DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 070806446–7446–01; 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: Final rule.

SUMMARY: NMFS issues a final rule implementing measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) to facilitate conservation and management of AMLR. This final rule requires the use of the Centralized satellite-linked vessel monitoring system (VMS) by all U.S. vessels harvesting AMLR and makes use of VMS by the harvesting vessel a condition of import for all U.S. dealers seeking to import shipments of toothfish (*Dissostichus*) into the United States. This final rule also exempts all shipments of fresh toothfish from the NMFS preapproval process and allows importers of frozen toothfish to submit the U.S. Customs 7501 entry number subsequent to their initial application for preapproval. This final rule requires the use of Electronic Catch Documents for all U.S. dealers seeking to import shipments of toothfish into the United States. Paper-based catch documents for toothfish will no longer be accepted. This final rule also requires 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). This final rule adds or amends 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)''. This final rule also expands the list of requirements and prohibitions regarding scientific observers and clarifies the duties and responsibilities of the observers on the vessels and of the vessel owners hosting the observers. This final 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. obligations in CCAMLR.

DATES: This rule is effective September 24, 2007.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action, the Final Programmatic Environmental Impact Statement (FPEIS), and the Record of Decision (ROD) may be obtained from the mailing address listed here or by calling Robin Tuttle, NMFS–S&T, 1315 East-West Highway, Silver Spring, MD 20910 (also see **FOR FURTHER INFORMATION CONTACT**).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final 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*, 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*.

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*.

Statutory and Regulatory Background

NMFS published the proposed rule for this action in the **Federal Register** on July 13, 2006 (71 FR 39642) with a public comment period through August 14, 2006. NMFS received comments from three commenters and the comments and responses are discussed under the succeeding Comments and Responses section of this preamble.

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. The changes implemented by this final rule involve: Centralized VMS; Dealer Permits and Preapproval; Electronic Catch Documents; Scientific Observers; Seal Excluder Device; Definitions; and Information on Harvesting Vessels. While each of these changes is described below, for a more complete discussion please see the preamble to the proposed rule published on July 13, 2006 (71 FR 39642).

Centralized Vessel Monitoring System (C–VMS)

The final rule requires all U.S. vessels, when on a fishing trip involving the harvesting of AMLR, to use a VMS unit that automatically transmits the vessel's position at least every 4 hours to a land-based fisheries monitoring center designated by NMFS. Previously only movement into or out of the Convention Area, not position, was required to be reported. In addition, the final rule requires use of a VMS unit from the time a vessel leaves any port until its return to any port. These measures will help manage fishing within the Convention Area with greater certainty and will make 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.

The final rule also requires 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 Catch Documentation Scheme (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 Economics Zones (EEZ) of Peru or Chile will 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

The final rule: (1) Allows additional time for dealers to supply the U.S. Customs 7501 number; and (2) exempts all shipments of fresh toothfish from the requirement for preapproval. Currently, after receiving an 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 kilograms (kg), is required to submit to NMFS the Dissostichus Catch Documents (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 revising the ''Application for Preapproval of Catch Documents'' form specifically to allow dealers additional time to forward the 7501 number to NMFS. Under the final rule, dealers may supply the 7501 number up to 3 working days prior to a toothfish shipment's arrival. NMFS needs at least 3 working days to process and issue a preapproval certificate. All other information requested on the ''Application for Preapproval of Catch Documents'' must be submitted, as presently required, 15 days in advance of the shipment's arrival.

