



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216, 300, 600, and 660

[Docket No. 090223227-6560-03]

RIN 0648-AX63

**Trade Monitoring Procedures for Fishery Products; International Trade in Seafood;
Permit Requirements for Importers and Exporters**

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

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations to revise procedures and requirements for filing import, export, and re-export documentation for certain fishery products to meet requirements for the SAFE Port Act of 2006, the Magnuson-Stevens Fishery Conservation and Management Act (MSA), other applicable statutes, and obligations that arise from U.S. participation in regional fishery management organizations (RFMOs) and other arrangements to which the United States is a member or contracting party. Specifically, NMFS sets forth regulations to integrate the collection of trade documentation within the government-wide International Trade Data System (ITDS) and require electronic information collection through the automated portal maintained by the Department of Homeland Security, Customs and Border Protection (CBP). Under this integration, NMFS will require annually renewable International Fisheries Trade Permits (IFTP) for the import, export, and re-export of certain regulated seafood

commodities that are subject to trade monitoring programs of RFMOs and/or subject to trade documentation requirements under domestic law. These trade monitoring programs enable the United States to exclude products that do not meet the criteria for admissibility to U.S. markets, including products resulting from illegal, unregulated, and unreported (IUU) fishing activities. This final rule consolidates existing international trade permits for regulated seafood products under the Antarctic Marine Living Resources (AMLR) and Highly Migratory Species International Trade Permit (HMS ITP) programs and expands the scope of the permit requirement to include regulated seafood products under the Tuna Tracking and Verification Program (TTVP). This final rule also stipulates data and trade documentation for the above programs which must be provided electronically to CBP and addresses recordkeeping requirements for these programs in light of these changes. Trade documentation excludes any programmatic documents that are not required at the time of entry/export (e.g., biweekly dealer reports).

DATES: This final rule is effective September 20, 2016, except for the revision to § 300.184, which is effective [*insert date of publication in the Federal Register*].

FOR FURTHER INFORMATION CONTACT: Christopher Rogers, Office for International Affairs and Seafood Inspection, NOAA Fisheries (phone 301-427-8350, or e-mail *christopher.rogers@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

The Security and Accountability for Every Port Act of 2006 (SAFE Port Act, Public Law 109-347) requires all Federal agencies with a role in import admissibility decisions to collect information electronically through the ITDS. The Department of the Treasury has the U.S.

Government lead on ITDS development and Federal agency integration. CBP developed Automated Commercial Environment (ACE) as an internet-based system for the collection information for ITDS. The Office of Management and Budget (OMB), through its e-government initiative, oversees Federal agency participation in ITDS, with a focus on reducing duplicate reporting across agencies and migrating paper-based reporting systems to electronic information collection.

The term ITDS refers to the integrated, government-wide project for the electronic collection, use, and dissemination of the international trade and transportation data Federal agencies need to perform their missions, while the term ACE refers to the “single window” system through which the trade community will submit data related to imports and exports. Detailed information on ITDS is available at: <http://www.itds.gov>.

Numerous Federal agencies are involved in the regulation of international trade and many of these agencies participate in the import, export and transportation-related decision-making process. Agencies also use trade data to monitor and report on trade activity. NMFS is a partner government agency in the ITDS project because of its role in monitoring the trade of certain fishery products. Electronic collection of seafood trade data through a single portal will result in an overall reduction of the public reporting burden and the agency’s data collection costs, will improve the timeliness and accuracy of admissibility decisions, and increase the effectiveness of applicable trade restrictive measures.

On December 29, 2015, NMFS published a notice of proposed rulemaking for this action (80 FR 81251) to codify NMFS procedures for collecting information electronically through the ITDS. NMFS prepared a regulatory impact review of this action, which is available from NMFS (see **FOR FURTHER INFORMATION CONTACT**). This analysis describes the economic

impact this action will have on the United States. Responses to public comments received on the proposed rule are set forth below.

Changes from the Proposed Rule

A number of changes from the proposed rule were made to clarify the regulatory text and to take account of other final rules affecting 50 CFR part 300 that became effective after the proposed rule for ITDS integration was published.

Export Requirements

Although the ITDS single window concept is built on the ACE platform as the reporting mechanism for the trade sector and the source for accessing trade data by the partner agencies, there is a distinction between reporting procedures for imports and exports. The system used to electronically transmit export filings is called the Automated Export System (AES). The primary document for instructing the trade sector on the data requirements for export filing is the Automated Export System Trade Interface Requirements (AESTIR). The primary instructional document for Partner Government Agency (PGA) export requirements is the "Appendix Q" to AESTIR. This document is comparable to the Customs and Trade Automated Interface Requirements (CATAIR) "Appendix PGA" for import transactions. While each PGA has issued a separate Implementation Guide for import requirements as a supplement to CATAIR, all guidance to the trade sector for PGA export requirements is detailed within the AESTIR Appendix Q documents.

The CBP web page that contains the primary information on export requirements is: <https://www.cbp.gov/trade/aes>. Details on how to submit export data via AES are available at: <https://www.cbp.gov/trade/aes/aestir/introduction-and-guidelines>. PGA record formats are listed at: <https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats>.

The Appendix Q Record Lay Out Key details how each record required should be structured: <https://www.cbp.gov/document/guidance/appendix-q-record-layout-key>. NMFS has included references to the CBP import and export documentation in § 300.323 of the regulatory text.

Electronic System for Atlantic Bluefin Tuna

NMFS amended the regulatory text for the HMS ITP at 50 CFR 300.181 through 300.189 to reflect the implementation of the electronic bluefin tuna catch document program (81 FR 18796, April 1, 2016).

Biweekly Reporting and Import Documentation for Bigeye Tuna

NMFS amended 50 CFR 300.184 to address the exemption for bigeye tuna described in the Response to Comments section below under the heading “Bi-weekly Reporting.”

Issuance of Permits Restricted to Residents

NMFS amended 50 CFR Part 300.322(a) to clarify that only resident agents in the United States are eligible to be issued the International Fisheries Trade Permit (IFTP). Entities that are not resident in the United States may obtain the IFTP only via a resident agent application.

Entry Types Subject to Rule

NMFS amended 50 CFR 300.322(a) and 300.323 to clarify the various transactions which pertain to seafood previously imported for purposes other than immediate consumption and for which the permitting, reporting and recordkeeping requirements apply.

Exception to Low Value Exemptions

NMFS revised 50 CFR 300.323 to clarify that all imports and exports of covered commodities, including shipments otherwise eligible for the de minimis value exemption, must be filed in ACE or AES, as applicable, in order to collect the NMFS-required information. NMFS also revised 50 CFR 300.324(b) to clarify that de minimis value imports (valued at \$800

or less; see 19 U.S.C. 1321(a)(2)(C)) and exports (valued at \$2500 or less; see 15 CFR 30.37(a) and 15 CFR 30.2(a)(iv)(F)) are subject to the prohibition on importing/exporting fish or fish products regulated under 50 CFR 300 subpart Q without a valid IFTP or without submitting complete and accurate information through ACE or AES, as applicable.

Low value shipments are not exempt from statutory and regulatory requirements to collect information to support admissibility determinations and to report to the respective regional fishery management organizations on U.S. trade in fish products within the scope of each program. Under the SAFE Port Act, NMFS is required to collect information electronically and through the single window. Therefore, NMFS requires the use of ACE or AES, as applicable, to submit required information. However, CBP may provide other reporting mechanisms for different entry types and/or de minimis value shipments. If these alternative CBP mechanisms can collect all of the NMFS-required information and transmit that information to NMFS, importers and exporters may use these mechanisms to fulfill NMFS reporting requirements.

