

Any point on or in	Southeast Shoal	Toledo or any Point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Detroit Pilot Boat .....	1,036	1,433	N/A	N/A	1,874

<sup>1</sup> When pilots are not changed at the Detroit Pilot Boat.

4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

**§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St. Mary's River.**

\* \* \* \* \*

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-Hour Period .....	\$443
Docking or Undocking .....	421

(b) Area 7 (Designated Waters):

Area	De Tour	Gros Cap	Any Harbor
Gros Cap .....	\$1,532	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario .....	1,532	577	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf .....	1,284	577	N/A
Sault Ste. Marie, MI .....	1,284	577	N/A
Harbor Morage .....	N/A	N/A	577

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period .....	\$388
Docking or Undocking .....	369

**§ 401.420 [Amended]**

5. In § 401.420—

a. In paragraph (a), remove the number “\$70” and add, in its place, the number “\$74”; and remove the number “\$1,100” and add, in its place, the number “\$1,166”.

b. In paragraph (b), remove the number “\$70” and add, in its place, the number “\$74”; and remove the number “\$1,100” and add, in its place, the number “\$1,166”.

c. In paragraph (c)(1), remove the number “\$416” and add, in its place, the number “\$441”; in paragraph (c)(3), remove the number “\$70” and add, in its place, the number “\$74”; and, also in paragraph (c)(3), remove the number “\$1,100” and add, in its place, the number “\$1,166”.

**§ 401.428 [Amended]**

6. In § 401.428, remove the number “\$424” and add, in its place, the number “\$449”.

Dated: May 30, 2006.

**C.E. Bone,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

[Docket No. 060621174-6174-01; I.D. 022106C]

**RIN 0648-AS75**

**Antarctic Marine Living Resources (AMLR); Centralized Vessel Monitoring System; Preapproval of Fresh Toothfish Imports; Customs Entry Number; Electronic Catch Documentation Scheme; Scientific Observers; Definitions; Seal Excluder Device; Information on Harvesting Vessels**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The proposed rule would implement measures adopted by the

Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) to facilitate conservation and management of AMLR. The proposed rule would require the use of the Centralized satellite-linked vessel monitoring system by all U.S. vessels harvesting AMLR and would be a condition of import for all U.S. dealers seeking to import shipments of toothfish (*Dissostichus*) into the United States. This proposed rule would also exempt all shipments of fresh toothfish from the NMFS preapproval process and allow importers of frozen toothfish to submit the U.S. Customs 7501 entry number subsequent to their initial application for preapproval. The proposed rule would require the use of Electronic Catch Documents, after a 60-day transition period, for all U.S. dealers seeking to import shipments of toothfish into the United States. Paper-based catch documents for toothfish would no longer be accepted. The proposed rule would also require the use of a seal excluder device on krill vessels using trawl gear in the Area of the Convention for the Conservation of Antarctic Marine Living Resources (Convention Area). The proposed rule would add or amend definitions of "Antarctic marine living resources", "export", "import", "international observer", "land or landing", "mobile transceiver unit", "national observer", "Office for Law Enforcement (OLE)", "Port State", "re-export", "seal excluder device", "transship or transshipment", and "vessel monitoring system (VMS)". The proposed rule would also expand the list of requirements and prohibitions regarding scientific observers and clarify the duties and responsibilities of the observers on the vessels and of the vessel owners hosting the observers. The proposed rule identifies new information on all vessels licensed by CCAMLR Members to harvest AMLR in the area identified in the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The intent of this rule is to incorporate new conservation measures, to revise procedures to facilitate enforcement, and to fulfill U.S. agreements in CCAMLR.

**DATES:** Comments must be received at the appropriate address (see **ADDRESSES**) no later than 5 p.m., eastern standard time, on August 14, 2006.

**ADDRESSES:** Comments on the proposed rule should be addressed to Robin Tuttle, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, by any of the following methods:

- E-mail: 0648-AS75.AMLR@noaa.gov. Include in the

subject line the following identifier: "AMLR proposed rule." E-mail comments, with or without attachments, are limited to 5 megabytes;

- Federal e-Rulemaking Portal: <http://www.regulations.gov>;
- Mail to: Robin Tuttle, NMFS - S&T, 1315 East-West Highway, Silver Spring, MD 20910;
- Fax to: Robin Tuttle at 301-713-4137; or
- Hand Delivery to Robin Tuttle, Rm. 12350, 1315 East-West Highway, Silver Spring, MD 20910.

Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action and the Draft Programmatic Environmental Impact Statement may be obtained from the mailing address above or by calling Robin Tuttle (see **FOR FURTHER INFORMATION CONTACT**). Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Robin Tuttle at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to [David\\_Rosker@ob.eop.gov](mailto:David_Rosker@ob.eop.gov), or fax to (202) 395-7825.

**FOR FURTHER INFORMATION CONTACT:** Robin Tuttle at 301-713-2282 ext. 199, fax 301-713-4137, or [robin.tuttle@noaa.gov](mailto:robin.tuttle@noaa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access**

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

##### **Background**

Antarctic fisheries are managed under the authority of the Antarctic Marine Living Resources Convention Act of 1984 (Act) codified at 16 U.S.C. 2431 *et seq.* NMFS implements conservation measures developed by CCAMLR and adopted by the United States, through regulations at 50 CFR part 300, subpart G. Changes to the existing regulations are necessary to incorporate new conservation measures and to revise procedures to facilitate enforcement of new and existing conservation measures.

##### **Centralized VMS**

Based upon the results of a trial conducted by some Contracting Parties to CCAMLR during the 2003/2004 fishing season, CCAMLR revised the

requirements for its automated satellite-linked vessel monitoring system (VMS), first implemented in 1999, and adopted Conservation Measure 10-04 implementing a Centralized VMS (C-VMS).

Prior to the adoption of C-VMS, CCAMLR required that each Contracting Party ensure that its fishing vessels were equipped with a satellite-linked vessel monitoring device allowing for the continuous reporting of their position in the Convention Area for the duration of the license issued by the Contracting Party. The vessel monitoring device was required to automatically communicate at least every 4 hours to the land-based fisheries monitoring center of the Flag State of the vessel.

With the adoption of C-VMS, CCAMLR now requires that all vessels, fishing in CCAMLR-managed waters use a VMS that automatically transmits the vessel's position at least every 4 hours to a land-based fisheries monitoring center of its Flag State. Previously only movement into or out of the Convention Area, not position, was required to be reported. Each Contracting Party to the Convention must forward the VMS reports and messages received to the CCAMLR Secretariat as soon as possible, but not later than 4 hours after receipt for exploratory longline fisheries or following departure from the Convention Area for all other fisheries. If the Contracting Party so desires, it can ensure that each of its vessels communicates its VMS reports and messages in parallel directly to the Secretariat. The CCAMLR Secretariat shall treat all VMS reports and messages received in a confidential manner in accordance with the confidentiality rules established by the Commission.