Due to the extremely quick turnaround time required for shipments of fresh toothfish, NMFS has accepted the ''Application for Preapproval of Catch Documents'' within 24 hours after the import of a shipment of fresh toothfish, rather than 15 days in advance of the shipment. This exception to preapproval was available for shipments of fresh toothfish under 2,000 kg. The final rule extends this exception to shipments of fresh toothfish over 2,000 kg. Therefore, no shipment of fresh toothfish requires preapproval; however, the final rule requires the completion and submission of a Reporting Form for Catch Documents Accompanying Fresh, Air-Shipped Shipments of Toothfish within 24 hours of import for all shipments of fresh toothfish whether greater or less than 2,000 kg. The number of shipments of fresh toothfish greater than 2,000 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 where any transshipment would take place, 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 final rule, DCDs for shipments of fresh toothfish from Chile will be reviewed without a fee-for-service charge. Shipments of all frozen toothfish including those in quantities of less than 2,000 kg will still require preapproval. NMFS regulations at 50 CFR 300.107(c)(6) and 300.114 regarding the re-export of toothfish are not revised. The revised DCD, revised NMFS application for an annual AMLR dealer permit, revised NMFS application for preapproval, and the Reporting Form for Catch Documents Accompanying Fresh, Air-Shipped Shipments of Toothfish (report) 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 will, 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 catch documentation system (E–CDS), by requiring electronic DCDs, eliminates the incentive by allowing a real-time check of the amount presented for import against the amount authorized for harvesting. All information is validated on presentation of the information. The final rule requires U.S. dealers importing toothfish into the United States to use the electronic format. Once the final rule goes into effect, NMFS will only accept electronic catch documents and will no longer accept paper catch documents for toothfish shipments. NMFS will not require the use of electronic documents until September 24, 2007. In the preamble to the proposed rule (July 13, 2006; 71 FR 39642), NMFS had announced its intention to delay the requirement for electronic documents for 60 days after publication of the final rule in order to allow U.S. dealers sufficient time to comply with the changes of moving to the electronic format. However, NMFS believes that 30 days is adequate time for U.S. dealers to comply. Moreover, NMFS believes that it is important to put in place the E–CDS requirement as soon as possible. The electronic documentation should provide further assurance to the public that the United States has an efficient and effective system in place to discourage and prevent importation of IUU fish.

Scientific Observers

CCAMLR has identified two types of observers, collectively known as scientific observers, who may collect information required in CCAMLR-managed fisheries. The first type, ''national observers,'' are nationals of the Member designating them to operate on board a fishing vessel of that Member and conduct themselves in accordance with national regulations and standards. The second type, ''international observers,'' are observers operating in accordance with bilateral arrangements between the receiving Member whose

vessel is fishing and the designating Member who is providing the observer.

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 current 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, CCAMLR requires a vessel to carry two scientific observers, one of which must be an international observer.

NMFS requires, as a condition of a vessel's 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 with 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 a vessel to carry scientific observers during line weight testing.

The final rule requires 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, to carry one or more scientific observers.

The final rule specifies 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 final rule.

The final rule expands 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, including that every vessel fishing for krill employ a device for excluding seals by facilitating their escape from the trawl net, and that observers be required on krill vessels to collect reliable data on seal entrapment and on the effectiveness of mitigation devices.

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 final rule requires seal excluder devices on all U.S. vessels trawling for krill in Convention Area fisheries.

Definitions

The final 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 final rule defines or redefines the terms ''export'', ''import'', ''land or landing'', ''Port State'', ''re-export'', and ''transship or transshipment'' as used by NMFS in implementing the CDS. 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. The final rule clarifies 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 areas in the high seas where a HSFCA permit is required. The final rule preserves the requirement that all imports of toothfish, wherever harvested, comply with U.S. import permit conditions and DCD controls.

For the designation and placement of scientific observers on vessels fishing in the CCAMLR Convention Area, the final rule defines ''national observers'' and ''international observers.'' Both national observers and international observers, by definition, are scientific observers.

For the mitigation of seal bycatch, the final rule defines ''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 final rule defines ''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 final rule defines ''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 defines the ''Office for Law Enforcement (OLE)'' as the National Marine Fisheries Service, Office for Law Enforcement, Northeast Division.

Information on Harvesting Vessels

Pursuant to CCAMLR Conservation Measure 10–02, adopted in 2004, NMFS is requesting the following information of all applicants for an AMLR harvesting

permit: 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.

In addition, pursuant to CCAMLR Conservation Measure 10–02, NMFS is collecting 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 methods; 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.

Comments and Responses

The public comment period on the proposed rule (71 FR 39642) closed at 5 p.m., eastern standard time, on August 14, 2006. A total of three commenters submitted comments (via e-mail and fax) to NMFS on behalf of four non-governmental organizations with environmental interests. These organizations were the National Environmental Trust, the Antarctic Krill Conservation Project, the Center for Biological Diversity, and the Turtle Island Restoration Network.