Redesignation of 50 CFR Part 300 Subpart Q

In publishing the proposed rule for ITDS integration of current trade monitoring programs, NMFS incorrectly numbered the sections of the proposed new subpart R to 50 CFR part 300. A final rule amending regulations implementing the High Seas Fishing Compliance Act (HSFCA) was published on October 16, 2015 (80 FR 62488). That final rule added a new subpart Q to 50 CFR part 300, with sections numbered §§ 300.330 through 300.341. In subsequently proposing a new Subpart R for the ITDS integration regulations, NMFS numbered sections from 300.320 through 300.324.

In order to maintain the correct sequence of section numbers, NMFS is now redesignating existing subpart Q as new subpart R. This final rule then inserts a new subpart Q for the ITDS regulations with sections numbered in the correct order. Given the placement of HSFCA regulations in the new subpart R, conforming amendments are needed for cross-references to HSFCA requirements which exist in 50 CFR 600.705 and 50 CFR 660.2.

Responses to Public Comments

NMFS received 12 public comments on the proposed rule. Comments were received from the National Customs Brokers and Forwarders Association of America (NCBFAA), Traffic/World Wildlife Fund/Oceana, Bumble Bee Seafoods, Tri Marine Management Company LLC, and two individuals potentially affected by new requirements in this rule.

Data Elements

Comment 1: NCBFAA noted that although the data submission requirements under the proposed rule are not new, this data has not previously been required to be submitted at the time of entry/release. They noted that submitting data at the time of entry/release not only increases processing costs for the importer, but also raises the potential for disruptions as the data moves through the ACE pipeline to CBP and NMFS. NCBFAA questioned the need for NMFS to collect all data elements at the time of entry/release and asked whether NMFS' requirements could be met if the information was provided via the entry summary which may be filed electronically within 10 days after entry/release. NCBFAA noted that moving these data submission requirements to entry summary would provide much needed flexibility for importers and customs brokers to handle complex entries without slowing down trade and would suit NMFS needs because NMFS would not be able to review data until after entry/release.

Response: NMFS believes that submission of data at the time of entry/release is necessary to ensure only admissible products are permitted entry into the U.S. market. Allowing data entry for these three programs after product has been admitted into the United States would make efforts to interdict problematic entries extremely difficult. NMFS also emphasizes that it is only requiring the minimum amount of data necessary to determine whether a product is admissible at the time of entry be provided as a data set at the time of entry. This approach should expedite the release of product associated with the three NMFS trade monitoring programs.

Permits and the Importer of Record

Comment 2: NCBFAA noted it does not object to consolidating the existing trade permits as proposed in the rule; however they noted that in some instances, particularly along land borders, customs brokers serve as the importer of record. NCBFAA stated its view that the IFTP should not be required for an importer of record who is not a beneficial party in interest, such as a customs broker. NCBFAA therefore suggested the rule be modified to clarify that the permit obligation, and associated recordkeeping and reporting requirements, belong to the “beneficial party in interest” which should be defined as a party with a financial interest in the imported goods such as the owner, purchaser, or distributor of the merchandise.

Response: NMFS believes it is important for enforcement purposes that the importer of record, regardless of whether said importer has a direct financial interest in the imported goods, be the responsible party accountable in the event of a shipment entry problem. Thus, the IFTP obligation and associated recordkeeping and reporting requirements in this rule will reside with the importer of record. Related to this, NMFS clarifies that entities not resident in the United States are ineligible to apply for the IFTP. Nonresident importers must have a U.S. resident agent

apply for the IFTP and have the customs broker provide the resident agent's permit number in the entry data. NMFS has clarified the regulatory text at 50 CFR 300.322(a) accordingly.

“De Minimis” Levels and Informal Entries

Comment 3: NCBFAA noted that the rule does not address NMFS requirements with regard to Informal Entries (valued at \$2,500) or Section 321 entries (shipments of “de minimis value”, increased from \$200 to \$800 by Section 601 of the Trade Facilitation and Trade Enforcement Act, Pub. Law 114-376). NCBFAA noted that with the de minimis threshold raised to \$800, the practice of breaking commercial shipments into lower-value increments will likewise increase, in effect allowing these imports to bypass the more formalized requirements of entry processing. NCBFAA stated its view that NMFS needs to address how it will meet this contingency.

Response: NMFS' requirement with regard to Informal Entries will be the same as those for all other entries, namely all entries associated with the HTS codes corresponding to the three seafood import monitoring programs will need to supply message sets and documentation into ACE via the Document Imaging System (DIS). Similarly, de minimis shipments corresponding to the relevant HTS codes which are valued at less than \$800 will also need to supply message sets and documentation into ACE via the DIS to ensure that no inadmissible products are granted entry into the U.S. market. NMFS therefore revised 50 CFR 300.323 to clarify that all imports and exports of covered commodities, including shipments otherwise eligible for the de minimis value exemption, must be filed in ACE or AES, as applicable, in order to collect the NMFS-required information. NMFS also revised 50 CFR 300.324(b) to clarify that de minimis value imports are also subject to the prohibition on importing fish or fish products regulated under 50 CFR part 300 subpart Q without a valid IFTP or without submitting complete and accurate

information. Likewise, low value exports are subject to AES filing to meet the NMFS requirements for permitting and reporting (see 15 CFR 30.2(a)(iv)(F)). However, NMFS has made provisions for cases where CBP reporting alternatives can capture and transmit the NMFS-required information without a formal entry or export filing in ACE or AES, as applicable.

Technical Language

Comment 4: NCBFAA noted that the proposed regulatory text at §§ 300.322(a) and 300.323 refers to persons who import “for consumption or non-consumption.” NCBFAA noted that the term “import for consumption” has a very specific legal meaning under customs law, whereas, the term “import for non-consumption” has no particular meaning under customs law. NCBFAA therefore suggested that commonly used customs terms be used to clarify the application of the proposed rule.

Response: NMFS agrees that the term “import for non-consumption” should be clarified and has therefore amended the regulatory text at §§ 300.322(a) and 300.323 to specify the various transactions which pertain to seafood previously imported for purposes other than immediate consumption, e.g. withdrawal from a foreign trade zone or bonded warehouse for entry into U.S. commerce.

Elimination of Paper-based Documentation

Comment 5: Traffic et al. conveyed its understanding that in the initial phases of ITDS implementation, document image scans will be used to transmit the catch documentation forms. Traffic et al. stated its view that the key goal must be to eventually move away from paper-based documentation, including imaged documents, to truly electronic data. Traffic et al. stated its hope that NMFS, in conjunction with CBP, will put in place systems to receive all information in a truly electronic format, at least before the implementation date of the proposed seafood import

monitoring program or at some set time thereafter, noting that the value of this system, in terms of real-time verification and compliance risk assessment, cannot be achieved without that change.

Response: Many of the paper-based catch documentation forms referenced in this comment are created by regional fishery management organizations (RFMOs) or arrangements that are comprised of different member countries including the United States. ITDS therefore cannot be made fully electronic until action in this direction is taken by the relevant RFMOs or arrangements. For example, the TTVP requires certification from tuna captains from all over the world, including many that fish in remote artisanal fisheries where Internet connectivity is not commonplace, even today. Having said that, however, NMFS agrees it is important to move to a fully electronic system as soon as the relevant international catch documentation schemes go electronic. NMFS notes that the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the International Convention for the Conservation of Atlantic Tunas (ICCAT) have moved in the direction of electronic catch documentation systems which have simplified import/export processes for the trade and NMFS expects this trend in other organizations in the future.

Need for Capacity Development

Comment 6: Traffic et al. noted its view that capacity building to assist some countries with implementing the new rules will be necessary. Traffic et al. noted its hope that NMFS, USAID, the State Department and other agencies will be able to work with countries to help develop electronic reporting systems that can produce the information needed at the point of catch and feed into traceability systems that will follow the product throughout the supply chain.

