-05. Currently, the regulations use the term “Dissostichus catch document” to include export and re-export documents, as well as documentation of harvest, transshipment, and landing. The new terminology clarifies that the DED documents export information and the DRED documents re-export information. The “Dissostichus catch document” or “DCD” would be defined as a document that includes information related to harvest, transshipment, and landing.

Section 300.103 Scientific Research

This proposed rule would revise the research notification requirements and remove paragraphs that refer to an obsolete section. These revisions are necessary to reflect Commission adopted revisions to Conservation Measure 24-01 which applies to scientific research in the Convention Area. Currently, persons planning to use a vessel for research purposes, who expect to catch less than 50 tonnes (metric tons) of AMLR, must provide notification to the Assistant Administrator at least 2 months in advance of planned research. Where catch is expected to be more than 50 tonnes, this notification must be provided at least 7 months in advance of the planned starting date for the research.

In this proposed rule, these advance notification requirements would apply if expected catches are one tonne or more of finfish or krill, or when gear other than

longline, trawl, or pot would be used to catch *Dissostichus* spp. For clarity, this rule would add Table 1 to the regulations, which would identify taxa-specific thresholds for advance notification of research vessel activity. Advance notification at least 2 months before the planned start of research fishing would be required for amounts of expected catch that are less than 50 tonnes of finfish in a season and no more than the amounts specified in Table 1. Advance notification of at least 7 months would be required for research that would involve expected catches more than 50 tonnes or more than the amounts specified in Table 1. CCAMLR Formats would need to be used in providing the notifications to the Assistant Administrator.

The proposed rule would also require that research fishing not proceed until the Assistant Administrator authorizes the person in writing that he or she may proceed when the expected catch is more than 50 tonnes of fish or greater than the amounts specified in Table 1. Such authorization may be provided after the completion of review of the scientific research plan by the CCAMLR Scientific Committee and the Commission.

Section 300.104 International Fisheries Trade Permits and AMLR first receiver permits

The provisions related to AMLR dealer permits and preapprovals are currently combined. This proposed rule would clearly separate these processes because the preapproval process applies only to imports of frozen *Dissostichus* spp. and not to imports of fresh *Dissostichus* spp. or other AMLR species. As explained above, this proposed rule would also revise the definition of a “dealer” and establish a definition for “first receiver.” This would enable NMFS to apply different requirements for dealer activities (importing/exporting/re-exporting AMLR) and first receiver activities (i.e., receiving AMLR, that have not previously been landed, from a harvesting or

transshipment vessel at a U.S. port of landing). Through the proposed rule for electronic reporting of trade documentation (80 FR 81251, December 29, 2015), NOAA would establish an International Fisheries Trade Permit (IFTP) for the import, export, and re-export of AMLR and other regulated seafood commodities that are subject to trade monitoring programs of regional fishery management organizations or arrangements and/or subject to trade documentation requirements under domestic law. The IFTP would replace the AMLR dealer permit. The IFTP would cover activities currently authorized under an AMLR dealer permit but would not apply to first receivers of AMLR. Accordingly, in anticipation of establishment of the IFTP, this proposed rule would establish a permit requirement and procedure for first receivers of AMLR that is distinct and separate from the requirement and procedure for AMLR dealers. This will enable NMFS to continue to monitor and obtain information about first receiver activities.

Current regulations (50 CFR 300.114(k)) allow foreign entities to possess a dealer permit on the condition that the entity designate and maintain a resident agent within the United States that is authorized to accept service of process on behalf of that entity. NMFS proposes to remove section 300.114(k), as the proposed rule for electronic reporting of trade documentation (80 FR 81251, December 29, 2015) would require any person (including a resident agent of a nonresident corporation) who imports, exports or re-exports AMLR to have a valid IFTP.

*Section 300.105 Preapproval for importation of frozen *Dissostichus species**

As mentioned, this proposed rule would create a separate section for the procedures related to issuance of a preapproval certificate for imports of frozen *Dissostichus* spp. This proposed rule would also change the preapproval certificate

application deadline for imports of frozen *Dissostichus* spp. from 15 to 10 working days before the anticipated date of importation to provide a more reasonable timeframe for submitting applications while still allowing sufficient time for NMFS to evaluate them. The proposed rule includes clarification regarding when NMFS will not issue a preapproval certificate for importation of frozen *Dissostichus* spp., e.g., when the *Dissostichus* spp. was harvested or transshipped in contravention of any CCAMLR conservation measure in force at the time of harvest or transshipment. The proposed rule includes additional minor, non-substantive changes to clarify the requirements related to the importation of frozen *Dissostichus* spp.

Under this proposed rule, NMFS would continue to charge a fee for reviewing and processing applications for a preapproval certificate that authorizes importation of a shipment of frozen *Dissostichus* spp. The methodology for calculating the fee is based on procedures in the NOAA Finance Handbook for determining administrative costs of special products and services. See NOAA Finance Handbook at Chapter 9, Section 10, “Instructions for Completing the NOAA Product/Service Cost Computation Form.” The NOAA Finance Handbook may be obtained by contacting NMFS (see **ADDRESSES**) or online at the NOAA’s Office of the Chief Financial Officer website:

<http://www.corporateservices.noaa.gov/noaa/cfohome.html>.

Section 300.106 Catch Documentation Scheme (CDS) documentation and other requirements

This proposed rule would provide a distinct section in the regulations for requirements under Conservation Measure 10-05, CCAMLR’s electronic Catch Documentation Scheme (CDS). CCAMLR’s CDS allows tracking of *Dissostichus* spp.

from harvest through the trade cycle, including transshipment, landing, import, export, and re-export. For imports of fresh *Dissostichus* spp., a report of the shipment will need to be submitted to NMFS even if the amount or value of the *Dissostichus* spp. is below the threshold that triggers the requirement to file entry documentation with U.S. Customs and Border Protection.

The proposed section 300.106 would contain a number of existing requirements related to CDS documents, such as the following: vessels masters must provide information on the harvest or transshipment of *Dissostichus* spp. and submit the DCD to NMFS and to each recipient of the catch; upon landing, first receivers must sign the DCD; and dealers must obtain necessary signatures, check the quantity of toothfish with that listed on the DED or DRED and provide the DED and DRED and other information when importing, exporting, or re-exporting *Dissostichus* spp. The DED and DRED are new terms that the Commission incorporated into Conservation Measure 10-05 in 2014.

This proposed rule would remove from the regulations the list of information specified in the applications for re-export and export of *Dissostichus* spp. because that information is captured in the application form that must be completed in order to receive approval to re-export or export *Dissostichus* spp.

Section 300.107 Vessel permits and requirements

This proposed rule would replace the term “harvesting permits” with “vessel permits.” NMFS proposes this change to ensure that the terminology encompasses vessels that engage in harvesting or associated activities such as transshipment at sea in support of harvesting. Transshipment vessels are currently required to obtain a “harvesting permit” and thus this change in terminology would clarify but not change the

scope of the requirement. To allow time for NMFS to review permit applications and provide information to the Commission Secretariat, if appropriate, by the June 1 deadline for some fisheries, this proposed rule would change the deadline for vessel permit applications to April 1 that precedes the fishing season (generally December 1 to November 30) in which the fishing or associated activities are expected to occur. The current deadline in the regulation is June 1, which does not allow any time for review by NMFS prior to the deadline for submission of fishing notifications to CCAMLR.

Under this proposed rule, NMFS would accept vessel permit applications only for U.S. vessels that have been issued an International Maritime Organization or IMO number, consistent with Commission adopted revisions to Conservation Measure 10-02. IMO numbers are unique vessel identifiers that remain with the vessel and allow for tracking of the vessel regardless of any changes to its name, call sign, flag or other identifying information.

This proposed rule would add 300.107(k) to implement Conservation Measure 10-09, which applies to transshipments in the Convention Area. Under proposed 300.107(k), a vessel operator would be required to provide advance notification of any transshipment within the Convention Area, of AMLRs or of any other goods or materials, to the CCAMLR Secretariat directly and to submit a confirmation of such notification to NMFS Headquarters.

Additionally, this proposed rule would remove regulatory text codified at § 300.115 regarding the appointment of a designated representative for holders of permits authorizing fishing in Subarea 48.3. This requirement will be included as a vessel permit condition if necessary and applicable to the authorized fishery and gear types.

Section 300.108 Vessel and gear identification

This proposed rule would revise existing regulations to implement Commission adopted revisions to Conservation Measure 10-01 related to the marking of fishing vessels and fishing gear. Previously, this conservation measure required that fishing vessels be marked so that they can be readily identified, in accordance with internationally recognized standards such as the FAO Standard Specifications and Guidelines for the Marking and Identification of Fishing Vessels. Revisions to the conservation measure now specify the location, coloring, size, and maintenance requirements for vessel and gear markings, and the proposed rule includes these requirements.

Section 300.109 Initiating a new fishery

This proposed rule would revise the deadline for notification of intent to participate in a new fishery to ensure that NMFS is able to satisfy the requirements of Conservation Measure 21-01 (Notification that members are Considering Initiating a New Fishery). Per this proposed rule, the deadline would be changed from July 1 to April 1 that precedes the fishing season (generally December 1 to November 30) in which the fishing activities are expected to occur. This revision would provide NMFS time to review the information provided by the applicant before submittal to the Commission Secretariat. Because Conservation Measure 21-01 requires that Commission members submit to the Commission Secretariat information about the vessel proposing to participate in a new fishery, this proposed rule requires that the notification shall be accompanied by a complete vessel permit application, which includes the requisite vessel information. Because bottom trawling on the high seas of the Convention Area is

considered a new fishery under Conservation Measure 21-01, this proposed rule would add to § 300.109 a requirement to provide information on any fishery that uses bottom trawl gear. This proposed rule revises section 300.109(c)(1) to reflect requirements in Conservation Measure 21-01 to provide a maximum catch level for the forthcoming season instead of the current regulation requiring “minimum level of catches that would be required to develop a viable fishery.”