National Environmental Trust (NET) Comments. The NET commented that finalizing the rule will strengthen the role of the U.S. government as a leader among CCAMLR Member States in adopting measures to prevent illegal, unreported, and unregulated fishing for toothfish and to sustainably manage the second generation Antarctic krill fishery. NET indicated that their comments were endorsed by Greenpeace USA and the Antarctic Krill Conservation Project. Comments by NET on regulatory components follow:

Comment 1: NET supports the requirement that dealers seeking to import toothfish into the United States provide documentation indicating that the toothfish was caught by a vessel participating in C–VMS regardless of where the vessel caught the toothfish. NET also supports the requirement that all U.S. vessels fishing for AMLR have C–VMS and that a VMS unit must be operating from port to port.

Response: These provisions of the rule are designed to discourage IUU fishing and further restrict access to the U.S. market for IUU toothfish.

Comment 2: NET expressed support for the requirement that all U.S. importers of toothfish must use the electronic format of the Dissostichus Catch Document (DCD) that accompanies toothfish imports into the United States.

Response: NMFS expects that this requirement will effectively guard against importation of IUU toothfish with forged paper documentation. The E–CDS is much more reliable and secure in that paper document fields may be incorrectly completed, or even fraudulently completed while the electronic version has logic checks and will not allow the completion of a document with errors with regard to fraud.

Comment 3: NET supports the requirement that all U.S. vessels fishing for AMLR, including krill, must carry one or more scientific observers on board.

Response: NMFS is publishing regulations to implement the CCAMLR Scheme of International Scientific Observation and believes that all U.S. vessels fishing in the Convention Area, including vessels fishing for krill, and U.S. vessels conducting longline testing outside the Convention Area, should carry one or more scientific observers. NMFS agrees with the commenter that detailed data on fishing activities provided by scientific observers is critical to managing AMLR and, in particular, krill, a vital food source for whales, seals, penguins, albatrosses and other sea birds.

Comment 4: NET supports the requirement that seal excluder devices be used on all U.S. vessels trawling for Antarctic krill in the Convention Area.

Response: Beginning in late 2004, NMFS required the sole U.S. krill harvester to use a seal excluder device to eliminate or reduce Antarctic fur seal bycatch. NMFS would now make this a regulatory requirement for all U.S. vessels trawling for Antarctic krill.

Antarctic Krill Conservation Project (the Project) Comments. The Project commented that they welcome the regulatory actions put forward by NMFS to implement CCAMLR–agreed conservation measures and, as Antarctic krill occupies a central role in the Southern Ocean ecosystem, the Project appreciates the proposed regulatory provisions to enhance krill protection.

Comment 5: The Project commented that the regulatory provisions dealing with scientific observers and seal excluder devices will contribute to a better managed krill fishery.

Response: These provisions of the rule are designed to contribute to a better managed krill fishery.

Comment 6: The Project requested that the regulatory provisions requiring C–VMS be applied to U.S. vessels fishing for krill, and encouraged NMFS to urge other countries to take similar action and seek an amendment to CCAMLR Conservation Measure 10–04 to remove the exemption for krill vessels.

Response: Through this final rule NMFS would require all U.S. vessels harvesting AMLR to use an NMFS approved VMS unit and to participate in C–VMS reporting requirements. At recent CCAMLR meetings, the United States has proposed an amendment to CCAMLR Conservation Measure 10–04 to require krill vessels to use C–VMS but has not yet been able to get CCAMLR to adopt such a measure.

Center for Biological Diversity (CBD) and Turtle Island Restoration Network (TIRN) Comments. The CBD and TIRN state that they support the proposed changes for the most part, but have raised concerns with several proposed changes regarding the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Migratory Bird Treaty Act (MBTA). Their comments on the proposed regulations incorporate by reference their comments on the 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 (DPEIS), and previous letters to NMFS (dated September 18, 2003, December 31, 2003, and March 22, 2004). Much of the following is a summary of their comments on the DPEIS and NMFS responses taken from the FPEIS for the above referenced DPEIS. Notice of availability of the FPEIS was published by the Environmental Protection Agency

in the November 24, 2006, issue of the **Federal Register** (71 FR 67864).