Response: NMFS agrees and is taking steps to do this. For example, NMFS is working with the Department of State and USAID on a Regional Development Mission Asia project in Southeast Asia to enhance seafood traceability infrastructure among the developing countries of this region.

Need to Apply Traceability to All Species

Comment 7: Traffic et al. noted its view that similar requirements for electronic submission of catch documentation eventually be applied to all species to effectively combat fraud and the flow of IUU products.

Response: Although not germane to this rule, NMFS agrees (as noted in the Seafood Import Monitoring Program proposed rule published in the Federal Register on February 5, 2016) that seafood traceability requirements should eventually be applied to all species in an effort to combat seafood fraud and IUU fishing. As noted in the March 2015 Presidential Task Force report, the National Oceans Committee will issue a report by December 2016 that includes an evaluation of the program as implemented to date as well as recommendations of how and under what timeframe it would be expanded.

TTVP “Reduced Data Set” Reporting

Comment 8: Bumble Bee noted that the proposed rule includes provisions for the submission of a “reduced data set” for domestic canners who import frozen tuna loins with the stated objective of preventing duplicative report for companies that submit monthly reports associated with the TTVP. Bumble Bee further noted that the recently released Seafood Import Monitoring Program proposed rule also references collection of data via a “NMFS message set” but the content, specific format, and timing to begin reporting of both the “reduced data set” and the “NMFS message set” appear to not yet be defined. Bumble Bee urged that the rollout of the

“reduced data set” reporting proposed in the ITDS implementation rule not be implemented prior to the rollout of the “NMFS Message Set” reporting requirement in the Seafood Import Monitoring Program proposed rule and that NMFS ensures that content and data serve both purposes. Bumble Bee stated its view that implementing a “reduced data set” reporting requirement under the ITDS implementation rule to meet the needs of the TTVP and then implementing another data requirement shortly thereafter to meet traceability reporting requirements seems wasteful and will create additional burden on the trade.

Response: As noted in the NMFS ITDS implementation guidelines (see <http://www.cbp.gov/sites/default/files/documents/ACE%20NMFS%20PGA%20MS%20Guidelines%20-%20July%202022%202015.pdf>), for cannery processed products that are imported into the U.S. Customs District from American Samoa and for imports of frozen cooked tuna loins, not in airtight containers, not in oil and with contents over 6.8 kilograms from any country of origin, certain data usually or otherwise required at the time of filing need not be submitted if provided to NMFS under the regulations found at 50 CFR 216.93(d)(2). Under these specific conditions, NMFS will only require a “reduced data set” consisting of an acknowledgement that an electronic image is associated with the shipment and also that the document images of the NOAA Form 370(s) associated with the shipment have been uploaded into the CBP DIS. Given the different timelines for implementation of these two regulations, it will not be possible to implement requirements simultaneously; however, NMFS will make every effort to avoid creating additional burdens on the trade in the course of implementing these programs.

Bi-Weekly Reporting Requirements

Comment 9: Bumble Bee stated its understanding that under the proposed rule, companies who are part of the TTVP would now need to obtain an IFTP. Bumble Bee does not

object to this requirement, but noted that in the reporting and recordkeeping requirements in section 300.183 of the proposed rule that biweekly reporting is required for holders of the IFTP. Bumble Bee requested confirmation that the existing bi-weekly reporting requirements associated with the IFTP will remain limited to species currently part of the HMS ITP with the existing reporting exemption for bigeye tuna destined for canneries.

Response: NMFS confirms that the import documentation requirements, as well as the bi-weekly reporting requirements, associated with the HMS ITP will remain limited to species currently part of that program. The reporting exemption for bigeye tuna destined for canneries harvested by either purse seiners or pole and line (bait) vessels will continue. The regulations pertaining to this exemption were inadvertently removed during a previous rulemaking (77 FR 52259, August 29, 2012) and have been restored in the regulatory text at 50 CFR 300.184. NMFS would also like to clarify that under this rule, documentation such as the HMS ITP biweekly dealer reports, which are not required at the time of entry/export, will continue to be provided to the HMS ITP office and are not submitted to CBP via the ACE portal.

Administrative/Financial Burdens Imposed by Rule

Comment 10: Tri Marine voiced its concern about the administrative and financial burden the proposed rule may pose and that this aspect was not adequately addressed in the Regulatory Flexibility Act section of the proposed rule. Tri Marine noted that direct and indirect costs associated with new requirements under the rule are difficult to determine at this time and that the primary beneficiary of the efficiencies gained would be U.S. government agencies and companies that also trade in non-TTVP species/products. Tri Marine encouraged NMFS to reconsider options that best mitigate potential economic impacts to industries that trade exclusively in TTVP species while still achieving desired outcomes. Tri Marine agrees TTVP

companies should be required to obtain the IFTP, but without a fee and with minimal filing burden. Tri Marine suggested updated templates for the NOAA 370 form and Captain's Statements should be designed that readily integrate into ACE. Tri Marine noted information required should always include the market name and scientific names of all species used in the product, not only simplified names such as light meat tuna that can mask the actual inputs used. Tri Marine encouraged NMFS to engage with the FDA to change the standard of identity for canned tuna to require the species name of all inputs be provided on canned tuna labels.

Response: In determining its preferred alternative for this rulemaking, NMFS made best efforts to balance potential economic impacts on the trade with the rulemaking's desired outcomes. NMFS believes extending the IFTP requirement to TTVP-related companies to be both the most equitable and effective alternative among those presented in the proposed rule. The cost of the IFTP is only \$30 and is calculated solely based upon the administrative cost to NMFS of issuing the permit. Requiring the permit for all three programs also allows NMFS to easily notify permit holders of any changes to the relevant regulations or import monitoring program procedures. NMFS appreciates the suggestion to update templates for the TTVP 370 form and Captain's Statements for improved integration with ACE and will work with CBP to consider this suggestion further. Although the comment regarding market and scientific names is outside the scope of this rulemaking, this issue has been discussed by NMFS, the FDA, and other agencies in response to Recommendation 10 of the Presidential Task Force to Combat IUU Fishing and Seafood Fraud. (See www.iuufishing.noaa.gov).

Import Data for Frozen Cooked Tuna Loins and Tuna in Airtight Containers

Comment 11: Tri Marine recognized the proposed rule allows for a reduced data set for imports of 1) frozen cooked tuna loins used in cannery operations and 2) tuna products in airtight

containers manufactured in American Samoa. Although Tri Marine agreed with the intent to prevent duplicative reporting and apply this to imports from American Samoa, it opposed reduced data collection from frozen loin importers. Tri Marine noted that tuna cans from American Samoa are typically produced from fish delivered directly to canneries from the fishing vessel allowing direct traceability from the vessel to processing line to finished product. Tuna loins imported into the United States, however, are typically caught in distant waters, transshipped onto carrier vessels, offloaded into foreign ports, trucked to large cold stores, transferred to foreign processing facilities and then shipped by container vessel to the United States where they are stored and undergo final secondary processing, all of which makes traceability more challenging. Tri Marine therefore recommends more rigorous data sets be required for imported tuna loins.

Response: These comments are germane to the chain of custody requirements proposed under the Seafood Import Monitoring Program (81 FR 6210) rather than under this ITDS implementation rule. However, NMFS notes that the reduced data set applies to all U.S. tuna canning facilities in order to reduce duplication of data elements required under 50 CFR 219.93(d)(2). NMFS will take these comments into consideration when formulating its final rule for the Seafood Import Monitoring Program.

Overlap with Proposed Seafood Import Monitoring Program

Comment 12: Tri Marine stated its view that there is significant overlap between the ITDS implementation proposed rule and the proposed rule for the Seafood Import Monitoring Program. Tri Marine's view is that since it is highly likely that comments on the Seafood Import Monitoring Program will be useful in guiding the development of a final rule for ITDS

implementation, it would be prudent to integrate the final rule for these two initiatives, taking into account comments on both proposed rules.