Section 300.110 Exploratory fisheries

This proposed rule would revise the deadline for notification of intent to participate in an exploratory fishery to ensure that NMFS is able to satisfy the requirements of Conservation Measure 21-02 (Exploratory Fisheries). The deadline would be changed from July 1 to April 1 that precedes the fishing season (generally December 1 to November 30) in which the fishing activities are expected to occur. This revision would provide NMFS time to review the information prior to submission to the Commission Secretariat. Because Conservation Measure 21-02 requires that Commission members submit information about the vessel proposing to participate in an exploratory fishery to the Commission Secretariat, this rule would require that the notification shall be accompanied by a complete vessel permit application, which includes the requisite vessel information. Proposed section 300.110(e) would also require that additional information be submitted with the notification so that the United States can comply with Conservation Measure 21-02 when notifying the Commission about the permittee’s intent to participate in an exploratory fishery.

Section 300.111 Scientific observers

This proposed rule would maintain but reorganize the requirements related to carrying of scientific observers aboard U.S. vessels permitted to harvest AMLR in the Convention Area.

Section 300.113 CCAMLR Ecosystem Monitoring Program Sites

This proposed rule would remove the duration and permit modification request elements of the regulation that implements Conservation Measure 91-01 (CCAMLR Ecosystem Management Program). Duration would be specified within the CCAMLR Ecosystem Monitoring Program (CEMP) permit itself rather than by regulation. Persons seeking any modifications of their permit before it expires would need to submit a new application.

This proposed rule removes the list of CEMP sites because these sites (Seal Islands, South Shetland Islands and Cape Shirreff and the San Telmo Islands) are no longer protected under Conservation Measure 91-01. Additionally, this rule would remove the phrase “when it enters into force” in reference to the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes because they have entered into force.

Section 300.114 Prohibitions

This proposed rule would revise § 300.114, Prohibitions, by removing text regarding gear restrictions on trawl mesh size and requirements to use measures to minimize incidental mortality of seabirds and marine mammals. NMFS would implement these measures as conditions to a vessel permit if applicable to the authorized fishery and gear type. The regulations would continue to specify under proposed 300.114(l) that it is unlawful for any person to violate or attempt to violate the conditions of any permit

issued under AMLRCA. Additionally, to be consistent with the IUU Fishing Enforcement Act amendments to AMLRCA section 306, 16 U.S.C. 2435, noted above, this rule would revise § 300.114 by: (1) removing the words “knew or should have known” from the prohibition in 300.114(d) relating to trade in AMLR harvested in violation of a conservation measure that is in force with respect to the United States; and, (2) amending 300.114(e) and (h) to add “investigation” to make it unlawful for a person to refuse to allow any authorized officer to board a vessel for that purpose.

Implementation of New or Revised Conservation Measures Adopted and Notified by the Commission

Proposed section 300.102(d) of this rule would clarify that NMFS may apply exemptions to Administrative Procedure Act (APA) requirements when implementing conservation measures that have been adopted and notified by the Commission. This proposed approach would apply only to conservation measures that do not require the development of policy options or a regulatory framework. NMFS would provide for notice-and-comment rulemaking when implementation of a conservation measure implicates other requirements of domestic law or when NMFS needs to interpret or expand upon a conservation measure.

Proposed section 300.102(e) would further clarify that NMFS would generally implement annual or biennial measures as conditions to vessel permits instead of through regulations. Annual or biennial measures are conservation measures that apply to the operation of the Convention’s commercial or exploratory fisheries and include, among other measures, gear, catch, and effort restrictions and time and area closures. (See

proposed definition below). These types of measures generally expire after one or two fishing seasons and therefore are referred to as annual or biennial measures.

This section provides background and an explanation for the application of APA exemptions, the use of permit conditions, and generally describes the regulations that would be added to codify this approach to implementation of certain conservation measures.

NMFS has had different practices for implementation of annual and biennial measures. The Commission adopts these and other conservation measures at its annual meeting, which is usually held in October. Shortly after the conclusion of each annual meeting, the Commission provides members formal notification of adopted conservation measures as required under the Convention's procedure for member implementation of adopted Conservation Measures at Article IX. Under the Commission's usual schedule, notification is generally provided within the first few days of November. The fishing season for fisheries managed under the Convention generally commences on December 1 and ends on November 30 of the following year.

This tight timing has presented challenges for NMFS in implementing annual and biennial measures in a timely manner. NMFS has taken a few different approaches to address those challenges. Until 1996, NMFS promulgated regulations to implement adopted annual measures. In May of 1996, NMFS adopted a framework under which annual measures were implemented by regulatory notice rather than codified regulations. In April of 2010, NMFS rescinded that framework and stated that Commission adopted measures would be implemented through regulations or permit conditions as appropriate.

The approach in this proposed rule – use APA exemptions and permit conditions – will help to expedite implementation of annual or biennial measures and other conservation measures with respect to vessels of the United States and persons subject to United States jurisdiction. The APA generally requires prior notice of and an opportunity to comment on proposed rules, and a 30-day delay in effectiveness of final rules. 5 U.S.C. 553(b)-(d). However, there are two APA exemptions that NMFS may apply in implementation of conservation measures. First, because NMFS implements Commission adopted measures to satisfy the obligations of the United States under the Convention, the APA foreign affairs function exception, 5 U.S.C. 553(a)(1), is available.

Second, the IUU Fishing Enforcement Act explicitly added to AMLRCA an exemption from APA rulemaking requirements under 5 U.S.C. 553(b)-(d). Public Law 114-81, Title I, 106(2)(B); 16 U.S.C. 2436(b). The exemption may be applied only to implement Commission adopted measures that have been “in effect for 12 months or less.” *Id.*; 16 U.S.C. 2436(b)(1)(A). NMFS proposes to interpret this “in effect” text as meaning the 12-month period that commences when the Commission provides notice of adopted conservation measures under Article IX of the Convention.

Proposed section 300.102(d) would provide that NMFS may apply either the APA foreign affairs function exception or the AMLRCA APA rulemaking exemption when implementing conservation measures that have been adopted and notified by the Commission. In either case, this proposed approach would apply only to conservation measures that do not require the development of policy options or a regulatory framework.

Proposed section 300.102(e) would provide that NMFS may implement annual and biennial measures as conditions to vessel permits instead of through regulations. Use of permit conditions would provide actual notice of the annual and biennial measures, consistent with the APA. *See* 5 U.S.C. 551(a)(1). Proposed section 300.101 of the rule would define “annual or biennial measure” as a conservation measure that: (1) applies to the operation of the Convention’s commercial or exploratory fisheries such as gear, catch, and effort restrictions and time and area closures; (2) generally expires after one or two fishing season(s); and (3) does not require the development of policy options or a regulatory framework. Consistent with this approach, this rule would remove existing regulations that implemented measures that NMFS intends to implement via permit condition, specifically, restrictions on gear disposal and mesh size.

NMFS notes that the APA exemption under AMLRCA applies only when the United States does not object to a measure. *See* 16 U.S.C. 2436(b)(1)(C) (applying exemption to conservation measures “with respect to which the Secretary of State, does *not* notify [sic] Commission in accordance with section 305(a)(1) within the time period allotted for objections under Article IX of the Convention” (emphasis added)). However, NMFS believes the introductory paragraph of section 2436(b)(1) as enacted by Congress has a typographical error: it refers to the exemption applying when the Secretary of State “notifies” the Commission of an objection. This does not make sense; the text should say “does not notify” as does section 2436(b)(1)(C). NMFS interprets the APA exemption consistent with AMLRCA section 2436(b)(1)(C).

NMFS also notes that, if implementation of a Commission adopted measure is exempt from APA rulemaking requirements, the analytical requirements of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, would also be inapplicable to those actions.

NMFS welcomes public comment on this proposed approach to implementation of Commission adopted measures and the regulations that would implement this approach under sections 300.102(d) and (e).

Classification

Antarctic Marine Living Resources Convention Act of 1984

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Antarctic Marine Living Resources Convention Act, codified at 16 U.S.C. 2431 *et seq.*, subject to further consideration following public comment.

Executive Order 12866

This 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 modify the AMLR regulations as proposed in the rule for electronic reporting of trade documentation (80 FR 81251, December 29, 2015). It would reorganize the regulations related to the trade of Antarctic marine living resources (AMLR) and those that apply to fishing activities; establish a distinction between first receivers and dealers of AMLR to ensure that NMFS is able to regulate the

activities of first receivers when dealer activities are regulated under the rule for electronic reporting of trade documentation; change the regulatory deadlines including the requirement for advance notice of intended fishing activities from June 1 to April 1 to allow NMFS time for review of vessel permit applications and associated information prior to submitting to the CCAMLR Secretariat by its deadline of June 1; require advance notification of transshipments of AMLR, bait, or fuel or other goods; and change the advance notice deadline for imports of toothfish (*Dissostichus* spp.) from 15 to 10 working days to provide a more reasonable timeframe for such advance notice while still allowing time for NMFS to verify information.

Additionally, the proposed rule would implement the following revised elements of CCAMLR conservation measures:

- Reporting requirements for vessels that conduct scientific research activities in the Convention Area;
- A requirement that Contracting Parties provide IMO numbers for their flagged vessels that it authorizes to fish in the CCAMLR area;
- Terminology changes relating to the *Dissostichus* Catch Documentation Scheme (CDS) and providing for the use of the electronic CDS; and
- Specifications for the identification markings to be put on vessels and gear.

