

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 000218046-0117; I.D. 121599F]

RIN 0648-AN42

Antarctic Marine Living Resources; Harvesting and Dealer Permits, and Catch Documentation

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise permit requirements for U.S. vessels harvesting, or transshipping catch of, *Dissostichus eleginoides* (Patagonian toothfish) and *Dissostichus mawsoni* (Antarctic toothfish) harvested in all waters, including those under the jurisdiction of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). These regulations govern U.S. harvesters, receivers, importers and exporters of toothfish wherever caught, as well as other Antarctic marine living resources. NMFS will no longer use "import" permits as part of its regulatory requirements, instead it will use "dealer" permits. Persons receiving, importing, or re-exporting toothfish are required to validate and submit *Dissostichus* Catch Documents (DCD) to NMFS. This rule implements U.S. obligations as a Contracting Party of CCAMLR to conserve Antarctic and Patagonian toothfish by preventing or otherwise discouraging unlawful harvest and trade in these species.

DATES: This final rule is effective May 5, 2000.

ADDRESSES: Copies of the Environmental Assessment and Regulatory Impact Review/Regulatory Flexibility Analysis (EA and RIR/RFA) supporting this action may be obtained from Dean Swanson, International Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this final rule should be sent to both Dean Swanson, at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer). Comments sent by

e-mail or the Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT:

Dean Swanson or Angela Somma at 301-713-2276 or FAX 301-713-2313.

SUPPLEMENTARY INFORMATION: The 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 CCAMLR conservation measures by regulations at 50 CFR part 300, subpart G. Background information about the need for revisions to the Antarctic fisheries regulations was provided in the preamble to the proposed rule (65 FR 13284, March 13, 2000) and is not repeated here.

Comments and Responses

NMFS received written comments during the 30-day comment period on the proposed rule. When drafting the final EA and RIR/RFA and the final regulations, NMFS considered all comments received. Comments were received on the proposed rule from an industry trade association, several importers of toothfish, several environmental organizations, the U.S. Customs Service, and the Department of State. All supported the action taken by CCAMLR.

Comment 1: Several commenters objected to a continuation of the import permit requirements as applied to incoming toothfish at the same time as the DCD requirements are being implemented.

Response: NMFS intends to withdraw such import permit requirements by formal rulemaking once the DCD requirements have their intended effect within the United States and other CCAMLR member states.

Comment 2: Several commenters suggested that NMFS should review and approve the completeness and accuracy of a DCD before a shipment of toothfish arrives at U.S. Customs.

Response: As this alternative was not suggested or considered in the proposed rule and the EA, and the United States is legally obligated to implement the DCD requirements on May 7, 2000, it was not feasible to incorporate this suggestion into the rulemaking given the deadline. NMFS intends to discuss this suggestion with an interagency group with experience with pre-approval procedures for restricted imports to determine whether a pre-approval system can improve compliance with the CCAMLR catch documentation scheme. NMFS will consider the advice of this group and the results of compliance with the DCD scheme in determining whether to propose an

amendment to this rule. NMFS is committed to implementing U.S. obligations arising from CCAMLR in a comprehensive manner that aims at full compliance by U.S. nationals and other individuals subject to U.S. jurisdiction.

Comment 3: One commenter expressed concern about the commercially sensitive nature of information required on the DCD.

Response: The DCD is a CCAMLR-prescribed form, and NMFS is not able to change it. NMFS does not believe any Privacy Act provisions are violated by the form.

Comment 4: One commenter said that, as written, the proposed rule is unclear whether the rule requires each landing of toothfish at U.S. ports by non-U.S. flag vessels to be accompanied by a DCD.

Response: Non-U.S. vessels are already prohibited by law from landing toothfish at U.S. ports (Nicholson Act, 46 U.S.C. 251-252). Therefore, NMFS does not believe that this issue needs to be addressed in this rulemaking. In addition, under the provisions at § 300.107(c)(2), all offloadings of toothfish by U.S. harvesting vessels must be accompanied by a DCD, and the provisions at § 300.107(c)(3) require a DCD for transshipment of toothfish as well. § 300.107 (c)(5) requires a DCD for the importation of toothfish regardless of the nationality of the vessel that brought it to port.