Response: Although NMFS recognizes there is overlap between the two rules, it will not be possible to integrate the two rules primarily because they have different timelines for implementation with NMFS implementation of ITDS required by July 23, 2016, in order to meet the requirements specified for all Federal agencies in Executive Order 13659 (Streamlining the Export/Import Process) whereas implementation of the Seafood Import Monitoring Program is not expected to occur until the fall of 2016 at the earliest.

Classification

This rule is published under the authority of AMLRCA of 1984, 16 U.S.C. 2431 *et seq.*; ATCA of 1975, 16 U.S.C. 971 *et seq.*; TCA of 1950, 16 U.S.C. 951-961; MSA, 16 U.S.C. 1801 *et seq.*; MMPA of 1972, 16 U.S.C. 1361-1407; DPCIA, 16 U.S.C. 1385; HSDFMPA, 16 U.S.C. 1826d-k; and HSDFEA, 16 U.S.C. 1826a-c. Other relevant authorities include the Pelly Amendment to the Fishermen's Protective Act, 22 U.S.C. 1978, and the Lacey Act, 16 U.S.C. 3371.

The NMFS Assistant Administrator has determined that this final rule is consistent with the provisions of these and other applicable laws.

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

Administrative Procedure Act

As explained above, this final rule revises text at 50 CFR 300.184 that provides an exemption from documentation requirements for bigeye tuna destined for canneries. Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public

comment on this specific provision of the final rule, because notice and comment would be unnecessary and contrary to the public interest. This text was inadvertently removed in an August 29, 2012 final rule (77 FR 52259), and NMFS only became aware of that fact as it was reviewing and responding to public comments on this current rulemaking. Providing for public comment at this time is unnecessary and contrary to the public interest, as NMFS and industry have been operating as if the exemption remained in place. Further, NMFS never intended to change the exemption and thus never analyzed its removal. Because this aspect of the rule relieves a restriction by reinserting an exemption to documentation requirements, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1).

Regulatory Flexibility Act

The Chief Counsel for Regulations certified that this rule is not expected to have a significant economic impact on a substantial number of U.S. small entities (80 FR 81255, December 29, 2015).

Although a new IFTP will be established for the import, export or re-export of regulated products under the AMLR, HMS ITP and TTVP programs, this new permit generally represents a consolidation of information contained in existing permits and should actually result in fewer reporting or recordkeeping requirements. Data sets to be entered electronically to determine product admissibility are already required to be submitted in paper form under the respective trade programs. Thus, NMFS anticipates that U.S. entities will not be significantly affected by this action because it generally does not pose new or additional burdens with regard to the collection and submission of information necessary to determine product admissibility.

With regard to the possible economic effects of this action, per the response to Question 13 of the supporting statement prepared for the Paperwork Reduction Act analysis (available

from www.reginfo.gov/public/do/PRAMain), NMFS estimates there will be 751 applicants for the new IFTP with an estimated net increase in annual costs of \$16,255 for obtaining those permits, based on the combined number of permit holders and respondents under NMFS' existing trade monitoring programs. Although NMFS does not have access to data about the business sizes of importers and receivers that would be impacted by this rule, it is likely that the majority may be classified as small entities. However, when overall total new burdens for the three requirements under this rule (IFTP, data set submission, and admissibility document(s) submission) are compared to current burdens, the new consolidated burdens are estimated to result in an overall net burden *decrease* of 4,225 hours and \$63,650. A no-action alternative, where NMFS would not promulgate the rule, was not considered as all applicable U.S. government agencies are required to implement ITDS under the authority of section 405 of the SAFE Port Act and Executive Order 13659 on Streamlining the Export/Import Process, dated February 19, 2014.

This action will not affect the volume of seafood trade or alter trade flows in the U.S. market. Although the rule will require traders under the TTVP to obtain an IFTP, which they are not currently required to do, NMFS expects that the consolidated IFTP will have no impact on, or will actually reduce, the overall administrative burden on the public; those parties currently required to obtain two separate permits under the AMLR and HMS ITP programs will be required to obtain only one consolidated permit under this rule.

The consolidated permitting and electronic reporting program established under this rulemaking will not have significant adverse or long-term economic impacts on small U.S. entities. This rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules. Thus, the requirements and prohibitions in the rule will not have a significant

economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under control number 0648-0732. When new reporting burdens for the three electronic reporting requirements under this rule (IFTP, data set submission, and admissibility document submission) are compared to current reporting burdens approved for the separate paper-based programs, it is estimated to result in an overall net burden decrease of 4,225 hours and \$63,650.

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

List of Subjects

50 CFR Part 216

Administrative practice and procedure, Exports, Fish, Imports, Indians, Labeling, Marine mammals.

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing regulations, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: July 27, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 216, 300, 600, and 660 are amended as follows:

**PART 216--REGULATIONS GOVERNING THE TAKING AND IMPORTING OF
MARINE MAMMALS**

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et. seq.*, unless otherwise noted.

2. In § 216.24, revise paragraphs (f)(2) introductory text, (f)(2)(i)(A) and (D), (f)(2)(ii)(A) and (D), (f)(2)(iii)(A) through (C), (f)(3) introductory text, and (f)(3)(i) through (iii) to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(f) ***

(2) *Imports requiring a Fisheries Certificate of Origin and an International Fisheries Trade Permit.* Shipments of tuna, tuna products, and certain other fish products identified in paragraphs (f)(2)(i) through (iii) of this section may not be imported into the United States unless: a scanned copy of a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, associated certifications and statements described in § 216.91(a), and required data set are filed electronically with U.S. Customs and Border Protection (CBP) at the time of, or in advance of, importation as required under § 300.323; and the importer of record designated on the entry summary (Customs Form 7501) holds a valid International Fisheries Trade Permit as specified at § 300.322 of this title. “Required data set” has the same meaning as § 300.321 of this title (*see* definition of “Documentation and data sets required”).

(i) ***

(A) *Frozen:* (products containing Yellowfin).

0303.42.0020 Yellowfin tunas, whole, frozen

0303.42.0040 Yellowfin tunas, head-on, frozen, except whole

0303.42.0060 Yellowfin tunas, other, frozen, except whole, head-on, fillets, livers and roes

0304.87.0000 Tuna fish fillets, frozen, not elsewhere specified or indicated (NESOI)

0304.99.1190 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each

(D) *Other*: (products containing Yellowfin).

0511.91.0090 Fish, shellfish products unfit for human consumption

1604.20.1000 Fish pastes

1604.20.1500 Fish balls, cakes and puddings, in oil

1604.20.2000 Fish balls, cakes and puddings, not in oil, less than 6.8 kg, in airtight containers

1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each

1604.20.3000 Fish balls, cakes and puddings, NESOI

1604.20.4000 Fish sticks, not cooked, nor in oil

1604.20.5010 Fish sticks, cooked and frozen

1604.20.5090 Fish sticks, NESOI

2309.10.0010 Dog or cat food, in airtight containers

(ii) ***

(A) *Frozen*: (other than Yellowfin).

0303.41.0000 Albacore or longfinned tunas, frozen, except fillets, livers and roes

0303.43.0000 Skipjack tunas or stripe-bellied bonito, frozen, except fillets, livers and roes

0303.44.0000 Bigeye tunas, frozen, except fillets, livers and roes

0303.45.0110 Atlantic Bluefin, frozen, except fillets, livers and roes

0303.45.0150 Pacific Bluefin, frozen, except fillets, livers and roes

0303.46.0000 Southern bluefin tunas, frozen, except fillets, livers and roes

0303.49.0200 Tunas, frozen, except fillets, livers and roes, NESOI

0304.87.0000 Tuna fish fillets, frozen, NESOI

0304.99.1190 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI

(D) *Other*: (only if the product contains tuna).