The proposed rule also revises regulations that specify prohibitions or unlawful acts to be consistent with the IUU Fishing Enforcement Act of 2015 amendments to AMLRCA section 306. Specifically, this rule proposes to 1) remove the words “knew or should have known” from the prohibition in 300.114(d) relating to trade in AMLR

harvested in violation of a conservation measure that is in force with respect to the United States; and, 2) amending 300.114(e) and (h) to add “investigation” to make it unlawful for a person to refuse to allow any authorized officer to board a vessel for that purpose.

The proposed rule would also establish regulations that would allow NMFS to implement CCAMLR adopted annual or biennial conservation measures through vessel permit conditions rather than regulations. Lastly, the proposed rule would clarify certain regulatory requirements, and remove or update outdated items, such as references to previously deleted sections, and outdated web and mailing addresses.

This proposed rule would impact U.S. flagged vessels operating in the Convention Area and first receivers and dealers of AMLR. During the past several years, there have been no U.S. flagged vessels operating in the Convention Area and no U.S. entities that first receive AMLRs, but there are approximately 45 dealers who could fall within the scope of NMFS’s AMLRCA regulations. Although NMFS does not have access to data about the business sizes of dealers that would be impacted by this proposed rule, it is likely that the majority would be considered small entities under the "Small Business Size Regulations" established by the SBA under 13 CFR 121.201.

Although all regulated entities are considered small under the SBA size standard, this rule is expected to have no economic impact on these regulated entities. The creation of a distinction between first receivers and dealers of AMLR and a modification of the deadline for advance notification for imports of toothfish are administrative provisions that would only minimally change dealer practices and are not expected to change dealer costs or revenues, and thus they are expected to be cost neutral. Other proposed changes applicable to fishing operations are also expected to be cost neutral as they do not add

new requirements but rather only make technical changes. These proposed changes include the change in the deadline for advance notification of intended fishing practices, revisions to requirements for scientific research fishing, and vessel marking. The requirement for advance notification for transshipments may involve some cost for transmitting information to the CCAMLR Secretariat and NMFS but, given that there have been no U.S. vessels harvesting or transshipping under these regulations for several years, any cost impacts of this requirement is expected to be absorbed into the overall, high cost of initiating operation in the Convention Area.

NMFS' proposal that Commission adopted annual or biennial measures be implemented through vessel permits, as appropriate, is an administrative change that is expected to result in a more efficient scheme for regulating entities that fish in the Convention Area. As an administrative change, this approach to implementation of conservation measures would not increase the regulatory burden on entities that are subject to AMLRCA regulations or have any economic effects.

Finally, the proposed rule includes technical revisions to existing regulations to make the regulations more concise, better organized, and easier for the public to use. These changes would have little or no economic impact on any small entities.

For the above reasons, this proposed rule is not expected to have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

This proposed rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). OMB approval of the new collections-of-

information is being requested. This proposed rule also contains a collection-of-information approved by OMB under control number 0648-0194. The current, approved collection of information includes permit applications (CEMP, vessel permit, dealer permit, and pre-approval of toothfish imports), vessel and gear marking requirements, installation of and reporting through a vessel monitoring unit, import tickets, and other items. This proposed rule would add a requirement to provide advance notification of transshipments of AMLRs, bait, fuel, or other goods and materials to the CCAMLR Secretariat and to submit a confirmation of the notification to NMFS Headquarters, including information on the vessels involved in the transshipment and the details of the materials being transshipped. Public reporting burden for this proposed requirement is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395-5806.

List of Subjects in 50 CFR Part 300

Antarctica, Antarctic marine living resources, Catch documentation scheme, Fisheries, Fishing, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 11, 2016.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. Under part 300, further revise subpart G—which was proposed to be amended on December 29, 2015 (80 FR 81251)—to read as follows:

Subpart G—Antarctic Marine Living Resources

Sec.

300.100 Purpose and scope.

300.101 Definitions.

300.102 Relationship to other treaties, conventions, laws, and regulations.

300.103 Scientific research.

- 300.104 International Fisheries Trade Permits and AMLR first receiver permits.
- 300.105 Preapproval for importation of frozen *Dissostichus* species.
- 300.106 Catch Documentation Scheme (CDS) documentation and other requirements.
- 300.107 Vessel permits and requirements.
- 300.108 Vessel and gear identification.
- 300.109 Initiating a new fishery.
- 300.110 Exploratory fisheries.
- 300.111 Scientific observers.
- 300.112 Vessel monitoring system.
- 300.113 CCAMLR Ecosystem Monitoring Program sites.
- 300.114 Prohibitions.
- 300.115 Facilitation of enforcement and inspection.
- 300.116 Penalties.

Subpart G—Antarctic Marine Living Resources

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

§ 300.100 Purpose and scope.

(a) This subpart implements the Antarctic Marine Living Resources Convention Act of 1984 (AMLRCA or Act), 16 U.S.C. 2431 *et seq.*

(b) This subpart regulates—

(1) The harvesting of Antarctic marine living resources and other associated activities by any person subject to the jurisdiction of the United States or by any vessel of the United States.

(2) The import, export, and re-export into the United States of any Antarctic marine living resource.

§ 300.101 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980 (Convention) the terms used in this subpart have the following meanings for purposes of this subpart. If a term is defined differently in § 300.2, than in the Act, or Convention, the definition in this section shall apply.

ACA means the Antarctic Conservation Act of 1978 (16 U.S.C. 2401, *et seq.*).

Annual or biennial measure means a conservation measure that:

- (1) Applies to the operation of the Convention's commercial or exploratory fisheries such as gear, catch, and effort restrictions and time and area closures;
- (2) Generally expires after one or two fishing season(s); and
- (3) Does not require the development of policy options or a regulatory framework.

Antarctic convergence means a line joining the following points along the parallels of latitude and meridians of longitude:

| <i>Lat.</i> | <i>Long.</i> |
|-------------|--------------|
| 50° S. | 0. |
| 50° S. | 30° E. |
| 45° S. | 30° E. |
| 45° S. | 80° E. |
| 55° S. | 80° E. |
| 55° S. | 150° E. |
| 60° S. | 150° E. |
| 60° S. | 50° W. |
| 50° S. | 50° W. |
| 50° S. | 0. |

Antarctic marine living resources or AMLR(s) means:

(1) The populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence;

(2) All parts or products of those populations and species set forth in paragraph (1) of this definition.

Centralized Vessel Monitoring System (C-VMS) means the system operated by the Secretariat of CCAMLR that receives reports of positional and other information from satellite-linked mobile transceiver units located on vessels, that are submitted to the CCAMLR Secretariat, either directly from the vessel or through the relevant flag State.

Commission or *CCAMLR* means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention.

Convention area means all waters south of the Antarctic Convergence.

Dealer means a person who imports AMLRs into, or exports or re-exports AMLRs from, the United States.

Dissostichus catch document (DCD) is a document generated through CCAMLR's electronic catch documentation scheme (CDS), containing information relating to the harvest, landing, and transshipment of *Dissostichus* species.

Dissostichus export document (DED) is a document generated through the CCAMLR's electronic CDS, containing information relating to the export of *Dissostichus* spp.

Dissostichus re-export document (DRED) is a document generated through CCAMLR's electronic CDS, containing information relating to the re-export of *Dissostichus* spp.

Dissostichus species or *Dissostichus spp.* means Patagonian toothfish and

Antarctic toothfish, and any parts or products therefrom.

Enhanced mobile transceiver unit or *EMTU* means a transceiver or communication device, including all hardware and software, carried and operated on a vessel as part of a vessel monitoring system.

Export means any movement of fish or fish product from a territory under the control of the State or free trade zone of landing, or, where that State or free trade zone forms part of a customs union, any other Member State of that customs union.

First receiver means the person who first receives AMLRs landed from a vessel licensed under 50 CFR 300.107 at a U.S. port.

Fish means finfish, mollusks, and crustaceans.

Fishery means:

(1) One or more stocks of fish that are treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

(2) Any fishing for such stocks.

Harvesting vessel means any vessel of the United States (including any boat, ship, or other craft), that is used for, equipped to be used for, or of a type that is normally used for harvesting.

Import means the physical entering or bringing of a fish or fish product into any part of the geographical territory under the control of a State, except where the catch is landed or transshipped within the definitions of landing or transshipment.

Individual permit means a National Science Foundation (NSF) permit issued under 45 CFR part 670; or an NSF award letter (demonstrating that the individual has

received an award from NSF to do research in the Antarctic); or a marine mammal permit issued under § 216.31 of this chapter; or an endangered species permit issued under § 222.21 of this chapter.

Inspection vessel means a vessel carrying a CCAMLR inspector and displaying the pennant approved by CCAMLR to identify such vessel.

International observer means a scientific observer operating in accordance with the CCAMLR Scheme of International Scientific Observation and the terms of a bilateral arrangement concluded between the United States and another member of CCAMLR for the placement of a U.S. national onboard a vessel flagged by another member of CCAMLR or for the placement of the national of another member of CCAMLR onboard a vessel of the United States.

Land or Landing means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded. However, for purposes of catch documentation as provided for in § 300.106, land or landing means the initial unloading or transfer of *Dissostichus* spp. in any form from a vessel to dockside even if such fish are subsequently transferred to a container or to another vessel in a port or free trade zone.

National observer means a U.S. national placed and operating onboard a vessel of the United States as a scientific observer in accordance with § 300.111.

National Seafood Inspection Laboratory (NSIL) means the NMFS laboratory located at 3209 Frederic Street Pascagoula, MS 39567, telephone (228) 769-8964, email PTFReporting@noaa.gov.