The conservation measure requires the CCAMLR Secretariat to place a list of vessels submitting VMS reports on a password-protected section of the CCAMLR website. The list will be divided into subareas and divisions, without indicating the exact position of vessels. This information can be used by Catch Document Scheme (CDS) officers of Contracting Parties to verify information claimed on a *Dissostichus* Catch Document (DCD). A Contracting Party may request actual VMS data reports and messages from the Secretariat for use in verifying DCD information in more detail. However, this data can only be released with the permission of the Flag State of the vessel. Only in the case of active surveillance and/or inspection can the Secretariat provide actual VMS data and/or messages to a Contracting Party without the consent of the Flag State of the vessel. The conservation measure

also requires the CCAMLR Secretariat to transmit VMS data and reports using secure Internet protocols Secure Socket Layer (SSL), (Data Encryption Standard (DES)) or verified certificates obtained from the Secretariat. These protocols are similar to those in use by the Northwest Atlantic Fisheries Organization (NAFO).

CCAMLR adopted these measures as a means of managing fishing within the Convention Area with greater certainty and making it more difficult, in particular, for illegal, unregulated and unreported (IUU) fishing in the Convention Area to be misreported as catch from outside the Convention Area. CCAMLR agreed that its CCAMLR System of Inspection could be improved by obtaining positional information including movements by vessels into and out of the Convention Area and CCAMLR statistical areas, in as close to real time as possible. CCAMLR also noted that positional information on movements would enable Contracting Parties to deploy CCAMLR inspectors in the Convention Area and to use available inspection potential in the most effective way. Moreover, CCAMLR noted that the C-VMS conservation measure would facilitate the work of the CCAMLR Secretariat on fisheries management by allowing it to monitor start/end dates of fishing by individual vessels and the catch reports submitted by statistical areas and fisheries.

The proposed rule would require the use of a NMFS approved VMS unit reporting through the newly implemented C-VMS by all U.S. vessels harvesting AMLR. The use of a VMS unit would be required from the time a vessel leaves any port until its return to any port.

The proposed rule would also require any U.S. dealer seeking to import toothfish into the United States through the preapproval process to have documentation that indicates that the toothfish was harvested by a vessel using C-VMS regardless of where the vessel caught the toothfish. All imports of toothfish or toothfish products would have to be accompanied by verifiable information available to the CDS Officer from the Secretariat documenting the use of C-VMS. U.S. dealers seeking to import toothfish or toothfish products originating from small artisanal boats fishing in the Exclusive Economic Zones (EEZ) of Peru or Chile would not have to possess information documenting the use of C-VMS by such artisanal boats. NMFS exempts such dealers because of the small size of these artisanal boats and their inability to navigate beyond the EEZ.

#### *Dealer Permits and Preapproval*

NMFS implemented the CCAMLR Catch Documentation Scheme (CDS) for toothfish in May 2000. In 2003, NMFS implemented a preapproval system applicable to all shipments of frozen toothfish and to shipments of fresh toothfish over 2,000 kilograms (kg). Preapproval streamlines administration of the toothfish import control program and enhances efforts to prevent the importation of illegally harvested toothfish. Preapproval improves the ability of toothfish importers and dealers to quickly move a fresh and, therefore, perishable toothfish product into the country. With the 15 day advance notification of a toothfish shipment required under the preapproval system, U.S. importers of toothfish have a higher degree of assurance that shipments of toothfish will be approved for entry into the United States before the fish arrives at port. Prior to the adoption by NMFS of the preapproval system, importers of toothfish were at risk of denial or seizure of toothfish shipments because DCDs could not be verified and validated by NMFS until after a shipment had been paid for and shipped. Under the preapproval system, the verification and validation of a toothfish shipment is undertaken by NMFS in advance of its entry into the United States. Thus, preapproval enhances economic certainty for U.S. businesses associated with the toothfish trade by giving U.S. dealers an approval to import toothfish before the shipment of toothfish and sometimes even before dealers make a financial investment in the toothfish shipment. Preapproval also facilitates NMFS enforcement efforts by allowing the NMFS program manager/CDS officer to review the DCD for each toothfish shipment prior to its arrival at port and to coordinate, when necessary, with a NMFS enforcement officer. If a shipment of toothfish is suspected of having been harvested or documented illegally, the fifteen-day preapproval review period makes it possible for NMFS to seize the shipment before it enters trade. Prior to adoption of the preapproval system, preemptive enforcement was difficult if not impossible because a suspect shipment of toothfish had already entered the marketplace before possible infractions could be identified.

The proposed rule would: (1) allow additional time within which dealers must supply the U.S. Customs 7501 number; and (2) exempt all shipments of fresh toothfish from the requirement for preapproval. Currently, after receiving an Antarctic Marine Living Resources

(AMLR) dealer permit but at least 15 business days prior to an expected import, the dealer seeking to import frozen toothfish or fresh toothfish in quantities greater than 2,000 kg, is required to submit to NMFS the DCD that will accompany each anticipated toothfish shipment as well as an "Application for Preapproval of Catch Documents" requesting preapproval to allow import of the toothfish shipment. NMFS requires a dealer to include on the application form for a specific toothfish shipment information regarding the shipment's estimated date of arrival, port of arrival, consignee(s) of product, DCD document number, Flag State confirmation number, export reference number, amount to be imported, and the U.S. Customs 7501 number (sometimes referred to as the "Entry" number). This 7501 number is an identifying number assigned to a particular shipment by a U.S. Customs broker. The dealer is required to fax or express mail the documentation described above, along with a check for the required fee, so that NMFS receives it at least 15 business days prior to the anticipated date of import. However, some dealers have difficulty obtaining a U.S. Customs 7501 number 15 days in advance of a shipment's arrival. The difficulty arises because Customs brokers have limitations on how soon they can assign the 7501 number to a pending shipment and most often, have difficulty assigning it 15 days in advance of the shipment's arrival. For this reason, NMFS is proposing to revise the "Application for Preapproval of Catch Documents" form specifically in regards to the requirement for the 7501 number. NMFS is proposing that dealers supply the 7501 number within 3 working days of a toothfish shipment's arrival. All other information on the "Application for Preapproval of Catch Documents" would remain unchanged.