0511.91.0090 Fish, shellfish products unfit for human consumption

1604.20.1000 Fish pastes

1604.20.1500 Fish balls, cakes and puddings, in oil

1604.20.2000 Fish balls, cakes and puddings, not in oil, less than 6.8 kg, in airtight containers

1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each

1604.20.3000 Fish balls, cakes and puddings, NESOI

1604.20.4000 Fish sticks, not cooked, nor in oil

1604.20.5010 Fish sticks, cooked and frozen

1604.20.5090 Fish sticks, NESOI

2309.10.0010 Dog or cat food, in airtight containers

(iii) ***

(A) *Frozen*:

0303.11.0000 Sockeye (red) salmon (*Oncorhynchus nerka*), frozen, except fillets, livers and roes

0303.12.0012 Chinook (King) salmon (*Oncorhynchus tshawytscha*), frozen, except fillets, livers and roes

0303.12.0022 Chum (dog) salmon (*Oncorhynchus keta*), frozen, except fillets, livers and roes

0303.12.0032 Pink (humpie) salmon (*Oncorhynchus gorbuscha*), frozen, except fillets, livers and roes

0303.12.0052 Coho (silver) salmon (*Oncorhynchus kisutch*), frozen, except fillets, livers and roes

0303.12.0062 Pacific salmon (*Oncorhynchus masou*, *Oncorhynchus rhodurus*), frozen, except fillets, livers and roes, NESOI

0303.13.0000 Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), frozen, except fillets, livers and roes

0303.14.0000 Trout (*Salmo trutta*; *Oncorhynchus mykiss*, *clarki*, *aguabonita*, *gilae*, *apache*, and *chrysogaster*), frozen, except fillets, livers and roes

0303.19.0100 Salmonidae, frozen, except fillets, livers and roes, NESOI

0303.57.0010 Swordfish steaks, frozen, except fillets

0303.57.0090 Swordfish, frozen, except steaks, fillets, livers and roes

0303.81.0010 Dogfish (*Squalus* spp.), frozen, except fillets, livers and roes

0303.81.0090 Sharks, frozen, except dogfish, fillets, livers and roes

0303.89.0079 Fish, other, frozen, except fillets, livers and roes, NESOI

0304.81.5010 Atlantic Salmonidae (*Salmo salar*) fillets, frozen, NESOI

0304.81.5090 Salmonidae fillets, frozen, except Atlantic salmon, NESOI

0304.89.1090 Fish fillets, skinned, frozen blocks weighing over 4.5 kg each, to be minced, ground or cut into pieces of uniform weights and dimensions, NESOI

0304.91.1000 Swordfish, frozen, in bulk or in immediate containers weighing over 6.8 kg each

0304.91.9000 Swordfish, frozen, NESOI

0304.99.9191 Fish fillets, ocean, frozen, NESOI

0307.49.0010 Squid fillets, frozen

0307.49.0022 Squid, *Loligo opalescens*, NESOI

0307.49.0024 Squid, *Loligo pealei*, NESOI

0307.49.0029 Squid, *Loligo*, other, NESOI

0307.49.0050 Squid, other, NESOI

(B) *Canned:*

1604.11.2020 Pink (humpie) salmon, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.2030 Sockeye (red) salmon, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.2090 Salmon NESOI, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.4010 Chum (dog) salmon, not in oil, canned

1604.11.4020 Pink (humpie) salmon, not in oil, canned

1604.11.4030 Sockeye (red) salmon, not in oil, canned

1604.11.4040 Salmon, NESOI, not in oil, canned

1604.11.4050 Salmon, whole or in pieces, but not minced, NESOI

1604.19.2100 Fish, NESOI, not in oil, in airtight containers

1604.19.3100 Fish, NESOI, in oil, in airtight containers

1605.54.6020 Squid, *Loligo*, prepared or preserved

1605.54.6030 Squid, except *Loligo*, prepared or preserved

(C) *Other:*

0305.39.6080 Fish fillets, dried, salted or in brine, but not smoked, NESOI

0305.41.0000 Pacific salmon (*Oncorhynchus* spp.), Atlantic salmon (*Salmo salar*), and Danube salmon (*Hucho hucho*), including fillets, smoked

0305.49.4041 Fish including fillets, smoked, NESOI

0305.59.0000 Fish, dried, whether or not salted but not smoked, NESOI

0305.69.4000 Salmon, salted but not dried or smoked; in brine

0305.69.5001 Fish in immediate containers weighing with their contents 6.8 kg or less each, salted but not dried or smoked; in brine, NESOI

0305.69.6001 Fish, salted but not dried or smoked; in brine, NESOI

0305.71.0000 Shark fins, dried, whether or not salted but not smoked

0305.49.0010 Squid, frozen, fillets

0307.49.0022 Squid, *Loligo opalescens*, frozen (except fillets), dried, salted or in brine

0307.49.0024 Squid, *Loligo pealei*, frozen (except fillets), dried, salted or in brine

0307.49.0029 Squid, *Loligo*, frozen (except fillets), dried, salted or in brine, NESOI

0307.49.0050 Squid, other, frozen (except fillets), dried, salted or in brine, except *Loligo* squid

0307.49.0060 Cuttle fish (*Sepia officinalis*, *Rossia macrosoma*, *Sepiola* spp.), frozen, dried, salted or in brine

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, West Coast Region, or downloaded from the Internet at <http://www.nmfs.noaa.gov/pr/dolphinsafe/noaa370.htm>.

(i) A properly completed FCO, and its attached certifications and statements as described in § 216.91(a), must accompany the required CBP entry documents that are filed at the time of, or in advance of, importation.

(ii) FCOs and associated certifications and statements as described in § 216.91(a) must be provided electronically to CBP as indicated in paragraph (f)(2) of this section.

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, West Coast Region, by the last endorser when all required endorsements are completed. Such FCOs must be submitted as specified in § 216.93(d)(2).

3. In § 216.93, revise paragraphs (f) and (g)(2) to read as follows:

§ 216.93 Tracking and verification program.

* * * * *

(f) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in § 216.24(f)(3) by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications and statements must be submitted by the importer of record to U.S. Customs and Border Protection as described in and required by § 216.24(f)(2).

(g) * * *

(2) *Record submission.* At the time of, or in advance of, importation of a shipment of tuna or tuna products, any importer of tuna or tuna products must submit all corresponding FCOs and required certifications and statements for those tuna or tuna products as required by § 216.24(f)(2).

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

4. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 5501 *et seq.*; 16 U.S.C. 2431 *et seq.*; 31 U.S.C. 9701 *et seq.*

5. In § 300.4:

- a. Revise paragraph (o);
- b. Redesignate paragraphs (p) and (q) as (q) and (r); and
- c. Add a new paragraph (p).

The revision and addition read as follows:

§ 300.4 General prohibitions.

* * * * *

(o) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish imported, exported or re-exported in violation of this part.

(p) Import, export, or re-export any fish regulated under this part without a valid International Fisheries Trade Permit as required under § 300.322 or applicable shipment documentation as required under § 300.323.

* * * * *

6. In § 300.107, revise paragraphs (b) introductory text, (b)(1) and (3), (c)(6)(i)(A)(5), and (c)(7)(i)(A)(4) to read as follows:

§ 300.107 Reporting and recordkeeping requirements.

* * * * *

(b) *Dealers.* Dealers of AMLR required under § 300.114 to have an International Fisheries Trade Permit (IFTP) issued under § 300.322 must:

- (1) Accurately maintain all reports and records required by their IFTP and this subpart;

* * * * *

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

(c) ***

(6) ***

(i) ***

(A) ***

(5) The dealer/exporter's name, address, and IFTP number; and

* * * * *

(7) ***

(i) ***

(A) ***

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

* * * * *

7. In § 300.114:

a. Revise paragraphs (a)(1), (2), and (4), (b), (d) through (f), (g)(1) and (2), (h), and (j); and

b. Remove paragraph (k).