Office of Law Enforcement (OLE) refers to the NOAA Office of Law

Enforcement.

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 hour with no more than a 1-hour delay.

Recreational fishing means fishing with hook and line for personal use and not for sale.

Re-export means any movement of a fish or fish product from a territory under the control of a State, free trade zone, or Member State of a customs union of import unless that State, free trade zone, or any Member State of that customs union is the first place of landing, in which case the movement is an export within the definition of export.

Seal excluder device means a barrier within the body of a trawl comprised of a metal frame, nylon mesh, or any material that results in an obstruction to seals between the mouth opening and the cod end of the trawl. The body of the trawl net forward of the barrier must include an escape opening through which seals entering the trawl can escape.

Specially validated dissostichus catch document (SVDCD) means a *Dissostichus* catch document that has been specially issued by a State to accompany seized or confiscated *Dissostichus* spp. offered for sale or otherwise disposed of by the State.

Transship or transshipment means the transfer of fish or fish products, other AMLRs, or any other goods or materials directly from one vessel to another. However, for purposes of catch documentation as provided for in § 300.106, transship or transshipment means the transfer of *Dissostichus* spp. that has not been previously landed, from one vessel directly to another, either at sea or in port.

Vessel Monitoring System (VMS) means a system that uses satellite-linked EMTUs installed on vessels to allow a flag State or other entity to receive automatic transmission of positional and other information related to vessel activity.

§ 300.102 Relationship to other treaties, conventions, laws, and regulations.

(a) Other conventions and treaties to which the United States is a party and other Federal statutes and implementing regulations may impose additional restrictions on the harvesting and importation into the United States of AMLRs.

(b) The ACA implements the Antarctic Treaty Agreed Measures for the Conservation of Antarctic Fauna and Flora (12 U.S.T. 794). The ACA and its implementing regulations (45 CFR part 670) apply to certain defined activities of U.S. citizens south of 60° S. lat.

(c) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), and their implementing regulations also apply to the harvesting and importation of AMLRs.

(d) Rule making exceptions. When implementing conservation measures adopted and notified by CCAMLR, NMFS may apply the following exceptions to Administrative Procedures Act (APA) rulemaking requirements at 5 U.S.C. 553(b)-(d):

(1) The foreign affairs function exception of the APA, 5 U.S.C. 553(a)(1); or

(2) The exception under subsection 307(b) of AMLRCA, 16 U.S.C. 2436(b), that provides that, notwithstanding 5 U.S.C. 553(b)-(d), NMFS may publish in the Federal Register a final regulation to implement any CCAMLR-adopted conservation measure –

(i) That has been in effect for 12 months or less, beginning on the date that the Commission notifies the United States of the conservation measure under Article IX of the Convention; and

(ii) With respect to which the Secretary of State does not notify the Commission in accordance with section 305(a)(1) of AMLRCA within the time period allotted for objections under Article IX of the Convention.

(e) Annual or biennial measures. NMFS may implement annual or biennial measures adopted by CCAMLR as conditions to vessel permits issued under § 300.107, instead of through rulemaking.

§ 300.103 Scientific research.

(a) This section applies to any person, using a vessel for research purposes, who intends to catch more than 1 tonne of finfish or krill or use gear other than longline, trawl, or pot to catch *Dissostichus* spp.

(b) Any person planning to use a vessel for research purposes, when the estimated research catch is expected to be less than 50 tonnes of finfish in a season, and no more than the amounts specified in Table 1, must notify the Assistant Administrator at least 2 months in advance of the planned research using the CCAMLR Format for Notification of Research Vessel Activity, Format 1. A copy of the format is available from NMFS Headquarters. The format requires:

- (1) Name and registration number of vessel;
- (2) Division and subarea in which research is to be carried out;
- (3) Estimated dates of entering and leaving the Convention Area;
- (4) Purposes of research; and

(5) Fishing equipment to be used (bottom trawl, midwater trawl, longline, crab pots, other).

| Taxon | Gear type | Expected Catch |
|---|-----------|---|
| Thresholds for finfish taxa <i>Dissostichus</i> spp. | Longline | 5 tonnes |
| | Trawl | 5 tonnes |
| | Pot | 5 tonnes |
| | Other | 0 tonnes |
| <i>Champscephalus gunnari</i> | All | 10 tonnes |
| Thresholds for non-fish taxa Krill Squid Crabs | All | 0.1 percent of the catch limit for a given area |

(c) Any person planning to use any vessel for research purposes, when the estimated research catch is expected to be more than 50 tonnes or greater than the amounts specified in Table 1 must report the details of the research plan to NMFS using CCAMLR Format 2 for Notification of Research Vessel Activity. The format must be submitted to Assistant Administrator at least 7 months in advance of the planned start date for the research. A copy of the format is available from NMFS Headquarters. The format requires:

- (1) Description of the main objective of the research;
- (2) Description of the fishery operations;
- (3) Description of the survey design, data collection, and analysis;
- (4) Proposed catch limit;
- (5) Description of the research capability; and
- (6) Description of the reporting for evaluation and review.

(d) Where the expected catch is more than 50 tonnes of fish or greater than the amounts specified in Table 1, the planned fishing for research purposes shall not proceed

until the Assistant Administrator authorizes the person in writing that he or she may proceed. Such authorization may be provided after completion of review of the scientific research plan by the CCAMLR Scientific Committee and Commission.

(e) A summary of the results of any research subject to these provisions must be provided to the Assistant Administrator within 150 days of the completion of the research and a full report must be provided within 11 months.

(f) Catch, effort, and biological data resulting from the research must be reported using the reporting format for research vessels in accordance with relevant conservation measures, with a copy to NMFS Headquarters.

§ 300.104 International Fisheries Trade Permits and AMLR first receiver permits.

(a) *General.* (1) A person may import, export, or re-export AMLR into the United States only under a NMFS-issued International Fisheries Trade Permit (IFTP). For AMLRs to be released for entry into the United States, the product must be accompanied by a vessel permit, individual permit, AMLR first receiver permit, or IFTP.

(2) All shipments of *Dissostichus* spp. must also be accompanied by accurate, complete and valid CDS documentation (including all required validations and DEDs/DREDs) as described in § 300.106, and, in the case of shipments of frozen *Dissostichus* species, a preapproval certificate issued under § 300.105, as well as verifiable information that the harvesting vessel was reporting to C-VMS from port-to-port, regardless of where the fish were harvested. For purposes of entry of *Dissostichus* spp. into the United States, NMFS will only accept electronic CDS documents described in § 300.106.

(3) Imports of fresh or frozen *Dissostichus* spp. accompanied by an SVDCD are

prohibited

(b) *International Fisheries Trade Permit*. A person intending to import, export, or re-export AMLR must possess a valid IFTP issued under § 300.322 and file required data sets electronically with Customs and Border Protection (CBP) at the time, or in advance, of importation, exportation or re-exportation. “Required data set” has the same meaning as § 300.321 (see definition of “Documentation and data sets required”). See § 300.322 for IFTP application procedures and permit regulations. The IFTP holder may only conduct those specific activities stipulated by the IFTP.

(c) *AMLR First Receiver Permits*. (1) *General*. First receivers of AMLR catch landed from a vessel permitted under § 300.107 at a U.S. port of landing must possess an AMLR first receiver permit and may only conduct those activities described in the permit. A person issued, or required to have been issued a first receiver permit under this subpart may only receive fish from a U.S. vessel that has a valid vessel permit issued under § 300.107 as well as a valid High Seas Fishing Permit issued under 50 CFR subpart Q.

(2) *Application*. Applications for the AMLR first receiver permit are available from NMFS Headquarters.

(3) *Issuance*. NMFS may issue an AMLR first receiver permit if the permit application is complete and NMFS determines that the activity proposed by the first receiver meets the requirements of the Act. First receivers of AMLR required to have a first receiver permit may only receive AMLR that were harvested, in a manner consistent with CCAML R conservation measures and this subpart.

(4) *Duration*. Unless revoked or suspended, an AMLR first receiver permit is

valid from its date of issuance to its date of expiration.

(5) *Prohibition on transfer or assignment.* AMLR first receiver permits are valid only for the person to whom NMFS issued the permit and may not be transferred or assigned.

(6) *Changes in information submitted by permit applicants or permit holders:*

(i) *Changes in pending applications.* Applicants for an AMLR first receiver permit must report any change in the information contained in the application to the Assistant Administrator in writing as soon as possible.

(ii) *Changes occurring after permit issuance.* The person to whom NMFS issued an AMLR first receiver permit must report any change in previously submitted information to the Assistant Administrator in writing within 15 days of the change. Based on such reported information, the Assistant Administrator may revise the permit effective upon notification to the permit holder.

(7) *Fees.* NMFS may charge a fee to recover the administrative expenses of permit issuance. NMFS will determine the fee in accordance with the procedures in the NOAA finance handbook, available from NMFS, for calculating administrative costs of special products and services.

(8) *Reporting and recordkeeping requirements.* First receivers of AMLRs required to have a first receiver permit under this subpart must:

(i) Accurately maintain all reports and records required by their first receiver permit and this subpart at their place of business;

(ii) Maintain the original permit at their place of business;

(iii) Make their permit, and all required reports and records, available for

inspection upon the request of an authorized officer; and

(iv) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(d) *Revision, suspension, or revocation.* NMFS may revise, suspend, or revoke an IFTP, or first receiver permit, issued under this section based upon a violation of the permit, the Act, or this subpart.

(e) A person may not import a marine mammal into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

§ 300.105 Preapproval for importation of frozen *Dissostichus* species.

(a) A NMFS-issued preapproval certificate is required to import each shipment of frozen *Dissostichus* species.