Comment 7: CBD/TIRN commented that NMFS must suspend any current authorizations, and not issue any further permits for U.S. flagged vessels to conduct fishing operations in the CCAMLR area, until a final programmatic EIS and biological opinion are completed and NMFS issues an MMPA incidental take authorization for sperm whales.

Response: NMFS conducted the appropriate analyses under NEPA and the ESA and other applicable laws prior to issuing AMLR harvesting permits and HSFCA permits to F/Vs American Warrior, America No. 1, and Top Ocean. In addition, NMFS completed an FPEIS with notice published on November 24, 2006 (71 FR 67864). The FPEIS contains Section 4.7 entitled the ''Endangered Species Act'', which summarized conclusions of the NMFS programmatic Section 7(a)(2) consultation, examining the effects of the management regime on listed species. NMFS also completed a programmatic biological opinion on March 28, 2006, which included consultation on the issuance of fishing permits by NMFS under the Antarctic Marine Living Resources Convention Act of 1984 (AMLRCA). The most recent permit that NMFS issued for a U.S. flagged vessel to conduct fishing operations in the CCAMLR Convention Area (F/V Top Ocean to harvest krill) expired November 30, 2005. F/V Top Ocean conducted commercial trawl operations for krill in the early months of 2005 and there has been no U.S. fishing in the Convention Area since then.

In terms of NMFS issuing an MMPA incidental take authorization for sperm whales, no sperm whale mortalities by U.S. vessels have occurred and no takes of sperm whales by U.S. vessels are anticipated or authorized. No U.S. vessels have been longlining for toothfish in the Convention waters since 2004.

Comment 8: CBD/TIRN believes that NMFS did not circulate the DPEIS widely enough, did not issue a stand-alone **Federal Register** notice, and did not describe how an interested member of the public could get a copy of the document. CBD/TIRN believes that NMFS did not provide the public with sufficient notice of the availability of the DPEIS for public comment and, therefore, NMFS must recirculate the DPEIS for public comment before relying on it for the proposed rule.

Response: NMFS provided EPA with the DPEIS and requisite information for EPA to publish a notice of availability in the **Federal Register** as required by CEQ regulations. Publication of the DPEIS in the **Federal Register** (70 FR 38132), along with distribution to the mailing list contained in the DPEIS, meets the Federal action agency responsibility for providing public notice and invitation for public comment under the CEQ regulations. In addition, NMFS posted notice of publication of the DPEIS, along with the DPEIS, on its Web site at several locations (*http://www.nmfs.noaa.gov/sfa/domes_fish/new_of_note.htm*).

Comment 9: CBD/TIRN believes that the DPEIS fails to analyze the likely cumulative impacts of fisheries-related mortality to threatened seabirds (primarily albatrosses and petrels) from longline and trawl fishing in their ranges. They assert that the role of U.S. longline and trawl vessels, combined with other nations' legal and illegal longline toothfish vessels, must be looked at cumulatively for their impacts on seabirds in order for the FPEIS to comply with NEPA.

Response: Table 7 of the DPEIS and the FPEIS lists the conservation status of seabirds defined by the U.S. government (i.e., Endangered Species Act listing status), CCAMLR and the International Union for the Conservation of Nature (IUCN). Table 21 of the DPEIS and the FPEIS lists the types of seabirds interacting with CCAMLR fisheries and highlights the 20 species identified by CCAMLR's Working Group on Incidental Mortality Associated with Fishing (WG–IMAF) as most at risk from fisheries interactions. NMFS cites peer-reviewed scientific publications that document the impact of fisheries on specific populations. Unlike ESA listing status and criteria, the IUCN listings do not connote any prescribed or specific actions or measures under U.S. law. The IUCN criteria do provide a basis for common understanding of global species and they have been used in that context in both the DPEIS and the FPEIS.