The revisions read as follows:

§ 300.114 Dealer permits and preapproval.

(a) ***

(1) A dealer importing, or re-exporting AMLR, or a person exporting AMLR, must possess a valid IFTP issued under § 300.322 and file, as specified under § 300.323, the required data sets electronically with CBP at the time of, or in advance of importation or 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. Preapproval from NMFS is required for each shipment of frozen *Dissostichus* species.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit or its importation has been authorized by an IFTP and, in the case of frozen *Dissostichus* species, preapproval issued under § 300.114(a)(1). AMLRs may not be released for entry into the United States unless accompanied by the harvesting permit, the individual permit, or IFTP and, in the case of frozen *Dissostichus* species, the preapproval certification granted by NMFS to allow import. NMFS will only accept electronic catch documents for toothfish imports.

(4) An IFTP or preapproval issued under this section does not authorize the harvest or transshipment of any AMLR by or to a vessel of the United States.

(b) *Application.* Application forms for preapproval are available from NMFS. ***

(d) *Issuance.* NMFS may issue a preapproval if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any CCAMLR conservation measure in force with respect to the United States or in violation of any regulation in this subpart. ***

(e) *Duration.* A preapproval is valid until the product is imported. Each export or re-export document created by NMFS in the CDS is valid only for that particular shipment.

(f) *Transfer.* A preapproval issued under this section is not transferable or assignable.

(g) ***

(1) *Pending applications.* Applicants for preapproval under this section must report in writing to NMFS any change in the information submitted in preapproval applications. ***

(2) *Issued preapprovals.* Any entity issued a preapproval under this section must report in writing to NMFS any changes in previously submitted information. ***

(h) *Revision, suspension, or revocation.* A preapproval issued under this section may be revised, suspended, or revoked, based upon a violation of the IFTP, the Act, or this subpart. Failure to report a change in the information contained in a preapproval application voids the application or preapproval. Title 15 CFR part 904 governs sanctions under this subpart.

(j) *SVDCD.* Preapprovals will not be issued for *Dissostichus* spp. offered for sale or other disposition under a Specially Validated DCD.

8. In § 300.117, revise paragraphs (b) and (r) and add paragraph (ii) to read as follows:

§ 300.117 Prohibitions.

* * * * *

(b) Import into, or export or re-export from, the United States any AMLRs without applicable catch documentation as required by § 300.107(c), without an IFTP as required by § 300.114 (a)(1), or in violation of the terms and conditions for such import, export or re-export as specified on the IFTP.

* * * * *

(r) Without a valid first receiver permit issued under this subpart, receive AMLRs from a vessel or receive AMLRs from a vessel without a valid harvesting permit issued under this

subpart.

* * * * *

(ii) Import into, or export or re-export from, the United States any AMLRs harvest by a vessel of the United States without a valid harvesting permit issued under this subpart.

9. In § 300.181:

a. Add in alphabetical order definitions for “Automated Commercial Environment (ACE)” and “Automated Export System (AES)”;

b. Revise the definition for “CBP”;

c. Add in alphabetical order definitions for “Document Imaging System (DIS)” and “International Fisheries Trade Permit (IFTP) or trade permit”;

d. Revise the definition for “Permit holder”;

e. Add in alphabetical order a definition for “Required data set”; and

f. Remove the definition for “Trade Permit”.

The additions and revisions read as follows:

§ 300.181 Definitions.

Automated Commercial Environment (ACE) has the same meaning as that term is defined in § 300.321 of this part.

Automated Export System (AES) has the same meaning as that term is defined in § 300.321 of this part.

CBP means U.S. Customs and Border Protection, Department of Homeland Security.

Document Imaging System (DIS) means the system established by CBP to receive image files of paper documents in ACE or AES and associate the image files with specific trade transactions.

International Fisheries Trade Permit (IFTP) or trade permit means the permit issued by NMFS under § 300.322.

Permit holder, for purposes of this subpart, means, unless otherwise specified, a person who is required to obtain an International Fisheries Trade Permit (IFTP) under §300.322.

Required data set has the same meaning as § 300.321 (see definition of “Documentation and data sets required”).

10. Section 300.182 is revised to read as follows:

§ 300.182 International fisheries trade permit.

An importer, entering for consumption any fish or fish products regulated under this subpart, harvested from any ocean area, into the United States, or an exporter exporting or re-exporting such product, must possess a valid International Fisheries Trade Permit (IFTP) issued under § 300.322.

11. In § 300.183, revise paragraphs (a) introductory text, (a)(3), and (b) through (e) to read as follows:

§ 300.183 Permit holder reporting and recordkeeping requirements.

(a) Biweekly reports. Any person trading fish and fish products regulated under this subpart and required to obtain a trade permit under §300.322 must submit to NMFS, on forms supplied by NMFS, a biweekly report of entries for consumption, exports and re-exports of fish and fish products regulated under this subpart, except shark fins.

* * * * *

(3) A biweekly report is not required for export consignments of bluefin tuna when the information required on the biweekly report has been previously supplied on a biweekly report submitted under § 635.5(b)(2)(i)(B) of this title. The person required to obtain a trade permit under § 300.322 must retain, at his/her principal place of business, a copy of the biweekly report which includes the required information and is submitted under § 635.5(b)(2)(i)(B) of this title, for a period of 2 years from the date on which each report was submitted to NMFS.

(b) *Recordkeeping.* Any person trading fish and fish products regulated under this subpart and required to submit biweekly reports under paragraph (a) of this section must retain, at his/her principal place of business, a copy of each biweekly report and all supporting records for a period of 2 years from the date on which each report was submitted to NMFS.

(c) *Other requirements.* Any person trading fish and fish products regulated under this subpart and required to obtain a trade permit under § 300.322 is also subject to the reporting and recordkeeping requirements identified in § 300.185.

(d) *Inspection.* Any person authorized to carry out the enforcement activities under the regulations in this subpart (authorized person) has the authority, without warrant or other process, to inspect, at any reasonable time: fish or fish products regulated under this subpart, biweekly reports, statistical documents, catch documents, re-export certificates, relevant sales receipts, import and export documentation, and any other records or reports made, retained, or

submitted pursuant to this subpart. A permit holder must allow NMFS or an authorized person to inspect any fish or fish products regulated under this subpart, and inspect and copy any import export, and re-export documentation and any reports required under this subpart, and the records, in any form, on which the completed reports are based, wherever they exist. Any agent of a person trading and required to obtain a trade permit under §300.322, or anyone responsible for importing, exporting, re-exporting, storing, packing, or selling fish or fish products regulated under this subpart, shall be subject to the inspection provisions of this section.

(e) *Applicability of reporting and recordkeeping requirements.* Reporting and recordkeeping requirements in this subpart apply to any person engaging in international trade regardless of whether a trade permit has been issued to that person.

12. Effective [insert date of publication in the Federal Register], revise §300.184 to read as follows:

§300.184 Species subject to permitting, documentation, reporting, and recordkeeping requirements.

(a) Except as noted in paragraphs (b) and (c) of this section, the following fish or fish products are subject to the documentation requirements of this subpart, regardless of ocean area of catch, and must be reported under the appropriate heading or subheading numbers from the Harmonized Tariff Schedule of the United States (HTS):

(1) Bluefin tuna,

(2) Southern bluefin tuna,

(3) Frozen bigeye tuna,

(4) Swordfish, and

(5) Shark fins.

(b) For bluefin tuna, southern bluefin tuna, frozen bigeye tuna, and swordfish, fish parts other than meat (e.g., heads, eyes, roe, guts, and tails) may be imported without the documentation required under this subpart.