Due to the extremely quick turnaround time required for shipments of fresh toothfish in quantities of less than 2,000 kg, the "Application for Preapproval of Catch Documents" is currently required to be submitted to NMFS within 24 hours of the import of a toothfish shipment, rather than fifteen days in advance of the shipment. The proposed rule would allow for submission of an application for preapproval within 24 hours of import for shipments of fresh toothfish over 2,000 kgs as well. The number of shipments of fresh toothfish over 2000 kg are small. These shipments are typically harvested by the artisanal fishery of Chile and have historically not been the cause for enforcement

concern. The infractions common to large shipments of frozen toothfish do not occur with small shipments of fresh toothfish. One common infraction results when legally and illegally harvested toothfish are frozen and combined in one shipment and exported with a single "legal" DCD. Large shipments of frozen toothfish might also include fish illegally harvested in a CCAMLR restricted area and claimed to have been harvested in an EEZ or on the high seas. As artisanal boats harvesting and shipping small amounts of fresh fish are not equipped to reach these CCAMLR restricted areas, they are not suspected of this type of infraction. Pursuant to a bilateral agreement with Chile, NMFS has a real time verification process for shipments of toothfish harvested by Chile's artisanal toothfish fishery. Under the proposed rule, DCDs for shipments of fresh toothfish from Chile would be reviewed without a fee-for-service charge. Shipments of all frozen toothfish including those in quantities of less than 2,000 kg would still require preapproval. NMFS regulations at 50 CFR 300.107(c)(6) and 300.114 regarding the re-export of toothfish would not be revised. The revised DCD, revised NMFS application for an annual AMLR dealer permit, and the new NMFS application for preapproval referenced under this section are available from NMFS (see **ADDRESSES**).

#### *Electronic Catch Documents*

In October 2004, CCAMLR adopted a resolution noting the successful completion of the electronic toothfish document trial and urging CCAMLR Contracting and Non-Contracting Parties to adopt the electronic format as a matter of priority. The electronic system, by means of internal checks, does not allow a country's CDS officer to incorrectly complete a DCD. Requiring U.S. importers of toothfish to use the electronic format would, thus, eliminate the submission of paper-based catch documents incorrectly completed by Flag States, Exporting States, Importing States and Re-exporting States. Paper documents can be difficult to obtain in a timely manner. As a result, in these cases, an incentive exists to submit a fraudulent paper-based DCD to expedite a shipment. The electronic system, by requiring electronic DCDs, eliminates the incentive. The proposed rule would require U.S. dealers importing toothfish into the United States to use the electronic format. Once the proposed rule goes into effect, NMFS will only accept electronic catch documents and will no longer accept paper catch documents for toothfish

shipments. In order to allow U.S. dealers sufficient time to comply with these changes, NMFS would not require the use of electronic documents until 60 days after publication of the final rule.

#### *Scientific Observers*

CCAMLR adopted a Scheme of International Scientific Observation in 1992 at its eleventh annual meeting. Observers placed on board fishing vessels pursuant to the scheme observe and report on the operations of fishing activities and their effects on target and associated species of living marine resources. Observers undertake tasks and record their observations pursuant to protocols and using formats approved by the CCAMLR Scientific Committee. These tasks include recording details of vessel operation; taking catch samples; recording biological data by species caught; recording bycatch; recording entanglement and incidental mortality of birds and mammals; recording procedures by which declared catch weight is measured; collecting and reporting factual data on sightings of fishing vessels in the Convention Area, including vessel type identification, position and activity; and collecting information on lost fishing gear and garbage disposal by fishing vessels at sea.

CCAMLR has identified two types of observers, collectively known as scientific observers, who may collect information required in CCAMLR-managed fisheries. They are described in the text of the CCAMLR Scheme of International Scientific Observation and referred to in CCAMLR conservation measures requiring scientific observers. The first type of scientific observers referred to by CCAMLR are "national observers." "National observers" are nationals of the Member designating them who operate on board a fishing vessel of that Member and conduct themselves in accordance with national regulations and standards. The second type of scientific observers are referred to by CCAMLR as "observers appointed in accordance with the CCAMLR Scheme of International Scientific Observation" or referred to by NMFS as "international observers." International observers are observers operating in accordance with bilateral arrangements between the Member whose vessel is fishing (the Receiving Member) and the Member providing the observer (the Designating Member).

The CCAMLR scheme identifies the elements that must be included in a bilateral arrangement. The U.S. Department of State negotiates bilateral arrangements placing U.S. nationals as observers on non-U.S. Member vessels

and receiving non-U.S. Member nationals as observers on U.S. vessels.

CCAMLR conservation measures require all fishing vessels operating in the Convention Area (except for vessels fishing for krill) to carry on board, throughout all fishing activities within the fishing period, at least one international observer and, where possible, one additional scientific observer, either a national observer or an international observer. In certain exploratory toothfish fisheries, the vessel must carry at least two observers, one of whom must be an international observer. NMFS regulations, however, only require that each vessel participating in an exploratory fishery carry one scientific observer (see 50 CFR 300.106(c)). In Subareas 88.1, 88.2 and 88.6 and Divisions 58.4.1 and 58.4.2, where exemptions are allowed for setting longlines during daylight hours, two scientific observers are required, one of which must be an international observer.

NMFS has not published regulations implementing the CCAMLR Scheme of International Scientific Observation. NMFS has, by **Federal Register** notice, published the annual conservation and management measures adopted by CCAMLR, (including requirements in these measures for scientific observers) for Convention Area fisheries. Additionally, on a case-by-case basis, NMFS has required, as a condition of a vessel's Antarctic Marine Living Resources (AMLR) harvesting permit, that the vessel carry scientific observers in the Convention Area throughout all fishing activities within the fishing period. Several observers have been placed pursuant to bilateral arrangements negotiated by the Department of State with Japan, South Africa and Ukraine. Others have been U.S. nationals. NMFS coordinates with the vessel permit holders and the observers in all instances to ensure that observers are fully trained in their duties to record the observations required by CCAMLR.

For a vessel to fish longline gear during daylight hours, CCAMLR Conservation Measure 24-02 requires longline testing trials prior to entering the Convention Area. Vessels choosing not to conduct the testing trials are restricted by CCAMLR Conservation Measure 25-02 to longline fishing at night. Nighttime fishing is one technique for minimizing the incidental mortality of seabirds in the course of longline fishing. Another technique to minimize incidental mortality is the use of weighted longlines. Conservation Measure 24-02 identifies two protocols for monitoring the sink rate of weighted

longlines. The more rapidly a weighted line sinks the less likely there is to be seabird interaction, and possible entanglement, with the lines. NMFS regulations do not presently require on board scientific observers during line weight testing.

The proposed rule would require that all U.S. vessels fishing in the Convention Area, including vessels fishing for krill, and all U.S. vessels conducting longline testing outside the Convention Area prior to longline fishing within the Convention Area, carry one or more scientific observers.

The proposed rule would specify the process for placing national observers on U.S. vessels harvesting AMLR; the duties and responsibilities of the observers on the vessels; and the duties and responsibilities of the vessel owners hosting the observers. International observers placed pursuant to a bilateral arrangement negotiated by the U.S. Department of State would also be subject to the provisions of the proposed rule.

The proposed rule would expand the list of prohibitions to make it unlawful to assault, resist, oppose, impede, intimidate, sexually harass, bribe or interfere with an observer.