Comment 5: One commenter said that the rule will not prevent all shipments of toothfish accompanied by incomplete DCDs from entering into the customs territory of the United States because it requires merely that each shipment of toothfish coming into the United States be accompanied by a DCD.

Response: NMFS disagrees that this rule requires each shipment of toothfish coming into the United States only to be accompanied by a DCD. Each shipment of toothfish must be accompanied by a complete and validated DCD as required under the CCAMLR catch documentation scheme. The provision at § 300.107 (c)(1)(ii) says "No shipment of *Dissostichus* species shall be released for entry into the United States unless accompanied by a complete and validated CCAMLR DCD, except as provided in paragraph (c)(7) of this subsection."

Comment 6: One commenter said that CCAMLR/NMFS should consider mandatory use of a vessel monitoring system (VMS) as a precautionary measure in conjunction with the DCD by vessels offloading toothfish into the United States.

Response: CCAMLR requires VMS on harvesting vessels of its Contracting

Parties participating in some fisheries, but it does not have the legal authority to require the use of VMS on harvesting vessels of non-contracting parties. CCAMLR did not include VMS requirements within its new toothfish catch documentation scheme. NMFS, therefore, did not consider the alternative of including a VMS requirement in the present rulemaking.

Changes From the Proposed Rule

The two finfish species that are being added to the definition of "Antarctic finfishes," *Lepidonotothen kempfi* and *Electrona carlsbergi*, were misspelled in the proposed rule. The spelling has been corrected.

The definition of "*Dissostichus* catch document (DCD)" has been corrected to delete the reference to vessels authorized to transship *Dissostichus* species because DCDs are not issued to transshipment vessels.

The definition of "transship" has been clarified to mean the transfer of fish or fish products from one vessel to another.

In § 300.107, paragraph (c) on catch documentation has been reformatted to improve readability.

In § 300.112, paragraph (k) has been clarified to apply to any U.S. flagged vessel that receives or attempts to receive *Dissostichus* species from a harvesting vessel at sea rather than any vessel subject to the jurisdiction of the United States that engages or attempts to engage in this activity.

In § 300.115, paragraph (b) is revised and paragraphs (q) and (r) have been added to enhance enforceability and clarify usage.

Throughout, reference to "the customs territory of the United States" has been changed to "the United States" to comport with the definition of "import" under the Act.

NMFS is not implementing the provisions contained in § 300.116 of the proposed rule at this time due to unresolved enforcement issues. NMFS will rely on existing statutory and regulatory authorities on a case-by-case basis when addressing any resources denied entry.

Classification

The Assistant Administrator for Fisheries (AA), NMFS, determined that this final rule is necessary for the conservation and management of Antarctic marine living resources and is consistent with the Antarctic Marine Living Resources Convention Act of 1984, and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification or the EA/RIR/RFA and the basis for this certification has not changed. Impacts were considered in the EA/RIR/RFA (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA. OMB has approved this collection-of-information requirement under OMB control number 0648-0194. The estimated burden for dealer permits to import is 30 minutes per occurrence. The estimated burden for applying for a dealer permit to re-export *Dissostichus* species is 30 minutes per occurrence, and the application for a harvest permit authorizing transshipment is estimated to take 12 minutes per occurrence. Completion and submission of an import ticket is estimated to take no more than 15 minutes per occurrence. The estimated burden for completion and submission of DCDs is 3 minutes for each submission by importers, 10 minutes for each submission by re-exporters, and 15 minutes for each submission by harvesting vessels and transshippers. The logbook requirement in § 300.107(a) is not subject to the PRA because it is a requirement imposed by an international organization rather than by NMFS.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and to OMB (see ADDRESSES).

Because the implementation of CCAMLR DCD program becomes an obligation of the United States and other CCAMLR members on May 7, 2000, there is good cause to waive the 30-day delay in effectiveness for this rule under 5 U.S.C. 553 (d)(3). To fulfill its international obligations under CCAMLR, the United States must implement the DCD scheme by May 7, 2000. Successful implementation is dependent upon CCAMLR members implementing the scheme at the same time because the DCD can only be issued by the flag State of the harvesting

vessel. Although U.S. vessels do not currently harvest toothfish, the United States is a significant importer. Because of this, the success of the global DCD scheme depends substantially on the United States implementing the harvest tracking system as close to May 7, 2000, as possible, to avoid confusion, to discourage trade in unlawfully harvested toothfish, and to facilitate international trade in lawful shipments of toothfish. The final rule provides a 60-day exception for toothfish harvested prior to the effective date of the final rule. The rule must be in effect by May 7, 2000, or as soon as practicable thereafter, and any delay would be contrary to the public interest and unnecessary.