(b) *Application.* Application forms for a preapproval certificate are available from NMFS Headquarters and the National Seafood Inspection Laboratory. With the exception of the U.S. Customs 7501 entry number, a complete and accurate application must be received by NMFS for each preapproval certificate at least 10 working days before the anticipated date of the importation. Dealers must supply the U.S. Customs 7501 entry number at least three working days prior to the expected arrival of a shipment of frozen *Dissostichus* species at a U.S. port.

(c) *Fees.* A person must include the processing fee with each preapproval certificate application. NMFS will determine the fee under the NOAA finance handbook procedures for calculating administrative costs of special products and services and user fees collected for administrative expenses associated with processing applications for

preapproval certificates.

(d) *Issuance.* NMFS may issue a preapproval certificate for importation of a shipment of frozen *Dissostichus* species if the preapproval application form is complete and NMFS determines that the activity proposed by the applicant meets the requirements of the Act and that the resources were not 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 that the harvesting vessel reported to C-VMS continuously and in real-time from port-to-port, regardless of where such *Dissostichus* species were harvested.

(e) *Duration.* A preapproval certificate is valid until the *Dissostichus* product specified in the preapproval application is imported.

(f) *Transfer.* A person may not transfer or assign a preapproval certificate.

(g) *Changes in information* — (1) For pending preapproval certificates, applicants must report in writing to NMFS any changes in the information submitted in their preapproval certificate applications. NMFS may extend the processing period for the application as necessary to review and consider any changes.

(2) *Issued preapprovals.* For issued preapproval certificates, the certificate holder must report in writing to NMFS any changes to information included in the preapproval certificate application. Any changes related to fish being imported, such as harvesting vessel or country of origin, type and quantity of the fish to be imported or Convention statistical subarea from which the resource was harvested, will void the preapproval certificate and the shipment may not be imported unless authorized by NMFS through issuance of a revised or new preapproval certificate.

(3) The provision of false information in a preapproval application, or the failure to report a change in the information contained in a preapproval application, voids the application or preapproval as applicable.

(h) NMFS will not issue a preapproval certificate for any shipment of *Dissostichus* species:

(1) Identified as originating from a high seas area designated by the Food and Agriculture Organization of the United Nations as Statistical Area 51 or Statistical Area 57 in the eastern and western Indian Ocean outside and north of the Convention Area;

(2) Determined to have been harvested or transshipped in contravention of any CCAMLR Conservation Measure in force at the time of harvest or transshipment;

(3) Determined to have been harvested or transshipped by a vessel identified by CCAMLR as having engaged in illegal, unreported and unregulated (IUU) fishing; or

(4) Accompanied by inaccurate, incomplete, invalid, or improperly validated CDS documentation or by a SVDCD.

§ 300.106 Catch Documentation Scheme (CDS): documentation and other requirements.

(a) *General.* (1) CCAMLR CDS document(s) must accompany all shipments of *Dissostichus* species as required in this section.

(2) No shipment of *Dissostichus* species shall be released for entry into the United States unless accompanied by an accurate, complete, valid and validated CCAMLR CDS document.

(3) *Dissostichus* species shall not be released for entry into the United States unless all of the applicable requirements of the CCAMLR Conservation Measures and

U.S. regulations have been met.

(b) *Harvesting vessels.* (1) A U.S. vessel harvesting or attempting to harvest *Dissostichus* species, whether within or outside of the Convention Area, must possess a valid vessel permit issued under § 300.107, a valid High Seas Fishing Permit issued under 50 CFR subpart Q, as well as DCD issued by NMFS, which is non-transferable. The master of the harvesting vessel must ensure that catch and other information specified on the DCD are accurately recorded.

(2) Prior to offloading *Dissostichus* species, the master of the harvesting vessel must:

(i) Electronically convey, by the most rapid means possible, catch and other information to NMFS and record on the DCD a confirmation number received from NMFS;

(ii) Obtain on the DCD (or copies thereof) the signature(s) of the following persons: if catch is offloaded for transshipment, the master of the vessel(s) to which the catch is transferred; or if catch is offloaded for landing, the signature of both the responsible official(s) designated by NMFS in the vessel permit and the recipient of the catch at the port(s) of landing; and

(iii) Sign the DCD (or copies thereof), electronically convey by the most rapid means possible each copy to NMFS and provide a copy to each recipient of the catch.

(3) The master of the harvesting vessel must submit the original DCD (and all copies thereof with original signatures) to NMFS no later than 30 days after the end of the fishing season for which the vessel permit was issued and retain copies of the DCD for a period of 2 years.

(c) *Transshipment vessels.* (1) A U.S. vessel transshipping or attempting to transship *Dissostichus* species, whether within or outside of the Convention Area, must possess a valid vessel permit issued under § 300.107 and a valid High Seas Fishing Permit issued under subpart Q of this part. The master of a U.S. vessel receiving *Dissostichus* species by transshipment must, upon receipt of *Dissostichus* species, sign each DCD provided by the master of the vessel that offloads *Dissostichus* species.

(2) Prior to landing *Dissostichus* species, the master of the transshipping vessel must:

(i) Obtain on each DCD (or copies thereof) the signature(s) of both the responsible official(s) designated by NMFS in the vessel permit and the recipient of the catch at the port(s) of landing and;

(ii) Sign each DCD (or copies thereof), and electronically convey by the most rapid means possible each copy to NMFS and to the flag state(s) of the offloading vessel(s) and provide a copy to each recipient of *Dissostichus* species.

(3) The master of the transshipping vessel must submit all DCDs with original signatures to NMFS no later than 30 days after offloading and retain copies for a period of 2 years.

(d) *First receivers.* Any person who receives *Dissostichus* species landed by a vessel at a U.S. port must hold an AMLR first receiver permit issued under § 300.104 and must sign the DCD(s) provided by the master of the vessel and retain copies at their place of business for a period of 2 years. A person issued, or required to have been issued a first receiver permit under this subpart may only receive fish from a U.S. vessel that has a valid vessel permit issued under § 300.107 as well as a valid High Seas Fishing Permit

issued under 50 CFR subpart Q.

(e) *Import.* (1) A person who imports fresh *Dissostichus* species must hold an IFTP issued under § 300.322. To import frozen *Dissostichus* species into the United States, a person must:

(i) Obtain a preapproval certificate issued under § 300.105 for each shipment.

Among the information required on the application, applicants must provide the document number and export reference number on the DED or DRED corresponding to the intended import shipment and, if requested by NMFS, additional information for NMFS to verify that the harvesting vessel reported to the C-VMS continuously and in real-time, from port-to-port, regardless of where the fish were harvested;

(ii) Ensure that the quantity of toothfish listed on the DED (or the *Dissostichus* re-export document if product is a re-export) matches the quantity listed on the preapproval application within a variance of 10 percent;

(iii) Provide copies of the DED or DRED as needed to persons who re-export *Dissostichus* species.

(2) Imports of fresh *Dissostichus* species do not require a preapproval certificate.

If the amount or value of the fresh *Dissostichus* species to be imported is below thresholds that trigger the requirement to file entry documentation with U.S. Customs and Border Protection via the Automated Commercial Environment (see definition in § 300.321), the importer must complete a report of each shipment and submit the report to NMFS within 24 hours following importation. Verification of the harvesting vessel's reporting to C-VMS from port-to-port is not required for imports of fresh *Dissostichus* species.

(f) *Re-export.* (1) To re-export *Dissostichus* species, a person must hold an IFTP issued under § 300.322 and:

(i) Submit to NMFS a complete and accurate application for a NMFS *Dissostichus* re-export document, and

(ii) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically-generated DRED.

(2) When applying for a re-export approval, a person must reference or include the approval number issued by NOAA, for the original validated *Dissostichus* import document.

(g) *Export.* (1) To export U.S.-harvested *Dissostichus* species, the person must possess an IFTP issued under § 300.322 and:

(i) Submit to NMFS a complete and accurate NMFS application for a DED.

(ii) Obtain validation by a responsible official(s) designated by NMFS and receive an electronically-generated DED.

(2) Any person who exports *Dissostichus* species must include the original validated DED with the export shipment.

(h) *Recordkeeping.* Any person who imports, exports or re-exports *Dissostichus* spp. must:

(1) Retain a copy of all CDS documents at the person's place of business for a period of 2 years from the date on the documents and provide copies as needed to NMFS; and

(2) Make the IFTP and all CDS documents and other records and reports required by this subpart available for inspection upon request of an authorized officer.

§ 300.107 Vessel permits and requirements.

(a) *General.* In addition to the High Seas Fishing Permit requirements at 50 CFR part 300, subpart Q:

(1) Every vessel of the United States that attempts to harvest or harvests any AMLR must have a vessel permit authorizing the harvest issued under this subpart, unless the attempt or harvest occurs during recreational fishing or is covered by an individual permit. Boats launched from a vessel issued a vessel permit do not require a separate permit, but are covered by the permit issued to the launching vessel. Any enforcement action that results from the activities of a launched boat will be taken against the owner and operator of the launching vessel.

(2) Any vessel of the United States that receives or attempts to receive any harvested AMLR from another vessel at sea, regardless of whether such transshipment occurs in the Convention Area or that receives, or attempts to receive any other goods or materials from another vessel in the Convention Area, must have a vessel permit authorizing transshipment issued under this subpart. Transshipment vessels must comply with the permitting provisions of this section. This requirement does not apply to scientific research vessels or to transshipments covered under an individual permit.

(3) Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to harass, capture, harm, kill, harvest, or import marine mammals. No marine mammals may be taken in the course of commercial fishing operations unless the taking is authorized under the Marine Mammal Protection Act and/or the Endangered Species Act pursuant to an exemption or permit granted by the appropriate agency.