#### *Seal Excluder Device*

CCAMLR's Scientific Committee recommended several seal bycatch mitigation measures to CCAMLR in 2004. These were that: (1) information on all seal excluder devices be combined and circulated to CCAMLR Members and other interested parties; (2) every vessel fishing for krill employ a device for excluding seals by facilitating their escape from the trawl net; (3) observers be required on krill vessels to collect reliable data on seal entrapment and on the effectiveness of mitigation devices; (4) data forms be completed accurately, consistently and comprehensively by all observers; and (5) the United Kingdom should be requested to submit its observer data to the CCAMLR Secretariat.

During the 2004/2005 fishing season, scientific observer reports were available from three vessels voluntarily using seal excluder devices while trawling for krill. One of these vessels was a U.S. vessel. The reports indicated that in Area 48, 95 Antarctic fur seals were observed caught during krill fishing operations, of which 74 were released alive, compared to 156 of which 12 were released alive in the 2003/2004 season.

The proposed rule would require seal excluder devices on all U.S. vessels trawling for krill in Convention Area fisheries.

#### *Definitions*

The proposed rule defines terms used in the implementation of the CDS; the designation and placement of scientific observers on vessels fishing in the CCAMLR Convention Area; the mitigation of seal bycatch; and the operation of CCAMLR's automated and centralized satellite-linked VMS.

The proposed rule would define or redefine the terms "export", "import", "land or landing", "Port State", "re-export", and "transship" as used by NMFS in implementing the CDS. "Export" would be defined as any movement of a catch in its harvested or processed form from the 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. "Import" would be defined as the physical entering or bringing of a catch 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 "land or landing" or "transship." "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; except for purposes of catch documentation in which case it would be defined as the initial transfer of catch in its harvested or processed form from a vessel to dockside or to another vessel in a port or free trade zone where the catch is certified by an authority of the Port State as landed. "Port State" would be defined as the State that has control over a particular port area or free trade zone for the purposes of landing, transshipment, importing, exporting and re-exporting and whose authority serves as the authority for landing or transshipment certification. "Re-export" would be defined as any movement of a catch in its harvested or processed form from the 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 of import is the first place of import, in which case the movement is an export within the definition of export.

"Transship or transshipment" would be defined as the transfer of fish or fish products from one vessel to another; except for purposes of catch documentation in which case it would be defined as the transfer at sea of a catch in its harvested or processed form from a vessel to another vessel or means of transport and, where such transfer takes place within the territory under the control of a Port State, for the

purposes of effecting its removal from that State. For the avoidance of doubt, temporarily placing a catch on land or on an artificial structure to facilitate such transfer shall not prevent the transfer from being a transshipment where the catch is not within the definition of landing.

NMFS implemented the CCAMLR CDS for toothfish in 2000. The CDS tracks and monitors trade in toothfish through a DCD required on all shipments of toothfish, wherever harvested, as a condition of import into the United States or any other CCAMLR Contracting Party. In giving effect to the CDS, NMFS amended its definition of "Antarctic marine living resources" to include "All species of *Dissostichus* wherever found," i.e., whether harvested inside or outside the CCAMLR Convention Area. The change of this definition caused some confusion among members of the public as to whether or not an AMLR harvesting permit was required for vessels which wanted to fish for toothfish both inside and outside the Convention Area.

The proposed rule would clarify that an AMLR Harvesting Permit is required by NMFS only when harvesting toothfish within the Convention Area by deleting "All species of *Dissostichus* wherever found" from the definition of Antarctic Marine Living Resources. Harvesting toothfish on high seas areas inside and outside the Convention Area would continue to require a permit issued by NMFS pursuant to the High Seas Fishing Compliance Act (HSFCA), 16 U.S.C. 5501 *et seq.* Areas within the Convention Area subject to national jurisdiction, such as the areas in Convention Subarea 48.3 claimed by the United Kingdom, are not considered high seas areas. The rule would preserve the requirement that all imports of toothfish, wherever harvested, comply with U.S. import permit conditions and DCD controls.

The proposed rule would define "national observers" and "international observers." National observer would be defined as a U.S. national placed and operating onboard a U.S. flagged vessel as a scientific observer in accordance with 50 CFR 300.113. International observer would be defined as 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 a Member of CCAMLR for the placement of a U.S. national onboard a vessel flagged by a Member of CCAMLR or for the placement of the national of a Member of CCAMLR onboard a U.S. flagged vessel.

The proposed rule would define “seal excluder device” as a barrier within the body of a trawl net 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.

The proposed rule would define “vessel monitoring system or VMS” as a system or mobile transceiver unit approved by NMFS for use on vessels that take AMLR, and that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels to receive automatic transmission of certain information. The proposed rule would define “mobile transceiver unit” as a vessel monitoring system or VMS device, as set forth at § 300.116, installed on board a vessel that is used for vessel monitoring and transmitting the vessel’s position as required by subpart G of 50 CFR part 300. It would define the “Office for Law Enforcement (OLE)” as the National Marine Fisheries Service, Office for Law Enforcement, Northeast Division.

#### *Information on Harvesting Vessels*

NMFS would request the following information of all applicants for an AMLR harvesting permit.

CCAMLR adopted a Conservation Measure (10–02) in 2004 requiring additional details on every vessel a Member State licenses to fish in the Convention Area, including the name of the fishing vessel (any previous names, if known); registration number; vessel’s International Maritime Organization (IMO) number, if issued; external markings and port registry; the nature of the authorization to fish granted by the Flag State, specifying time periods authorized for fishing; areas of fishing; species targeted; gear used; previous flag, if any; international radio call sign; the name and address of the vessel’s owner(s) and any beneficial owner(s), if known; name and address of license owner, if different from vessel owner; type of vessel; where and when built; length; three color photographs of the vessel; and where applicable, details of the implementation of the tamper-proof requirements on the satellite-linked vessel monitoring device.

CCAMLR requested, to the extent practicable, the following additional information for vessels notified for fishing in exploratory fisheries: name and address of operator, if different from vessel owner; name and nationality of master and, where relevant, of fishing master; type of fishing method or method; beam in meters; gross

registered tonnage; vessel communication types and numbers; normal crew complement; power of main engine or engines in kilowatts; carrying capacity in tons; number of fish holds and their capacity in cubic meters; and any other information in respect of each licensed vessel considered appropriate (e.g., ice classification) for the purposes of the implementation of the Conservation Measure 21–02.

#### **Classification**

##### *The Act*

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

##### *National Environmental Policy Act*

A “Draft Programmatic Environmental Impact Statement on Codified Regulations at 50 CFR Part 300 Subparts A and G Implementing Conservation and Management Measures Adopted by the Commission for the Conservation of Antarctic Marine Living Resources” was prepared by NMFS and published on July 1, 2005 (70 FR 38132). It analyzes actions proposed in this rule.