List of Subjects in 50 CFR Part 300

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

Dated: May 5, 2000.

Penelope D. Dalton,

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

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

PART 300--INTERNATIONAL FISHERIES REGULATIONS

Subpart G—Antarctic Marine Living Resources

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

Authority: 16 U.S.C. 2431 *et seq.*

2. In § 300.101, the definition of "Antarctic finfishes" is amended by adding an entry in the table for "Striped-eyed rockcod" immediately following the existing entry for "Grey Rockcod" and two others for "Antarctic toothfish" and "Lanternfish" immediately following the existing entry for "Patagonian toothfish." The definition of "Antarctic marine living resources or AMLR(s)" is revised, and the definitions for "Dealer", *Dissostichus* catch document (DCD)", "*Dissostichus* species" and "Transship" are added in alphabetical order to read as follows:

§ 300.101 Definitions.

* * * * *

Antarctic finfishes include the following:

Scientific name	Common name
* * * * *	
<i>Lepido</i>	
<i>notothen</i>	
<i>kemp</i>	Striped-eyed rockcod.
* * * * *	
<i>Dissostichus</i>	
<i>mawsoni</i> ..	Antarctic toothfish.
<i>Electrona</i>	
<i>carlsbergi</i>	Lanternfish.
* * * * *	

Antarctic marine living resources or AMLR(s) means:

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

(2) All species of *Dissostichus*, wherever found; and

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

* * * * *

Dealer means the person who first receives AMLRs from a harvesting vessel or transshipment vessel or who imports AMLRs into, or re-exports AMLRs from, the United States.

* * * * *

Dissostichus catch document (DCD) means the uniquely numbered catch documentation form approved by the Commission and issued by a flag state to its vessels authorized to harvest *Dissostichus* species.

Dissostichus species means Patagonian toothfish and/or Antarctic toothfish and their parts or products.

* * * * *

Transship means the transfer of fish or fish products from one vessel to another.

3. Section 300.107 is revised to read as follows:

§ 300.107 Reporting and recordkeeping requirements.

(a) *Vessels*. The operator of any vessel required to have a permit under this subpart must:

(1) Accurately maintain on board the vessel a fishing logbook and all other reports and records required by its permit;

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector; and

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

(b) *Dealers*. Dealers of AMLRs required to have a permit under this subpart must:

(1) Accurately maintain all reports and records required by their permits;

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector; and

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

(c) *Catch documentation*—(1) *General*.

(i) The CCAMLR DCD must accompany all shipments of *Dissostichus* species as required in this subsection.

(ii) No shipment of *Dissostichus* species shall be released for entry into the United States unless accompanied by a complete and validated CCAMLR DCD, except as provided in paragraph (c)(7) of this section.

(2) *Harvesting vessels*. (i) In addition to any harvesting permit or authorization previously issued, a U.S. vessel harvesting or attempting to harvest *Dissostichus* species must possess a DCD issued by NMFS which is non-transferrable. The master of the harvesting vessel must ensure that the catch information specified on the DCD is accurately recorded.

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

(A) electronically convey by the most rapid means possible catch information to NMFS and record on the DCD a confirmation number received from NMFS;

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

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

(iii) The master of the harvesting vessel must submit the original DCD (or all copies thereof with original signatures) to NMFS no later than 30 days after the end of the fishing season as authorized for that vessel on its harvesting permit.

(3) *Transshipment vessels*. (i) The master of a U.S. vessel issued a permit to transship *Dissostichus* species must, upon receipt of *Dissostichus* species,

sign each DCD provided by the master of the harvesting vessel.

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

(A) Obtain on each DCD (or copies thereof) the signature(s) of both the responsible official(s) designated by NMFS in the permit, and the dealer(s) that receives the catch at the port(s) of landing and

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

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

(4) *Receivers upon landing*. Any dealer who receives *Dissostichus* species from a harvesting vessel or from a transshipment vessel must sign the DCD(s) provided by the master of the vessel.