(c) Bigeye tuna caught by purse seiners or pole and line (bait) vessels and destined for canneries within the United States, including all U.S. commonwealths, territories, and possessions, may be imported without the documentation required under this subpart.

13. In § 300.185:

a. Revise paragraphs (a)(2)(i), (a)(2)(ii)(A), and (a)(2)(iii)(A);

b. Remove paragraph (a)(2)(vii);

c. Revise paragraphs (a)(3), (b)(2) and (3), (c)(2)(i) and (ii), and (c)(3).

The revisions read as follows:

§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.

(a) ***

(2) *Documentation requirements.* (i) Except for shark fins, all fish or fish products regulated under this subpart, imported into the Customs territory of the United States or entered for consumption into a separate customs territory of a U.S. insular possession, must, at the time of presenting entry documentation for clearance by customs authorities (e.g., electronic filing via ACE or other documentation required by the port director) be accompanied by an original,

complete, accurate, approved and properly validated, species-specific consignment document. An image of such document and the required data set must be filed electronically with CBP via ACE.

(ii) *Bluefin tuna*. (A) Imports that were re-exported from another nation must also be accompanied by an original, complete, accurate, approved and properly validated, species-specific re-export certificate.

(1) For Atlantic bluefin tuna, this requirement must be satisfied by the U.S. importer through electronic receipt and completion of a re-export certificate in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or FEDERAL REGISTER notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number or re-export certificate number, as applicable, and the importer trade permit number would suffice as an import filing, without need to submit any forms via DIS in ACE.

(2) For bluefin tuna harvested from other than the Atlantic Ocean, or for Atlantic Bluefin tuna entered pursuant to a notified exception under (a)(2)(ii)(A)(1), an image of the original paper re-export certificate and the supporting consignment documents must be submitted to CBP via the ACE DIS.

(iii) ***

(A) Imports that were previously re-exported and were subdivided or consolidated with another consignment before re-export, must also be accompanied by an original, completed, accurate, valid, approved and properly validated, species-specific re-export certificate. An image

of such document, an image of the original import document, and the required data set must be filed electronically with CBP via ACE.

(3) *Reporting requirements.* (i) For fish or fish products regulated under this subpart, except shark fins, that are entered for consumption and whose final destination is within the United States, which includes U.S. insular possessions, a permit holder must submit an image of the original consignment document that accompanied the fish product as completed under paragraph (a)(2) of this section to CBP electronically through the ACE DIS.

(ii) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as directed in paragraph (a)(2)(vi)(A) of this section, unless NMFS provides otherwise through actual notice or Federal Register notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number or the re-export certificate number, as applicable, and the importer trade permit number would suffice as an import filing, without need to submit any forms via DIS in ACE.

(b) ***

(2) *Documentation requirements.* A permit holder must complete an original, approved, numbered, species-specific consignment document issued to that permit holder by NMFS for each export referenced under paragraph (b)(1) of this section, and electronically file an image of such documentation and the required data set with CBP via AES. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific export consignment. A permit holder must provide on the consignment document the correct information and exporter certification. The consignment

document must be validated, as specified in § 300.187, by NMFS, or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export consignment.

(i) For Atlantic bluefin tuna, this requirement must be satisfied by electronic completion of a consignment document in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or Federal Register notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as an export filing, without need to submit any forms in AES via DIS.

(ii) For non-Atlantic bluefin tuna, this requirement must be satisfied by completion of a paper consignment document, and electronic filing of an image of such documentation and the required data set with CBP via AES.

(3) *Reporting requirements.* (i) A permit holder must ensure that the original, approved, consignment document as completed under paragraph (b)(2) of this section accompanies the export of such products to their export destination and must electronically file an image of such documentation and the required data set with CBP via AES.

(ii) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the eBCD system as directed in paragraph (b)(2)(i) of this section, unless NMFS provides otherwise through actual notice or Federal Register notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as an export filing without need to submit any forms in AES via DIS.

(c) ***

(2) *Documentation requirements.* (i) If a permit holder re-exports a consignment of bluefin tuna, or subdivides or consolidates a consignment of fish or fish products regulated under this subpart, other than shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section, the permit holder must complete an original, approved, individually numbered, species-specific re-export certificate issued to that permit holder by NMFS for each re-export consignment. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific re-export consignment. A permit holder must provide on the re-export certificate the correct information and re-exporter certification. The permit holder must also attach the original consignment documentation that accompanied the import consignment or a copy of that documentation, and must note on the top of both the consignment documents and the re-export certificates the entry number assigned by CBP authorities at the time of filing the entry for the previously imported consignment. An electronic image of these documents and the required data set must be filed electronically with CBP via AES at the time of export.

(A) For Atlantic bluefin tuna, these requirements must be satisfied by electronic completion of a re-export certificate in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or Federal Register notice. In cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as a re-export filing, without need to submit any forms in AES via DIS.

(B) For non-Atlantic bluefin tuna, these requirements must be satisfied by completion of a paper re-export certificate, and electronic filing of an image of such documentation and the required data set with CBP via AES.

(ii) If a consignment of fish or fish products regulated under this subpart, except bluefin tuna or shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section is not subdivided into sub-consignments or consolidated with other consignments or parts thereof, for each such re-export consignment, a permit holder must complete the intermediate importer's certification on the original consignment document and note the entry number previously issued by CBP for the consignment at the top of the document. Such re-exports do not need a re-export certificate and the re-export does not require validation. An electronic image of the consignment document with the completed intermediate importer's certification and the required data set must be filed electronically with CBP via AES at the time of re-export.

(3) *Reporting requirements.* (i) For each re-export, a permit holder must submit the original of the completed re-export certificate (if applicable) and the original or a copy of the original consignment document completed as specified under paragraph (c)(2) of this section, to the shipper to accompany the consignment of such products to their re-export destination, and an image of such documentation and the required data set must be filed electronically with CBP via AES.

(ii) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as directed in paragraph (c)(2)(i)(A) of this section, unless NMF provides otherwise through actual notice or Federal Register notice. In

cases where the documentation requirements have been completed in the ICCAT eBCD system, a reduced data set consisting of the eBCD number and the exporter trade permit number would suffice as an export filing, without need to submit any forms in AES via DIS.

14. In § 300.189, revise paragraphs (a), (b), (c), (m), and (n) to read as follows:

§ 300.189 Prohibitions.

(a) Falsify information required on an application for a permit submitted under § 300.322.

(b) Import as an entry for consumption, purchase, receive for export, export, or re-export any fish or fish product regulated under this subpart without a valid trade permit issued under § 300.322.

(c) Fail to possess, and make available for inspection, a trade permit at the permit holder's place of business, or alter any such permit as specified in § 300.322.

(m) Fail to electronically file via ACE a validated consignment document and the required data set for imports at time of entry into the Customs territory of the United States of fish or fish products regulated under this subpart except shark fins, regardless of whether the importer, exporter, or re-exporter holds a valid trade permit issued pursuant to § 300.322 or whether the fish products are imported as an entry for consumption.

(n) Import or accept an imported consignment of fish or fish products regulated under this subpart, except shark fins, without an original, complete, accurate, approved and properly

validated, species-specific consignment document and re-export certificate (if applicable) with the required information and exporter's certification completed.

Subpart Q — [Redesignated as Subpart R]

15. Redesignate subpart Q, consisting of § 300.330 through 300.341, as subpart R.

16. Add new subpart Q to read as follows:

Subpart Q—International Trade Documentation and Tracking Programs

Sec.

300.320 Purpose and scope.

300.321 Definitions.

300.322 International Fisheries Trade Permit.

300.323 Reporting requirements.

300.324 Prohibitions.

Subpart Q—International Trade Documentation and Tracking Programs

§ 300.320 Purpose and scope.