##### *Regulatory Flexibility Act*

NMFS prepared an Initial Regulatory Flexibility Analysis, as required by section 603 of the Regulatory Flexibility Act, to describe the economic impacts this proposed regulation may have on small entities. Small entities within the scope of this proposed rule include individual U.S. vessels and U.S. dealers (importers and re-exporters). This proposed rule does not duplicate, overlap, or conflict with other Federal regulations.

##### *Summary of IRFA*

A description of the reasons for, the objectives of, and the legal basis for this proposed rule is contained in the preamble and not repeated here.

##### *Description of the Number of Entities:*

During the past several years, there have been 5 vessels (2 for toothfish, 2 for krill, and 1 for crab) and 80 dealers who could fall within the scope of this proposed regulation. All U.S. vessels and U.S. dealers are considered small entities under the “Small Business Size Regulations” established by the Small Business Administration (SBA) under 13 CFR 121.201. There are no disproportionate impacts between large and small entities since all affected businesses are considered small entities by SBA standards.

#### **Economic Analysis of Proposed Regulatory Action and the Status Quo**

1. *Centralized VMS.* CCAMLR adopted Conservation Measure 10–04 to implement C-VMS. In implementing Conservation Measure 10–04, NMFS considered two alternatives: the proposed rule (preferred alternative) and the status quo (no-action) alternative. The preferred alternative would require NMFS and U.S.-flagged vessels fishing for AMLR to participate in C-VMS as established by the CCAMLR Secretariat.

NMFS currently requires both a VMS unit on-board a U.S. vessel (50 CFR 300.107(a)(4)) and reporting of a U.S. vessel’s location every four hours (50 CFR 300.107(a)(3)). Therefore, the preferred alternative does not represent a change in operating procedures for U.S.-flagged vessels currently participating in AMLR fisheries or for U.S. dealers currently importing toothfish shipments into the United States.

Possible benefits resulting from the proposed rule may include: automation of the submission of VMS data to the CCAMLR Secretariat; timely responses from the CCAMLR Secretariat to NMFS’s inquiries into fishing activities of a foreign vessel; faster investigations into authenticity of catch documentation; more efficient response time to NMFS requests for VMS data from flag nations; and freeing agency resources from having to respond to VMS data requests from Contracting Parties.

The following cost estimates assume a single VMS technology: Inmarsat-C (this one is commonly used but there are other VMS technologies). Possible compliance costs to U.S. fishing vessels associated with the preferred alternative include the initial cost of the VMS unit estimated at \$2,250 each (includes purchase price and installation; excludes freight); the annual cost of maintenance estimated at \$350.00 per year (based on a 5-year life cycle for the equipment); and the annual cost of VMS transmission for a 6-month season, fishing every day, estimated at between \$54.00 and \$108.00 (based on a per-day charge of \$.30 to \$.60 per day, depending on the service provider, for 180 days). However, for U.S.-flagged vessels currently participating in AMLR fisheries, no additional compliance costs associated with the proposed rule are anticipated as such costs have already been realized to comply with requirements at 50 CFR 300.107(a)(4) and (a)(3), respectively. For future participants in AMLR fisheries, compliance costs would include the

cost of the VMS unit, freight, installation, maintenance, and the cost per day for a service provider to transmit VMS reports. This transmission cost is estimated at \$54.00 and \$108.00, as stated above. Transmission of VMS reports to the CCAMLR Secretariat to fulfill the "centralized" aspect of this preferred alternative will be made by NMFS and does not represent an additional cost burden to U.S. vessels.

The status quo (no-action alternative) is NMFS's non-participation in C-VMS. Neither current nor future participants in AMLR fisheries will incur additional compliance costs as a direct result of this alternative, nor will these participants incur additional compliance costs as a direct result of the preferred alternative. As stated above, this is due to 50 CFR 300.107(a)(4) and (a)(3), respectively. Regardless of whether NMFS participates in C-VMS (the preferred alternative) or does not participate in C-VMS (the status quo alternative), no net change in economic impacts to U.S. vessels currently participating in AMLR fisheries will occur as a direct result of the proposed rule. Nonetheless, NMFS rejected the status quo alternative due to the potential benefits associated with C-VMS mentioned above.

**2. Dealer Permits and Preapproval.** The proposed rule (preferred alternative) would tighten and improve the import/re-export control program that the United States maintains for AMLR. The proposed rule would allow U.S. dealers additional time to obtain the 7501 number. This preferred alternative is expected to benefit U.S. dealers by providing a timeframe for the preapproval process that takes into consideration U.S. Customs administrative procedures.

The status quo (no-action alternative) would maintain the existing NMFS requirement that U.S. dealers must submit the 7501 number 15 working days prior to the arrival of a shipment as part of their preapproval application. Currently, U.S. dealers have difficulty complying with this NMFS requirement because U.S. Customs has stated that the 7501 number cannot be issued until it receives all of the required paperwork from the broker a requirement that is often difficult to meet 15 days prior to the arrival of a shipment of toothfish. Due to the perishable nature of fresh and frozen toothfish, delays associated with the existing preapproval requirements could hinder toothfish shipments from reaching the market in a timely manner, resulting in a lower quality of toothfish product. This delay may further result in lost revenue to U.S. dealers, representing negative

economic impacts. Based on the above, NMFS rejected this alternative.

The second part of this preferred alternative would exempt all U.S. dealers importing shipments of fresh toothfish weighing more than 2,000 kilograms from preapproval of the DCD requirement. Under current NMFS requirements (the no-action alternative), U.S. dealers who import fresh toothfish shipments of 2,000 kilograms or more must pay the same fee-for-service as U.S. dealers who import frozen toothfish shipments that average 25,000 kilograms. This requirement financially penalizes U.S. dealers importing numerous smaller shipments of fresh product at a \$200 fee for each, while U.S. dealers importing frozen product less frequently pay the same \$200 fee for their larger shipments. This represents a disproportionate cost to U.S. dealers importing shipments of fresh toothfish weighing 2,000 kilograms or more relative to U.S. dealers importing frozen toothfish. Though only 4 percent of fresh toothfish shipments weigh 2,000 kilograms or more, and only a small number of U.S. dealers (2 or fewer U.S. dealers) are affected by the current preapproval of DCD requirement, the status quo represents a negative economic impact to these U.S. dealers. The current cost of an estimated 8 preapproval applications for 80 dealers is \$128,000. Future costs resulting from the proposed rule for an estimated 8 preapproval applications for 78 dealers is \$124,800. Therefore, because the proposed rule will likely represent a positive economic impact (decrease in cost) to these 2 or fewer dealers, the status quo was rejected.