(5) *Import*. (i) Any dealer who imports *Dissostichus* species must:

(A) Obtain the DCD(s) that accompany the import shipment;

(B) Mail or fax the DCD(s) to NMFS within 24 hours of the release from customs custody, and

(C) Retain a copy for his/her records and provide copies to exporters as needed.

(ii) Dealers must retain at their place of business a copy of the DCD for a period of 2 years from the date on the DCD.

(6) *Re-export*. (i) Any dealer who re-exports *Dissostichus* species must complete a *Dissostichus* re-export document by indicating:

(A) The amount from the original DCD(s) that is exported in the particular export shipment;

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

(C) The name of the importer and point of import; and

(D) The exporter's name, address and permit number.

(ii) The dealer must then sign the re-export document and obtain validation by a responsible official(s) designated by NMFS.

(iii) The original validated *Dissostichus* re-export document and copies of the original DCD(s) must accompany the export shipment.

(iv) The dealer must retain a copy of the re-export document and copies of the DCD(s) at his/her place of business for a period of 2 years from the date on the DCD.

(7) *Exception.* *Dissostichus* species harvested prior to the effective date of this rule may be imported during the first 60 days following the effective date of this rule, provided that the date of the harvest(s) are corroborated on the dealer permit.

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

§ 300.112 Harvesting permits.

* * * * *

(k) *Transshipment vessels.* Any U.S. flagged vessel that receives or attempts to receive *Dissostichus* species from a harvesting vessel at sea, regardless of whether such transshipment occurs in waters under the jurisdiction of CCAMLR, must obtain from NMFS a harvesting permit authorizing transshipment. Transshipment vessels must comply with the permitting provisions of this section with respect to harvesting vessels.

5. Section 300.113 is revised to read as follows:

§ 300.113 Dealer permits.

(a) *General.* (1) A dealer must obtain an AMLR's dealer permit from NMFS. Only those specific activities stipulated by the permit are authorized for the permit holder.

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

(3) In addition to any applicable catch documentation required under § 300.107 (c)(1), the dealer is required to complete and return to NMFS, no later than 24 hours after the date of the importation, an import ticket reporting the importation. In no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit

issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

(4) A dealer permit 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 AMLR dealer permits are available from NMFS. A complete and accurate application must be submitted for each permit at least 30 days before the anticipated date of the first receipt, importation, or re-export.

(c) *Issuance.* NMFS may issue a dealer permit 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 conservation measure in force with respect to the United States or in violation of any regulation in this subpart.

(d) *Duration.* A permit issued under this section is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(e) *Transfer.* A permit issued under this section is not transferable or assignable.

(f) *Changes in information—(1) Pending applications.* Applicants for permits under this section must report in writing to NMFS any change in the information submitted in their permit applications. The processing period for the application will be extended as necessary to review and consider the change.

(2) *Issued permits.* Any entity issued a permit under this section must report in writing to NMFS any changes in previously submitted information. Any changes that would not result in a change in the receipt or importation authorized by the permit must be reported on the import ticket required to be submitted to NMFS no later than 24 hours after the date of receipt or importation. Any changes that would result in a change in the receipt or importation authorized by the permit, i.e., harvesting vessel or country of origin, type and quantity of the resource

to be received or imported, and Convention statistical subarea from which the resource was harvested must be proposed in writing to NMFS and may not be undertaken unless authorized by NMFS through issuance of a revised or new permit.

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

6. In § 300.115, paragraph (b) is revised and paragraphs (q) and (r) are added to read as follows:

§ 300.115 Prohibitions.

* * * * *

(b) Import into or export from the United States any AMLRs taken by vessels without a permit to harvest those resources as required by § 300.112 (a)(1), or without applicable catch documentation as required by § 300.107 (c)(1), or without a dealer permit as required by § 300.113 (a)(1), or in violation of the terms and conditions for such import or export as specified on the permit.

* * * * *

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

(r) Receive AMLRs from a vessel without a dealer or harvesting permit issued under this subpart.

7. In § 300.116, paragraph (d) is added and reserved to read as follows:

§ 300.116 Facilitation of enforcement and inspection.

* * * * *

(d) *Disposition of resources denied entry.* [Reserved]

[FR Doc. 00-11666 Filed 5-5-00; 2:01 pm]

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