The environmental consequences section of both the DPEIS and the FPEIS analyzes the anticipated impacts of each individual action on seabirds. The cumulative impacts section of both the DPEIS and FPEIS addresses impacts on seabirds. Potential cumulative impacts on these seabird species include: U.S. vessels fishing in CCAMLR regulated fisheries, other CCAMLR member vessels fishing in CCAMLR regulated fisheries, IUU vessels fishing within the CCAMLR and adjacent areas, and regulated fishing activities occurring in adjacent areas under the jurisdiction of other Regional Fishery Management Organizations (RFMOs). CCAMLR's ad hoc WG–IMAF and CCAMLR's Working Group on Fish Stock Assessment (WG–FSA) have discussed potential effects of bycatch levels and rates on seabird populations, particularly threatened and endangered species (as defined under IUCN). The groups noted the current lack of appropriate demographic models and the lack of reliable data on mortality rates of the relevant seabird species in longline and trawl fisheries outside the Convention Area and in IUU fisheries generally. Without this information, it is difficult, if not impossible, for NMFS to conduct a complex quantitative analysis of the cumulative impacts to seabirds from longline and trawl fisheries outside the Convention Area and in IUU fisheries. Even without these detailed analyses, CCAMLR has taken the approach (as the United States has in the Hawaii and Alaska longline fisheries) to minimize/reduce the bycatch of seabirds that occurs by requiring effective mitigation, including gear type and usage requirements and time-area closures, among other measures. The United States implements these measures and they help mitigate the impacts on seabirds.

The DPEIS and FPEIS note that trade and enforcement control measures are anticipated to minimize the import of IUU fish into the United States; this should result in the United States contributing negligible amounts to the cumulative impact on seabirds from both fishing and import activities.

The impacts of fisheries-related mortality on seabird species were fully analyzed using the available data. NMFS notes that in the regulated CCAMLR longline fishery, the seabird bycatch levels are extremely low, 0.0011 birds/1000 hooks in Subarea 48.3 in 2005, for instance. Consequently, the regulated fishery contributes a negligible amount to seabird mortality. The only remaining bycatch problems in the longline fishery are in the French EEZ and in IUU fishing within the Convention Area. The impact of U.S.-permitted vessels in the regulated longline fisheries on seabird bycatch is so small that it does not contribute to cumulative impacts on seabirds.

Comment 10: CBD/TIRN believes that the DPEIS fails to adequately analyze the impacts on marine mammals, particularly on a form of killer whale that specializes in eating toothfish and on Antarctic fur seals being caught and killed in the trawl fishery for krill.

Response: Given recent observations that there likely is a form of killer whale in the Southern Ocean that preys primarily on toothfish (so-called Type C) (p. 106 and p. 186 of FPEIS), any fishery for toothfish has the potential to produce negative impacts on this form.

These recent observations come primarily from National Science Foundation sponsored research conducted by scientists from the NMFS, Southwest Fisheries Science Center, and research is still ongoing. Information on distribution of this fish-eating form suggests they occur primarily in East Antarctica. Their abundance is not known. CCAMLR produces regional quotas for toothfish take which allow considerable escapement for toothfish stock availability to satisfy ''predator demand'', and CCAMLR considers this sufficient for the foraging needs of these fish-eating killer whales. There remains the possibility of local conflicts, if, for example, a toothfish fishery expanded in areas in East Antarctica where this form of killer whale occurs. If this becomes a matter of serious concern, it will be necessary to conduct directed research on the distribution, abundance and other characteristics of these ''Type C'' killer whales. This information could then be used by CCAMLR in the same manner that krill demand by localized populations of pinnipeds and birds is used, to set appropriate local quotas for commercial harvest. In the absence of such specific data, CCAMLR's precautionary catch limits for toothfish can be taken to leave sufficient food for this form of killer whale.

As for Antarctic fur seals being killed in krill trawls, this final rule would require any U.S. krill harvesting vessel, using trawl gear in Convention Area fisheries, to install a seal excluder device. The bycatch of Antarctic fur seals by the single U.S. krill harvester and by foreign vessels in the Convention Area, the use of seal excluder devices, and the increasing population trend in Antarctic fur seals is discussed in both the DPEIS and the FPEIS.