**3. Electronic Catch Documents.** The proposed rule (the preferred alternative) would require that all imports of toothfish be documented using the electronic format recommended by CCAMLR. The proposed rule would increase the security and reliability of catch documents and facilitate the trade of toothfish on behalf of U.S. dealers by decreasing the time needed by NMFS to process approval of shipments. U.S. dealers currently participating in AMLR trade are anticipated to have positive economic benefits associated with this preferred alternative by avoiding costs associated with demurrage charges and delays getting toothfish products into commerce. Additionally, there are no transmission costs to transmit electronic DCDs. The CCAMLR Secretariat maintains a website accessible by CDS participants for the transmission of electronic DCDs via the web. Therefore, there are no anticipated economic costs to U.S. dealers associated with the use of electronic DCDs.

The status quo (no-action alternative) of not participating in electronic DCDs is not anticipated to result in a change in economic impacts for current or future participants in AMLR fisheries. However, NMFS rejected the no-action alternative because electronic DCDs would result in positive economic impacts to U.S. dealers as noted above.

**4. Scientific Observers.** NMFS regulations currently require one scientific observer on each U.S. vessel participating in fishing activities in the Convention Area (50 CFR 300.106(c), 300.111(d), and/or 300.112(i)). The status quo (no-action alternative) would leave these regulations and processes in place.

For current participants in AMLR fisheries, the preferred alternative is anticipated to represent at most a minimal compliance cost for U.S. vessels since scientific observers are already required by NMFS regulations. These minimal compliance costs may include new requirements such as a work station for use by the scientific observer which can likely be fabricated at minimal cost to the vessel. For future participants in exploratory or assessed fisheries, the proposed rule will represent a compliance cost for each scientific observer ranging from \$55,900 per fishing season (or \$232.92 per day for 240 days) to \$89,220 per fishing season (or \$371.75 per day for 240 days). This cost includes estimates for observer salary, insurance, travel costs, overhead, and other miscellaneous expenses associated with scientific observers.

Additionally, this cost range reflects the planned cost for a U.S. scientific observer in the Antarctic krill fishery (\$55,900 per fishing season, extrapolated from actual costs from previous fishing seasons) and the average U.S. scientific observer cost for the North Pacific groundfish fishery (\$89,220 per fishing season). U.S. scientific observer cost for Alaskan fisheries was used here due to the Alaskan fisheries similarities with Antarctic fisheries in terms of environmental conditions, travel costs for the U.S. scientific observer to travel to and from the vessel, vessel size, and fishing season length. This level of coverage provides a good estimate for the average cost of a U.S. scientific observer in the Antarctic fisheries, and represents a middle range relative to the cost of scientific observers nationwide.

Since the proposed rule (preferred alternative) seeks to clarify the process of placing observers on board vessels fishing in the Convention Area and codify requirements and prohibitions associated with observer placement, the



no-action alternative was rejected. This proposed rule would clarify the process by specifying placement of national observers on U.S. vessels harvesting AMLR; the duties and responsibilities of the observers on the vessels; and the duties and responsibilities of the vessel owners hosting the observers.

5. *Seal Excluder Device (SED)*. The proposed rule would require the use of a seal excluder device (SED) on all U.S. vessels trawling for krill in the Convention Area (the preferred alternative). Use of SEDs and other mitigation measures to avoid fur seal deaths have been in use on some vessels for only 1 to 2 years. In a 2005 study by Hooper *et al.*, (CCAMLR Science, vol. 12: 195–205), it was concluded that mitigation measures either eliminated or greatly reduced the incidence of seal entanglements during the 2004–2005 season. Costs were found to be minimal due to the array of mitigation measures available to fishers; choice of mitigation measures depended on their budget and fishing strategy.

Based on this study, the compliance cost associated with incorporating SEDs on U.S. vessels currently participating in the krill fishery is anticipated to be minimal. For future participants in this fishery, additional costs associated with SEDs is anticipated to be small relative to the cost of the fishing gear itself. In addition, because the study found that SEDs did not cause a decrease in catch per unit effort (vessel productivity), the overall harvest is not anticipated to decline for current or future participants in this fishery based on the SEDs. Therefore, negative economic impacts are not anticipated for current or future participants in this fishery.

Positive economic impacts related to the use of SEDs which successfully reduce or eliminate seal capture include: decreasing expenditures on time of operations and on fuel due to fewer seal entanglements which create drag on fishing gear; increasing catch by allowing nets to remain open longer since seal capture will be reduced; and reducing damage to trawl gear and to the catch associated with seal capture.

Not including a regulatory requirement for SEDs was considered but rejected as an alternative because the NMFS believes SEDs are necessary to reduce or eliminate seal capture.

6. *Definitions*. The proposed rule (the preferred alternative) would amend the definition of “Antarctic marine living resources” by deleting “All species of *Dissostichus* wherever found” from the definition. This change would clarify this term and is not anticipated to have a negative economic impact on current fisheries operations inside or outside

the Convention Area. Instead, it may represent a positive economic impact by eliminating permit-related costs to vessels who may have purchased an AMLR permit to harvest toothfish outside of the Convention Area when in fact the AMLR permit was unnecessary. Therefore, the status quo alternative, keeping the definition in its current form and thereby requiring AMLR permits to harvest toothfish outside Convention Area, was rejected.

The proposed rule would also add or amend the terms, “export”, “import”, “international observer”, “landing”, “mobile transceiver unit”, “national observer”, “Office of Law Enforcement (OLE)”, “Port State”, “re-export”, “seal excluder device”, “transshipment”, and “vessel monitoring system (VMS)”, as used by NMFS in implementing the CCAMLR CDS. The proposed rule (preferred alternative) would define and clarify the use of these terms since they are not currently defined by NMFS regulations with regard to the CDS. The status quo was rejected because clarifying these terms will provide better guidance to fishery participants and dealers. The revised or new definitions are needed to conform U.S. regulations with CCAMLR conservation measures. The proposed rule is not anticipated to have an economic impact on legitimate fisheries operations in the Convention Area.

7. *Information on Harvesting Vessels*. CCAMLR adopted a Conservation Measure (10–02) in 2004 requiring additional details on every vessel a Member State licenses to fish in the Convention Area. Requested information includes the name of the fishing vessel; registration number; vessel’s IMO number, if issued; external markings and port registry; three color photographs of the vessel; and other information related to the vessel, fishing operations, and equipment.

The proposed rule would request this information of all applicants for an AMLR harvesting permit and may represent a minimal cost to current and future participants in terms of the time needed to fulfill the information request and costs associated with obtaining three color photographs of the vessel. NMFS makes this determination based on an estimate, in hours, of the burden to vessels for the collection of information which is estimated to be two hours: one hour for a harvest permit application and one hour for an annual report. In addition, though the cost of obtaining three color photographs of the vessel was not itemized, the cost is anticipated to be minimal.

These information requirements are specified in a Conservation Measure

agreed to by the United States in CCAMLR. Therefore, other alternatives were not considered.

There are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

#### *Executive Order 12866*

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

#### *Paperwork Reduction Act*

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Requirements for 94 respondents have previously been approved under OMB Control Number 0648–0194, with a total response time 576 hours.