(b) *Responsibility of owners and operators.* (1) The owners and operators of vessels permitted, or required to be permitted, under this subpart are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under the Act and this subpart.

(2) The owners and operators of each such vessel are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the owners or operators, and regardless of knowledge concerning their occurrence.

(3) The owner of a vessel issued a vessel permit under this subpart must report any sale, change in ownership, or other disposition of the vessel to the Assistant Administrator as soon as possible but no later than 15 days after the change.

(4) The owner and operator of a harvesting vessel issued a permit to fish for krill in the Convention Area using trawl gear must install a seal excluder device and may not possess onboard or deploy trawl gear without a seal excluder device installed.

(c) *Application.* Application forms for vessel permits are available from NMFS Headquarters.

(1) A separate, fully completed and accurate application is required for each vessel for which a permit is requested.

(2) NMFS must receive applications for vessel permits no later than April 1 for the fishing season that will commence on or after December 1 of that year.

(3) Applications for a permit to harvest krill must, to the extent possible, identify the products to be derived from the anticipated krill catch.

(4) NMFS will only accept permit applications for vessels that have been issued

an International Maritime Organization (IMO) number.

(5) NMFS may charge a fee to recover the administrative expense of permit issuance. NMFS will determine the fee in accordance with procedures in the NOAA finance handbook, available from NMFS, for calculating administrative costs of special products and services and user fees.

(d) *Issuance.* The Assistant Administrator may issue a vessel permit if the Assistant Administrator determines that the harvesting or transshipment activities described in the application will meet the requirements of the Act and will not:

(1) Decrease the size of any harvested population to levels below those that ensure its stable recruitment. For this purpose, the Convention provides that its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment.

(2) Upset the ecological relationships between harvested, dependent, and related populations of AMLRs and the restoration of depleted populations to levels that will ensure stable recruitment.

(3) Cause changes or increase the risk of changes in the marine ecosystem that are not potentially reversible over 2 or 3 decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effects of the introduction of alien species, the effects of associated activities on the marine ecosystem and the effects of environmental changes, with the aim of making possible the sustained conservation of AMLRs.

(4) Violate the Convention or any conservation measures in force with respect to the United States under the Convention. The Convention and the schedule of

conservation measures in force can be found on the CCAMLR website: www.ccamlr.org.

(e) *Duration*. A vessel permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(f) *Transfer*. Permits are not transferable or assignable. A permit is valid only for the vessel to which it is issued.

(g) *Display*. Each vessel must have on board, at all times, a valid vessel permit and the vessel operator must produce it for inspection upon the request of an authorized officer or CCAMLR inspector.

(h) *Changes in information submitted by permit applicants or holders* — (1) *Changes in pending applications*. Applicants for a vessel permit must report to the Assistant Administrator in writing any change in the information contained in the application. The processing period for the application will be extended as necessary to review the change.

(2) *Changes occurring after permit issuance* —

(i) *Requested changes in the location, manner, or amount of harvesting*. Any changes in the location, manner or amount of harvesting must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator through a permit revision or issuance of a new permit. If the Assistant Administrator determines that the requested change in the location, manner, or amount of harvesting could significantly affect the status of any Antarctic marine living resource, the Assistant Administrator will treat the requested change as an application for a new permit and so notify the holder.

(ii) *Changes other than in the location, manner or amount of harvesting*. For

changes other than those addressed in paragraph (h)(2)(i) of this section, the owner or operator of a vessel that has been issued a vessel permit must report to the Assistant Administrator in writing any change in previously submitted information as soon as possible but no later than within 15 days after the change. Based on such reported information, the Assistant Administrator may revise the permit and any revised permit would be effective upon notification to the permit holder.

(iii) *Conditions and restrictions.* The vessel permit will contain conditions and restrictions that the Assistant Administrator deems necessary for implementation of conservation measures that apply to the harvesting or transshipment activities. The Assistant Administrator may revise the vessel permit to include additional conditions and restrictions on the harvesting vessel as necessary to implement conservation measures in force with respect to the United States or to achieve the purposes of the Convention or the Act. Any additional conditions or restrictions will be effective upon notification to the permit holder.

(j) *Revision, suspension, or revocation for violations.* A vessel permit may be revised, suspended, or revoked if the harvesting vessel is involved in the commission of any violation of its permit, the Act, or this subpart. The Assistant Administrator may deny a vessel permit if the applicant or harvesting vessel was previously involved in the commission of any violation of its permit, the Act, or this subpart. Failure to report a change in the information contained in an application within 15 days of the change is a violation of this subpart and voids the application or permit, as applicable. If a change in vessel ownership is not reported, the violation is chargeable to the previous owner.

(k) *Transshipment notification.* The vessel operator must notify the CCAMLR

Secretariat of transshipments of AMLRs, bait, or fuel, and submit a confirmation of the notification to NMFS Headquarters, no later than 72 hours before the transshipment will take place. The vessel operator must notify the CCAMLR Secretariat of transfers of all other goods, and submit a confirmation of the notification to NMFS Headquarters, no later than 2 hours before the transshipment will take place. Notifications of intended transshipments shall include the following information, for all vessels involved:

- (1) Names, registration numbers, and IMO numbers,
- (2) International radio call signs,
- (3) Flag State,
- (4) Type of vessels, length, gross registered tonnage and carrying capacity,
- (5) Proposed time and position, in latitude and longitude, of transshipment.
- (6) Details of the type and amount of catches and/or other goods, such as food stores and fuel, involved in the transshipment.

(1) *Reporting and recordkeeping requirements.* The operator of any vessel required to have a vessel permit under this subpart must:

- (1) Accurately maintain on board the vessel all CCAMLR reports and records required by its permit.
- (2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector.
- (3) Within the time specified in the vessel permit, submit a copy of such reports and records to NMFS.
- (4) Install a NMFS-approved EMTU on board U.S. flagged 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 § 300.112.

(5) Provide advance notice of the vessel's entry into port using the CCAMLR Port Inspection Report, including the written declaration that the vessel has not engaged in or supported illegal, unreported and unregulated (IUU) fishing in the Convention Area and has complied with relevant CCAMLR requirements. The CCAMLR Port Inspection Report, and instructions for its submission, is available from NMFS Headquarters.

§ 300.108 Vessel and gear identification.

(a) *Vessel identification.* (1) A vessel issued a permit under this subpart must be marked with the vessel's name and its International Radio Call Sign (IRCS) amidships on both the port and starboard sides of the superstructure or hull, so that it is visible at all times from an enforcement or inspection vessel. Fixtures inclined at an angle to the vessel's side or superstructure would be considered as suitable provided that the angle of inclination would not prevent sighting of the sign from another vessel or from the air. The vessel's IRCS shall be marked on the deck. Should an awning or other temporary cover be placed so as to obscure the mark on the deck, the awning or cover shall also be marked with the IRCS. The marks should be placed athwartship with the top of the numbers or letters towards the bow.

(2) Boats, skiffs and craft carried by the vessel for fishing operations shall bear the same mark as the vessel, except that a numerical suffix specific for the boat, skiff, or craft must follow the IRCS.

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the vessel in block Roman alphabet letters and Arabic

numerals using good quality marine paints. The letters and numbers shall be: at least 1 meter in height (h) for the IRCS placed on the hull, superstructure and/or inclined surfaces and at least 0.3 meter for marks placed on deck. The length of the hyphen shall be half the height of the letters and numbers. The width of the stroke for all letters, numbers and the hyphen shall be $h/6$. The space between letters and/or numbers shall not exceed $h/4$ nor be less than $h/6$. The space between adjacent letters having sloping sides (e.g., A and V) shall not exceed $h/8$ nor be less than $h/10$. If a contrasting color is used for the background of the marks, it shall extend to provide a border around the mark of at least $h/6$.

(4) The marks and the background shall be maintained in good condition at all times.

(b) *Navigational lights and shapes.* Each vessel issued a vessel permit must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the harvesting vessel is engaged (as described at 33 CFR part 81).

(c) *Gear identification.* (1) The operator of each fishing vessel must ensure that all deployed fishing gear is clearly marked at all times at the surface with a buoy displaying the vessel identification of the harvesting vessel (see paragraph (a) of this section) to which the gear belongs, a light visible for 2 miles at night in good visibility, and a radio buoy.

(2) The operator of each harvesting vessel must ensure that deployed longlines and strings of traps or pots, and gillnets are clearly marked at all times at the surface at each terminal end with a buoy displaying the vessel identification of the harvesting vessel

to which the gear belongs (see paragraph (a) of this section), a light visible for 2 miles at night in good visibility, and a radio buoy.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable CCAMLR Conservation Measures in force with respect to the United States by any authorized officer or CCAMLR inspector.

(d) *Maintenance.* The operator of each vessel issued a vessel permit must:

(1) Keep the vessel and gear identification clearly legible and in good condition at all times;

(2) Ensure that nothing on the vessel obstructs the view of the markings from an enforcement or inspection vessel or aircraft; and

(3) Ensure that the proper navigational lights and shapes are displayed for the vessel's activity and are properly functioning.

§ 300.109 Initiating a new fishery.

(a) A new fishery, for purposes of this section, is a fishery that uses bottom trawls on the high seas of the Convention Area or a fishery for a species, using a particular method, in a statistical subarea or division for which:

(1) Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing has not been submitted to CCAMLR;

(2) Catch and effort data have never been submitted to CCAMLR; or

(3) Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

(b) Persons intending to develop a new fishery shall notify the Assistant Administrator no later than April 1 for the fishing season that will commence on or after December 1 and shall not initiate the fishery pending NMFS and CCAMLR review or until a vessel permit has been used under this subpart.