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), the Magnuson-Stevens Fishery Conservation and Management Act, the Tuna Conventions Act of 1950, and the Antarctic Marine Living Resources Convention Act of 1984. These regulations implement the applicable recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the conservation and management of tuna and tuna-like species in the Atlantic Ocean, the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the eastern Pacific Ocean, and the Commission for the Conservation of Antarctic Marine Living Resources so far as they affect vessels and persons subject to the jurisdiction of the United States. These regulations are also issued under the Marine Mammal Protection Act of 1972, the Dolphin Protection Consumer Information Act and the Security and Accountability for

Every Port Act of 2006. The requirements in this subpart may be incorporated by reference in other regulations under this title.

§ 300.321 Definitions.

ACE Implementation Guide for NMFS means the data set and document imaging requirements set forth in the Appendices to the Customs and Trade Automated Interface Requirements issued by Customs and Border Protection.

AMLR trade program means the program for monitoring trade in Antarctic marine living resources including, inter alia, *Dissostichus* species as set forth in subpart G of this part.

Automated Commercial Environment (ACE) means, for purposes of this subpart, the central point through which import shipment data required by multiple agencies is filed electronically to Customs and Border Protection (CBP).

Automated Export System (AES) means, for purposes of this subpart, the central point through which export shipment data required by multiple agencies is filed electronically to Customs and Border Protection (CBP).

Catch and Statistical Document/Documentation means a document or documentation accompanying regulated seafood imports, exports and re-exports that is submitted by importers and exporters to document compliance with TTVP, AMLR, and HMS ITP trade documentation programs as described in § 216.24(f) of this title, and subparts G and M of this part.

CBP means U.S. Customs and Border Protection, Department of Homeland Security.

Documentation and data sets required under this subpart refers to documentation and data that must be submitted by an importer or exporter at the time of, or in advance of, the import, export or re-export of fish or fish products as required under this subpart, the AMLR

trade program, the HMS ITP, or the TTVP. The required data sets and document images to be submitted for specific programs and transactions are posted by CBP as indicated in § 300.323.

Fish or fish products regulated under this subpart means species and products containing species regulated under this subpart, the AMLR trade program, the HMS ITP, or the TTVP.

HMS ITP means the Highly Migratory Species International Trade Program which includes trade monitoring and/or reporting and consignment documentation for trade of bluefin tuna, southern bluefin tuna, frozen bigeye tuna, swordfish, and shark fins as described in subpart M of this part.

Import has the same meaning as 16 U.S.C. 1802(22). Import includes, but is not limited to, customs entry for consumption, withdrawal from customs bonded warehouse for consumption, or entry for consumption from a foreign trade zone.

International Fisheries Trade Permit (or IFTP) means the permit issued by NMFS under § 300.222.

TTVP means the Tuna Tracking and Verification Program, which regulates trade in certain fishery products as set forth in § 216.24(f)(2) of this title.

§ 300.322 International Fisheries Trade Permit.

(a) *General.* Any person, including a resident agent for a nonresident corporation (see 19 CFR 141.18), who imports as defined in § 300.321, exports, or re-exports fish or fish products regulated under this sub-part from any ocean area, must possess a valid International Fisheries Trade Permit (IFTP) issued under this section. Fish or fish products regulated under this subpart may not be imported into, or exported or re-exported from, the United States unless the IFTP holder files electronically the documentation and the data sets required under this subpart with U.S. Customs and Border Protection (CBP) via ACE at the time of, or in advance of,

importation, exportation or re-exportation. If authorized under other regulations under this title or other applicable laws and regulations, a representative or agent of the IFTP holder may make the electronic filings. Only persons resident in the United States are eligible to apply for the IFTP.

(b) *Application.* A person must apply for an IFTP electronically via a website designated by NMFS. The application must be submitted electronically with the required permit fee payment, at least 30 days before the date upon which the applicant wishes the permit to be made effective.

(c) *Issuance.* Except as provided in subpart D of 15 CFR part 904, NMFS will issue an IFTP within 30 days of receipt of a completed application. NMFS will notify the applicant of any deficiency in the application, including failure to provide information, documentation or reports required under this subpart. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* An IFTP issued under this section is valid for a period of one year from the permit effective date.

(e) *Alteration.* Any IFTP that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* NMFS may issue replacement permits. An application for a replacement permit is not considered a new application. An appropriate fee, consistent with paragraph (j) of this section, may be charged for issuance of a replacement permit.

(g) *Transfer.* An IFTP issued under this section is not transferable or assignable; it is valid only for the permit holder to whom it is issued.

(h) *Inspection.* The permit holder must keep the IFTP issued under this section at his/her principal place of business. The IFTP must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by NMFS for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* NMFS will charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must be submitted via a website designated by NMFS at the time of application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the permit holder must report the change to NMFS via a website designated by NMFS. If a change in permit information is not reported within 30 days, the permit is void as of the 30th day after such change.

(l) *Renewal.* Persons must apply annually for an IFTP issued under this section. A renewal application must be submitted via a website designated by NMFS, at least 15 days before the permit expiration date to avoid a lapse in permitted status. NMFS will renew a permit provided that: the application for the requested permit renewal is complete; all documentation and reports required under this subpart and the Magnuson-Stevens Act, Atlantic Tuna Conventions Act, the Tuna Conventions Act, the Marine Mammal Protection Act, the Dolphin Consumer Protection Information Act, and the Antarctic Marine Living Resources Act have been submitted, including those required under §§ 216.24, 216.93, 300.114, 300.183, 300.185,

300.186, 300.187 and 635.5 of this title; and the applicant is not subject to a permit sanction or denial under paragraph (i) of this section.

§ 300.323 Reporting requirements.

Any person, including a resident agent for a nonresident entity (see 19 CFR 141.18), who imports as defined in § 300.321, exports, or re-exports fish or fish products regulated under this sub-part from any ocean area, must file all reports and documentation required under the AMLR trade program, HMS ITP, and TTVP as specified under this title and under other regulations that incorporate by reference the requirements of this subpart. For imports, specific instructions for electronic filing are found in Customs and Trade Automated Interface Requirements (CATAIR) Appendix PGA (<https://www.cbp.gov/document/guidance/appendix-pga>). For exports, specific instructions for electronic filing are found in Automated Export System Trade Interface Requirements (AESTIR) Appendix Q (<https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats>). For fish and fish products regulated under this subpart, an ACE entry filing or AES export filing, as applicable, is required regardless of value, except in cases where CBP provides alternate means of collecting NMFS-required data and/or document images.

§ 300.324 Prohibitions.

In addition to the prohibitions specified in §§ 300.4, 300.117, 300.189, 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to:

(a) Violate any provision of this subpart, or the conditions of any IFTP issued under this subpart,

(b) Import, export or re-export fish or fish products regulated under this subpart, including imports or exports otherwise eligible for the de minimis value exemption from filing

requirements under CBP procedures, without a valid IFTP as required under § 300.322 or without submitting complete and accurate information as required under § 300.323.

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

17. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 et seq.

18. In § 600.705, revise the first sentence of paragraph (g) to read as follows:

§ 600.705 Relation to other laws,

(g) *High seas fishing activities.* Regulations governing permits and requirements for fishing activities on the high seas are set forth in 50 CFR part 300, subparts A and R.***

PART 660—FISHERIES OFF WEST COAST STATES

19. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 773 et seq., and 16 U.S.C. 7001 et seq.

20. In § 660.2, revise paragraph (c) to read as follows:

§ 660.2 Relation to other laws.

(c) Fishing activities on the high seas are governed by regulations of the High Seas Fishing Compliance Act set forth in 50 CFR part 300, subparts A and R.

[FR Doc. 2016-18401 Filed: 8/2/2016 8:45 am; Publication Date: 8/3/2016]