This rule also contains new or revised collection of information requirements that have been submitted to OMB for approval and which reduce the number of respondents and total burden hours in the overall PRA collection (for current and proposed regulations) to 86 respondents (5 vessels/vessel representatives, 80 dealers, and one CCAMLR Ecosystem Monitoring Program applicant) and 295 burden hours. The reduced number of respondents and burden hours is due to an overestimation in the previous collection of information of the number of dealers importing toothfish and the number of pre-approval applications they would be submitting.

The new information collection requirements of this proposed rule are for C-VMS. The estimate in information collection burden hours for an estimated harvesting fleet size of 5 vessels is 14 hours per year with an associated labor cost of \$350.00 (at \$25/hour). There is also an estimated total annual cost burden of \$4,270.00 for the fleet (5 vessels) for VMS purchase, installation, maintenance, and transmission costs resulting from the C-VMS collection. This \$4,270.00 cost was estimated as follows: (a) vessel VMS equipment purchase and installation = \$2,250.00, annualized based on estimated 5–year useful life = \$450 x 5 vessels = \$2,250.00 annualized cost for the fleet; (b) annual vessel VMS maintenance per vessel = \$350 x 5 vessels = \$1,750.00 annualized maintenance, for the fleet; and (c) annual vessel transmission costs: \$54.00 x 5 vessels = \$270.00 for the fleet. As indicated earlier in this Classification section under Summary of the IRFA where C-VMS is discussed, for U.S.-flagged vessels currently participating in AMLR fisheries, compliance costs associated with the proposed rule are anticipated to be



minimal because such costs have already been realized to comply with requirements at 50 CFR 300.107(a)(3) and (a)(4).

The response estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### List of Subjects in 50 CFR Part 300

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

Dated: July 7, 2006.

**William T. Hogarth,**

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

For the reasons set out in the preamble, 50 CFR part 300, subpart G is proposed to be amended as follows:

### PART 300—INTERNATIONAL FISHERIES REGULATIONS

#### Subpart G—Antarctic Marine Living Resources

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

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

2. In § 300.101, in the definition of “Antarctic marine living resources (AMLRs)” paragraph (2) is removed and paragraph (3) is revised and redesignated as paragraph (2); and definitions for “Export”, “Import”, “International observer”, “Mobile transceiver unit”, “National observers”, “Office for Law Enforcement (OLE)”,

“Port State”, “Re-export”, and “Seal excluder device” are added in alphabetical order; and the definitions of “Land or landing”, “Tranship”, “Transshipment”, and “Vessel Monitoring System or VMS” are revised to read as follows:

#### § 300.101 Definitions.

\* \* \* \* \*

*Antarctic marine living resources (AMLRs)* \* \* \*

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

\* \* \* \* \*

*Export* as used in § 300.107(c) means any movement of a catch in its harvested or processed form 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.

\* \* \* \* \*

*Import* as used in §§ 300.107(c) and 300.114 means the physical entering or bringing of a catch into any part of the geographical territory under the control of a State, except where the catch is landed or transhipped within the definitions of landing or transshipment.

\* \* \* \* \*

*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 a Member of CCAMLR for the placement of a U.S. national onboard a vessel flagged by a Member of CCAMLR or for the placement of the national of a Member of CCAMLR onboard a U.S. flagged vessel.

\* \* \* \* \*

*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; Except for purposes of catch documentation as provided for in § 300.107(c), land or landing means the initial transfer of catch in its harvested or processed form from a vessel to dockside or to another vessel in a port or free trade zone where the catch is certified by an authority of the Port State as landed.

*Mobile transceiver unit* means a vessel monitoring system or VMS device, as set forth at § 300.116, installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by this subpart.

*National observer* means a U.S. national placed and operating onboard a

U.S. flagged vessel as a scientific observer in accordance with § 300.113.

*Office for Law Enforcement (OLE)* refers to the National Marine Fisheries Service, Office for Law Enforcement, Northeast Division.

*Port State* means the State that has control over a particular port area or free trade zone for the purposes of landing, transshipment, importing, exporting and re-exporting and whose authority serves as the authority for landing or transshipment certification.

\* \* \* \* \*

*Re-export* as used in §§ 300.107(c) and 300.114 means any movement of a catch in its harvested or processed form 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 of import is the first place of import, 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.

\* \* \* \* \*

*Tranship or transshipment* means the transfer of fish or fish products from one vessel to another; Except for purposes of catch documentation as provided for in §§ 300.107(c) and 300.114, tranship or transshipment means the transfer at sea of a catch in its harvested or processed form from a vessel to another vessel or means of transport and, where such transfer takes place within the territory under the control of a Port State, for the purposes of effecting its removal from that State. Temporarily placing a catch on land or on an artificial structure to facilitate such transfer does not prevent the transfer from being a transshipment where the catch is not landed with the definition of landing.

*Vessel Monitoring System (VMS)* means a system or mobile transceiver unit approved by NMFS for use on vessels that take AMLR, and that allows a Flag State, through the installation of satellite-tracking devices on board its fishing vessels to receive automatic transmission of certain information.

#### § 300.106 [Amended]

3. In § 300.106, paragraph (c) is removed and paragraphs (d) and (e) are redesignated as paragraphs (c) and (d), respectively.

4. In § 300.107, paragraphs (a)(4), (c)(2)(i), (c)(5)(i)(A), (c)(5)(i)(C), and (c)(5)(iii) are revised to read as follows:

**§ 300.107 Reporting and recordkeeping requirements.**

(a)\*\*\*

(4) Install a NMFS approved VMS unit for use in the CCAMLR Centralized satellite-linked vessel monitoring system (C-VMS) on board U.S. vessels harvesting Antarctic marine living resources that automatically transmits the vessel's position at least every 4 hours to a NMFS-designated land-based fisheries monitoring center or centers. The unit must be operated from the time the vessel leaves any port until its return to any port. The requirements for the installation and operation of the VMS are set forth at § 300.116.

\* \* \* \* \*

(c)\*\*\*

(2)\*\*\*

(i) In addition to any AMLR harvesting permit or a High Seas Fishing Compliance Act permit issued pursuant to § 300.12, a U.S. vessel harvesting or attempting to harvest *Dissostichus* species, wherever found, must possess a DCD issued by NMFS which is non-transferable. The master of the harvesting vessel must ensure that catch information specified on the DCD is accurately recorded.

\* \* \* \* \*

(5)\*\*\*

(i)\*\*\*

(A) Any dealer who imports toothfish must first obtain the document number and export reference number on the DCD corresponding to the import shipment and must produce verifiable information documenting use of C-VMS to allow entry into the United States.

\* \* \* \* \*

(C) The reference numbers described in paragraph (c)(5)(i)(A) of this section must be entered by the dealer on the preapproval application for the shipment and sent to the address designated by NMFS so that NMFS receives the documentation at least 15 working days prior to import.