(c) The notification shall be accompanied by a complete vessel permit application required under § 300.107 and information on:

(1) The nature of the proposed fishery, including target species, methods of fishing, proposed region and maximum catch levels proposed for the forthcoming season;

(2) Biological information on the target species from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity;

(3) Details of dependent and related species and the likelihood of them being affected by the proposed fishery;

(4) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield; and

(5) If the proposed fishery will be undertaken using bottom trawl gear, the known and anticipated impacts of this gear on vulnerable marine ecosystems, including benthos and benthic communities.

§ 300.110 Exploratory fisheries.

(a) An exploratory fishery, for purposes of this section, is a fishery that was previously defined as a new fishery under § 300.109.

(b) A fishery continues to be classified by CCAMLR as an exploratory fishery until sufficient information is available to:

(1) Evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery's potential yield;

(2) Review the fishery's potential impacts on dependent and related species; and

(3) Allow the CCAMLR Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels and fishing gear.

(c) The operator of any vessel engaging in an exploratory fishery must submit, by the date specified in the vessel permit issued under § 300.107, catch, effort, and related biological, ecological, and environmental data as required by a data collection plan for the fishery formulated by the CCAMLR Scientific Committee.

(d) In addition to the requirements in § 300.107, any person planning to enter an exploratory fishery must notify the Assistant Administrator no later than April 1 for the fishing season that will commence on or after December 1 and shall not enter the fishery pending NMFS and CCAMLR review or until a vessel permit has been used under this subpart. The Assistant Administrator will not issue a permit to enter an exploratory fishery until after the requirements of § 300.107 have been met and CCAMLR has considered the notification.

(e) The notification shall be accompanied by a complete vessel permit application required under § 300.107 and information on:

(1) The nature of the exploratory fishery, including target species, methods of fishing, proposed region and maximum catch levels proposed for the forthcoming season;

(2) Specification and full description of the types of fishing gear to be used;

(3) Biological information on the target species from comprehensive research/survey cruises, such as distribution, abundance, demographic data and

information on stock identity; details of dependent and related species and the likelihood of their being affected by the proposed fishery;

(4) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of potential yield;

(5) If the proposed fishery will be undertaken using bottom trawl gear, information on the known and anticipated impacts of this gear on vulnerable marine ecosystems, including benthos and benthic communities; and

(6) Any other information the Assistant Administrator requires to fully implement the relevant conservation measures.

§ 300.111 Scientific observers.

(a) Except as otherwise specified, this section applies to both national observers and international observers, as well as to vessels of the United States carrying, or required to carry, such observers.

(b) All vessels of the United States fishing in the Convention Area must carry one or more scientific observers as required by CCAMLR conservation measures or as specified in a vessel permit issued under this subpart.

(c) All vessels of the United States conducting longline sink rate testing outside the Convention Area and pursuant to CCAMLR protocols must carry one or more scientific observers as specified in the vessel permit issued under this subpart.

(d) *Procurement of observers by vessel.* Owners of vessels required to carry scientific observers under this section must arrange for observer services in coordination with the NMFS Southwest Fisheries Science Center Antarctic Ecosystem Research Division. The vessel owner is required to pay for observer services through an observer

service provider who has provided observer services to the Federal government within the past year. In situations where no qualified observer is available through a qualified observer provider, the Secretary may authorize a vessel owner to arrange for an observer by alternative methods. An observer may not be paid directly by the vessel owner.

(e) *Vessel responsibilities.* An operator of a vessel required to carry one or more scientific observers must:

(1) *Accommodations and food.* Provide, at no cost to the observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers of the vessel; and

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and have on board:

(i) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I;

(ii) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(iii) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(3) *Health and safety regulations.* Comply with the observer health and safety regulations at part 600 of this title.

(4) *Transmission of data.* Facilitate transmission of observer data by allowing observers, on request, to use the vessel's communications equipment and personnel for the confidential entry, transmission, and receipt of work-related messages.

(5) *Vessel position.* Allow observers access to, and the use of, the vessel's

navigation equipment and personnel, on request, to determine the vessel's position, course and speed.

(6) *Access.* Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(7) *Prior notification.* Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(8) *Records.* Allow observers to inspect and copy the vessel's DCD, product transfer forms, any other logbook or document required by regulations or CCAMLR conservation measures, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(9) *Assistance.* Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

- (i) Measuring decks, codends, and holding bins;
- (ii) Providing the observers with a safe work area adjacent to the sample collection site;
- (iii) Collecting bycatch when requested by the observers;
- (iv) Collecting and carrying baskets of fish when requested by observers; and
- (v) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(10) *Transfer at sea.* (i) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(f) *Insurance.* The observer service provider or vessel owner must provide insurance for national observers that provides compensation in the event of an injury or death during the entire deployment, from the point of hire location to return, equivalent to the standards of the North Pacific Groundfish Observer Program set forth in § 679.50 of this title.

(g) *Educational requirements.* National observer candidates must:

(1) Have a Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences; or

(2) Have successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course.

(h) *Health requirements.* National observers, and U.S. observers deployed as international observers, must have a signed and dated statement from a licensed physician that he or she has physically examined the observer. The statement must confirm that,

based upon the physical examination, the observer does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of an observer and the dangerous, remote and rigorous nature of the work. The physician's statement must be submitted to the NMFS Southwest Fisheries Science Center Antarctic Ecosystem Research Division program office prior to approval of an observer. The physical exam must have occurred during the 12 months prior to the observer's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(i) *Standards of observer conduct* – (1) Observers: (i) Must not have a direct financial interest in the fishery being observed, including but not limited to:

(A) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(B) Any business involved with selling supplies or services to any vessel, shoreside or floating stationary processing facility; or

(C) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities.

(ii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts

activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(iii) Must not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(iv) Must not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor while employed by an observer provider.

(2) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(j) *Standards of observer behavior.* Observers must:

(1) Avoid any behavior that could adversely affect the confidence of the public in the integrity of the CCAMLR System of Scientific Observation or of the government, including but not limited to the following:

(2) Perform their assigned duties as described in the CCAMLR Scientific Observers Manual and must complete the CCAMLR Scientific Observer Logbooks and submit them to the CCAMLR Data Manager at the intervals specified by the Data Manager.

(3) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(4) Not disclose collected data and observations made on board the vessel or in the processing facility to any person, except the owner or operator of the observed vessel

or processing facility or NMFS.

(5) Refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the CCAMLR System of Scientific Observation as a whole. This includes, but is not limited to,:

(i) Refrain from engaging in the use, possession, or distribution of illegal drugs;

or

(ii) Refrain from engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(k) *Sampling station.* (1) Minimum work space aboard at sea processing vessels. The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 meter (m) deep in the area in front of the table and scale.

(2) Table aboard at-sea processing vessels. The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(3) Other requirement for at-sea processing vessels. The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping),

lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

§ 300.112 Vessel monitoring system.

(a) *Requirement for use.* Within 30 days after NMFS publishes in the Federal Register a list of approved EMTUs and associated communications service providers for the AMLR fishery, an owner or operator of a vessel that has been issued a vessel permit under § 300.107 must ensure that such vessel has a NMFS-type-approved, operating EMTU installed and continuously operating for the duration of any fishing trip involving the harvesting of AMLR.

(b) *Installing and activating the EMTU.* Only EMTUs that have been approved by NMFS for use in the AMLR fishery may be used. The vessel owner or operator shall obtain and have installed on the fishing vessel, by a qualified marine electrician and in accordance with any instructions provided by the VMS Helpdesk or OLE, a NMFS type-approved EMTU.

(c) *Interference with the EMTU.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the EMTU, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's EMTU is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by NMFS that a vessel's EMTU is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by NMFS the vessel's positions or returning to port until the EMTU is operable.

(e) *Access to data.* OLE is authorized to receive and relay transmissions from the EMTU. OLE will share a vessel's position data obtained from the EMTU, if requested, with other NMFS offices, the USCG, and their authorized officers and designees.

(f) *Installation and operation of the VMS.* NMFS has authority over the installation and operation of the EMTU. NMFS may authorize the connection or order the disconnection of additional equipment, including a computer, to any EMTU when deemed appropriate by NMFS.

§ 300.113 CCAMLR Ecosystem Monitoring Program sites.

(a) *General.* (1) Any person subject to the jurisdiction of the United States must apply for and be granted an entry permit authorizing specific activities prior to entering a CCAMLR Ecosystem Monitoring Program (CEMP) site designated in accordance with the CCAMLR conservation measure describing the procedure for according protection for CEMP sites.

(2) If a CEMP site is also a site specially protected under the Antarctic Treaty (or the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes, such as the sites listed in 45 CFR 670.29), an applicant seeking to enter such site must apply to the Director of the NSF for a permit under applicable provisions of the ACA or any superseding legislation. The permit granted by NSF shall constitute a joint CEMP/ACA Protected Site permit and any person holding such a permit must comply with the appropriate CEMP site management plan. In all other cases, an applicant seeking a permit to enter a CEMP site must apply to the Assistant Administrator for a CEMP permit in accordance with the provisions of this section.

(b) *Responsibility of CEMP permit holders and persons designated as agents*

under a CEMP permit. (1) The CEMP permit holder and person designated as agents under a CEMP permit are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under this subpart.

(2) The CEMP permit holder and agents designated under a CEMP permit are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the CEMP permit holder or agents, and regardless of knowledge concerning their occurrence.