\* \* \* \* \*

(iii) *Exception.* Preapproval is not required for shipments of fresh *Dissostichus* species. A report of a shipment of fresh *Dissostichus* species must be completed and submitted to NMFS within 24 hours following import.

\* \* \* \* \*

5. In § 300.112, paragraph (b)(4) is added to read as follows:

**§ 300.112 Harvesting permits.**

\* \* \* \* \*

(b)\*\*\*

(4) The owners and operators of each krill harvesting vessel using trawl gear in Convention Area fisheries must install a seal excluder device.

\* \* \* \* \*

**§§ 300.117, 300.116, 300.115, 300.114, 300.113 [Redesignated as §§ 300.119, 300.118, 300.117, 300.115, 300.114]**

6. Sections 300.17, 300.116, 300.115, 300.114 and 300.113 are redesignated as §§ 300.119, 300.118, 300.117, 300.115, 300.114, respectively.

7. Add new § 300.113 to read as follows:

**§ 300.113 Scientific observers.**

(a) This section applies to U.S. observers aboard U.S. vessels harvesting in the Convention Area, U.S. observers placed on foreign flagged vessels and foreign observers placed on U.S. vessels.

(b) All U.S. vessels fishing in the Convention Area must carry one or more scientific observers as required by CCAMLR conservation and management measures or as specified in a NMFS-issued AMLR Harvesting Permit.

(c) All U.S. vessels conducting longline sink rate testing outside the Convention area and pursuant to CCAMLR protocols must carry one or more scientific observers as specified in a NMFS-issued AMLR Harvesting Permit.

(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) *Insurance.* The observer service provider or vessel owner must provide insurance for observers that provides compensation in the event of injury or death during the entire deployment from the point of hire location and return equivalent to the standards of the North Pacific Groundfish Observer Program set forth in § 679.80 of this title.

(f) *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.

(g) *Health requirements.* National 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

(h) *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 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.* (i) 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.

(ii) Have on board:

(A) 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. NMFS will grant a waiver from the Voluntary Safety decal provision if the vessel is in compliance with the standards of the observer vessel safety check list developed by the Northeast Fisheries Science Center <http://www.nefsc.noaa.gov/femad/fsb/> or equivalent certification issued by the Flagging State;

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

(C) 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. NMFS will grant a waiver from the Voluntary Safety decal provision if the vessel is in compliance with the standards of the observer vessel safety check list.

(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 CCAMLR DCD, product transfer forms, any other logbook or document required by regulations, 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.

(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) May 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) May 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 avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(1) Observers must 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.

(2) Observers must 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.

(3) Observers must 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.

(4) Observers must 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 Observer Program as a whole. This includes, but is not limited to:

(i) Engaging in the use, possession, or distribution of illegal drugs; or

(ii) 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 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.

8. In newly redesignated § 300.114, paragraphs (a)(1), (a)(2), (b), and (i) are revised to read as follows:

**§ 300.114 Dealer permits and preapproval.**

(a) \* \* \*

(1) A dealer intending to import or re-export AMLR must obtain an AMLR

dealer permit valid for one year. Preapproval from NMFS is required for each shipment of frozen *Dissostichus* species. The permit holder may only conduct those specific activities stipulated by the permit.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit issued under § 300.112(a)(1) or its importation has been authorized by a NMFS-issued dealer permit and preapproval issued under this paragraph (a) of this section. AMLRs may not be released for entry into the United States unless accompanied by the harvesting permit or the individual permit or dealer permit 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.

\* \* \* \* \*

(b) *Application.* Application forms for AMLR dealer permits and preapproval are available from NMFS. A complete and accurate application must be received by NMFS for each preapproval at least 15 working days before the anticipated date of the first receipt, importation, or re-export. Dealers may supply the U.S. Customs 7501 entry number within three working days of a *Dissostichus* species shipment's arrival.

\* \* \* \* \*

(i) *Exception.* Preapproval is not required for shipments of fresh *Dissostichus* species. A report of a shipment of fresh *Dissostichus* species must be completed and submitted to NMFS within 24 hours following import.

\* \* \* \* \*

9. Add § 300.116 to read as follows:

**§ 300.116 Requirements for a vessel monitoring system.**

(a) *Requirement for use.* Within 30 days after NMFS publishes in the **Federal Register** a list of approved transmitting units and associated communications service providers for the AMLR fishery, an owner or operator of a vessel that has been issued a harvesting permit for AMLR must ensure that such vessel has a NMFS-approved, operating VMS on board when on any fishing trip involving the harvesting of AMLR. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by

NMFS for use in the AMLR fishery may be used. When installing and activating the NMFS-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must -

(1) Follow procedures indicated on an installation and activation checklist, which is available from OLE; and

(2) Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

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

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact NMFS, Office of Enforcement, (OLE OFFICE), and follow instructions from that office. If notified by NMFS that a vessel's VMS 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 VMS is operable.

(e) *Access to position data.* As a condition of authorized fishing for or possession of AMLR, a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS.

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

10. In newly designated § 300.117, paragraph (t) is revised and new paragraphs (u) through (ff) are added to read as follows:

**§ 300.117 Prohibitions.**

\* \* \* \* \*

(t) Import shipments of frozen *Dissostichus* spp. without a preapproval issued under § 300.114.

(u) Assault, resist, oppose, impede, intimidate, harass, bribe, or interfere with an observer.

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

(w) 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.

(x) 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.

(y) 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. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(z) Fish for or process fish without observer coverage required under § 300.113.

(aa) 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.

(bb) Vessel monitoring systems.

(1) Use any vessel registered to an AMLR harvesting permit to conduct fishing operations unless that vessel carries a OLE type-approved mobile transceiver unit and complies with the requirements described in this subpart.

(2) Fail to install, activate, repair or replace a mobile transceiver unit prior to leaving port as specified in this subpart.

(3) Fail to operate and maintain a mobile transceiver unit 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 VMS, mobile transceiver unit, or VMS signal required to be installed on or 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 a VMS transceiver unit registered to more than one vessel at the same time.

(7) Connect or leave connected additional equipment to a VMS unit 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 a VMS unit or communication service provider.

(9) Fail to operate a Centralized satellite-linked vessel monitoring system (C-VMS) on board U.S. vessels harvesting AMLR in the Convention

Area from the time of leaving port to returning to port.

(cc) Fail to use the mitigation measures required in the course of longline fishing or longline fishing research in the Convention Area to minimize the incidental mortality of seabirds.

(dd) Fail to use the mitigation measures required in the Convention Area to minimize the incidental

mortality of seabirds and marine mammals in the course of trawl fishing.

(ee) Set longlines in Subareas 48.6, 88.1 and 88.2 Divisions 58.4.1, 58.4.2, 58.4.3a, 58.4.3b and 58.5.2 during daylight hours without following the CCAMLR protocol designed to mitigate seabird interactions.

(ff) Trawl for krill in Convention Area fisheries without a seal excluder device.  
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