(c) *Prohibitions regarding the Antarctic Treaty System and other applicable treaties and statutes.* Holders of permits to enter CEMP Protected Sites are not authorized to undertake any activities within a CEMP Protected Site that are not in compliance with the conditions of the CEMP permit and the provisions of:

(1) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora (including the Protocol on the Environmental Protection to the Antarctic Treaty and its Annexes), as implemented by the ACA and any superseding legislation. (Persons interested in conducting activities subject to the Antarctic Treaty or the Protocol should contact the Office of Polar Programs, NSF).

(2) The Convention for the Conservation of Antarctic Seals.

(3) The Convention and its Conservation Measures in force, implemented under the Act.

(d) *Prohibitions on takings.* Permits issued under this section do not authorize any takings as defined in the applicable statutes and implementing regulations governing the activities of persons in Antarctica.

(e) *Issuance criteria.* Permits designated in this section may be issued by the

Assistant Administrator upon a determination that:

- (1) The specific activities meet the requirements of the Act;
- (2) There is sufficient reason, established in the CEMP permit application, that the scientific purpose for the intended entry cannot be served elsewhere; and
- (3) The actions permitted will not violate any provisions or prohibitions of the site's management plan submitted in compliance with the CCAMLR Conservation Measure describing the procedure for according protection to CEMP sites.

(f) *Application process.* An applicant seeking a CEMP permit from the Assistant Administrator to enter a CEMP site shall include the following in the application.

(1) A detailed justification that the scientific objectives of the applicant cannot be accomplished elsewhere and a description of how said objectives will be accomplished within the terms of the site's management plan.

(2) A statement signed by the applicant that the applicant has read and fully understands the provisions and prohibitions of the site's management plan. Prospective applicants may obtain copies of the relevant management plans and the CCAMLR Conservation Measure describing the procedure for according protection to CEMP sites by requesting them from NMFS Headquarters.

(g) *Conditions.* CEMP permits issued under this section will contain special and general conditions including a condition that the permit holder shall submit a report describing the activities conducted under the permit within 30 days of the expiration of the CEMP permit.

(h) *Transfer.* CEMP permits are not transferable or assignable. A CEMP permit is valid only for the person to whom it is issued.

(i) *Additional conditions and restrictions.* The Assistant Administrator may revise the CEMP permit effective upon notification of the permit holder, to impose additional conditions and restrictions as necessary to achieve the purposes of the Convention, the Act and the CEMP Management Plan. The CEMP permit holder must, as soon as possible, notify any and all agents operating under the permit of any and all revisions or modifications to the permit.

(j) *Revocation or suspension.* CEMP permits may be revoked or suspended based upon information received by the Assistant Administrator and such revocation or suspension shall be effective upon notification to the permit holder.

(1) A CEMP permit may be revoked or suspended based on a violation of the permit, the Act, or this subpart.

(2) Failure to report a change in the information submitted in a CEMP permit application within 10 days of the change is a violation of this subpart and voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(k) *Exceptions.* Entry into a CEMP site is lawful if committed under emergency conditions to prevent the loss of human life, avoid compromising human safety, prevent the loss of vessels or aircraft, or to prevent environmental damage.

(l) *Protected sites.* Sites protected by the Antarctic Treaty and regulated under the ACA are listed at 45 CFR part 670 subpart F.

§ 300.114 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Harvest any AMLR without a permit for such activity as required by §

300.107.

(b) Import into, or export or re-export from, the United States any AMLR: taken by a vessel of the United States without a permit issued under this subpart or by the a foreign-flagged vessel without valid authorization from the applicable flag state to harvest those resources; without accurate, complete, valid and properly validated CDS documentation as required by § 300.106; without an IFTP as required by § 300.104; or in violation of the terms and conditions for such import, export or re-export as specified on the IFTP.

(c) Engage in or benefit from harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the Convention.

(d) Ship, transport, offer for sale, sell, purchase, import, export, re-export or have custody, control or possession of, any AMLR that was harvested in violation of a conservation measure in force with respect to the United States under Article IX of the Convention or in violation of any regulation promulgated under the Act, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the AMLR.

(e) Refuse to allow any CCAMLR inspector or authorized officer to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for the purpose of conducting any search, investigation, or inspection authorized by the Act, this subpart, or any permit issued under the Act.

(f) Refuse to provide appropriate assistance, including access as necessary to communications equipment, to any CCAMLR inspector or authorized officer.

(g) Refuse to sign a written notification of alleged violations of Commission measures in effect prepared by a CCAMLR inspector.

(h) Assault, resist, oppose, impede, intimidate, or interfere with a CCAMLR inspector or authorized officer in the conduct of any boarding, search, investigation, or inspection authorized by the Act, this subpart, or any permit issued under the Act.

(i) Use any vessel to engage in harvesting, or receive, import, export or re-export, AMLRs after the revocation, or during the period of suspension, of an applicable permit issued under the Act.

(j) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by this subpart.

(k) Fish in an area where fishing is prohibited by the Commission, other than for scientific research purposes in accordance with § 300.103.

(l) Violate or attempt to violate any provision of this subpart, the Act, any other regulation promulgated under the Act or the conditions of any permit issued under the Act.

(m) Provide incomplete or inaccurate information about the harvest, transshipment, landing, import, export, or re-export of applicable species on any document required under this subpart.

(n) Receive AMLR from a vessel, without holding an AMLR first receiver permit as required under § 300.104, or receive AMLR from a fishing vessel that does not hold a valid vessel permit issued under § 300.107.

(o) Import, export or re-export *Dissostichus* spp. harvested or transshipped by a vessel identified by CCAMLR as having engaged in illegal, unreported and unregulated

(IUU) fishing, originating from a high seas area designated by the Food and Agriculture Organization of the United Nations as Statistical Area 51 or Statistical Area 57 or accompanied by inaccurate, incomplete, invalid, or improperly validated CDS documentation or import or re-export *Dissostichus spp.* accompanied by a SVDCD.

(p) Import shipments of frozen *Dissostichus spp.* without a preapproval issued under § 300.105.

(q) *Observers.* (1) Assault, resist, oppose, impede, intimidate, harass, bribe, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(4) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties.

(5) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment.

(6) Fish for or process fish without observer coverage required under § 300.111.

(7) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any

duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(8) Refuse to provide appropriate assistance, including access as necessary to communications equipment, to an observer.

(r) *Vessel monitoring systems.* (1) Use any vessel of the United States issued, or required to be issued, an AMLR vessel permit to conduct fishing operations unless that vessel carries a NMFS-type-approved EMTU and complies with the requirements described in this subpart.

(2) Fail to install, activate, repair or replace an EMTU prior to leaving port as specified in this subpart.

(3) Fail to operate and maintain an EMTU on board the vessel at all times as specified in this subpart.

(4) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the EMTU required to be installed on a vessel or the EMTU position reports transmitted by a vessel as specified in this subpart.

(5) Fail to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this subpart.

(6) Register an EMTU to more than one vessel at the same time.

(7) Connect, or leave connected, additional equipment to an EMTU without the prior approval of the OLE.

(8) Make a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of an EMTU or communication service provider.

(9) Fail to report to NMFS and to CCAMLR's C-VMS from port-to-port on any trip during which AMLR are, or are expected to be, harvested regardless of whether the vessel operates, or is expected to operate, inside the Convention Area.

(s) Trawl for krill in Convention Area fisheries without a seal excluder device or possess trawl gear without a seal excluder device installed onboard a vessel permitted, or required to be permitted, under this subpart to harvest krill with trawl gear.

(t) Harvest any AMLR in the Convention Area without a vessel permit required by this subpart.

(u) 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 that the harvesting vessel reported to CCAMLR's C-VMS continuously and in real-time, from port-to-port, regardless of where such *Dissostichus* species were harvested.

§ 300.115 Facilitation of enforcement and inspection.

In addition to the facilitation of enforcement provisions of § 300.5, the following requirements apply to this subpart.

(a) *Access and records.* (1) The owners and operator of each harvesting vessel must provide authorized officers and CCAMLR inspectors access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to personal quarters and areas within personal quarters. If inspection of a particular area would interfere with specific on-going scientific research, and if the operator of the harvesting vessel makes such assertion and produces an individual permit that covers that specific research, the authorized officer or CCAMLR inspector will not

disturb the area, but will record the information pertaining to the denial of access.

(2) The owner and operator of each harvesting vessel must provide to authorized officers and CCAMLR inspectors all records and documents pertaining to the harvesting activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(3) Before leaving vessels that have been inspected, the CCAMLR inspector will give the master of the vessel a Certificate of Inspection and a written notification of any alleged violations of Commission measures in effect and will afford the master the opportunity to comment on it. The ship's master must sign the notification to acknowledge receipt and the opportunity to comment on it.

(4) Any person issued a first receiver permit under this subpart, or an IFTP under § 300.322, must as a condition of that permit, allow an authorized officer access to any facility from which they engage in the first receipt, import, export or re-export of AMLR for the purpose of inspecting the facility and any fish, equipment or records therein.

(b) *Reports by non-inspectors.* All scientists, fishermen, and other non-inspectors present in the Convention Area and subject to the jurisdiction of the United States are encouraged to report any violation of Commission conservation measures observed in the Convention Area to the Office of Ocean and Polar Affairs (CCAMLR Violations), Department of State, Room 5801, Washington, DC 20520.

(c) *Storage of AMLR.* The operator of each harvesting vessel storing AMLR in a storage space on board a vessel must ensure that non-resource items are neither stowed

beneath nor covered by resource items, unless required to maintain the stability and safety of the vessel. Non-resource items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other moveable non-resource items. These non-resource items may be in a resource storage space when necessary for the safety of the vessel or crew or for the storage of the items. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure the safety of crew and to prevent shifting of cargo within the space.

§ 300.116 Penalties.

Any person or harvesting vessel found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, 15 CFR part 904, and other applicable laws.

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