Comment 11: CBD/TIRN commented that the analysis of the global toothfish fishery and trade in toothfish should be expanded, and reduced catch and the decline of the toothfish population should be the focal point of the DPEIS.

Response: While the DPEIS acknowledges that ''where reliable data exist, reduced CPUE and clear population declines have been shown'', this primarily applies to the Indian Ocean sector of the Convention Area that exhibits high levels of IUU, and not areas where IUU is negligible, such as South Georgia. In areas where IUU has been minimal and CCAMLR TACs have been adhered to, there is little evidence of substantial population declines of toothfish stocks over the last decade. The source for this information is the 2005 CCAMLR Report of the Scientific Committee (SC–CAMLR–XXIV(2005)). NMFS believes the analysis of the toothfish fishery and trade in the FPEIS is sufficient.

Comment 12: CBD/TIRN commented that a major NEPA deficiency of the DPEIS was the failure to analyze the environmental consequences of U.S. importation and consumption of toothfish on toothfish stocks and on species incidentally caught in the toothfish fishery (e.g., seabirds and marine mammals). CBD/TIRN further commented that the DPEIS should have included an alternative in which toothfish imports were banned entirely until and unless bycatch could be reduced and toothfish stocks recovered.

Response: The DPEIS did consider the current regulatory provisions to control harvest and trade (particularly importation into the United States) of toothfish and alternatives. NMFS did prepare analytical documents for the Catch Documentation Scheme and pre-approval, etc. regulations promulgated in 2000 and 2003 to control trade in toothfish and prevent importation into the United States of IUU toothfish. Although there are some uncertainties associated with the CCAMLR methodology for estimating IUU catch, the CCAMLR estimates show that IUU fishing has continued to decline by significant amounts over the past five years.

As a result of both the substantial decrease in estimated IUU fishing and the efforts by CCAMLR to improve its methodology for estimating IUU fishing, NMFS believes that a ban on U.S. imports of toothfish is neither warranted nor necessary. In addition, the United States strictly regulates the importation of toothfish. As a result of announcing its intention to restrict imports of toothfish to shipments documented with E–CDS, the following countries are now using E–CDS exclusively in importing into the United States: Australia, Japan, Korea, New Zealand, Russia, South Africa, Spain, Ukraine, United Kingdom (overseas territories) and Uruguay. Chile and France are part time users of E–CDS, while Peru and Argentina are not using E–CDS in importing toothfish into the United States. This final rule will require all toothfish shipments to the United States to be documented electronically making it even more unlikely that IUU fish will enter the United States.

In 2003, NMFS, based upon advice of CCAMLR's Scientific Committee (SC) and after consultation with the Office of the United States Trade Representative, banned all imports of toothfish from Areas 51 and 57. These areas, immediately north of the CCAMLR Convention Area in the Indian Ocean, were identified on catch documents as the location of large amounts of toothfish catch. Based upon the bathymetry of the area, fishable habitat and the behavior of toothfish, the SC expressed its serious misgivings that Areas 51 and 57 could support toothfish populations in the numbers being reported on catch documents. The SC concluded that the catches attributed to Areas 51 and 57 outside the CCAMLR Convention Area were much more likely to be IUU catches taken from within the nearby Convention Area. Following the ban, catch documents attributing catch of toothfish to Areas 51 and 57 dropped to very small amounts.

Because the United States believes a ban on all toothfish imports is not appropriate or warranted, NMFS did not consider it as a viable alternative. Annually, the United States participates in setting the area-wide catch limits and other conservation measures designed to protect toothfish stocks in CCAMLR's international forum. Fishing by all countries and IUU fishing is taken into account as CCAMLR adopts annual catch limits and other restrictions on harvest and trade. Imports into the United States are controlled to prevent importation of IUU toothfish. A ban on toothfish imports into the United States would penalize U.S. consumers and other businesses and would not prevent IUU fishing as toothfish harvest would find other markets.

Comment 13: CBD/TIRN commented that the DPEIS fails to address the human health impacts from the consumption of toothfish in the United States. They cite a 2003 survey conducted by the San Francisco Chronicle that concluded that toothfish for sale in U.S. markets contained unsafe levels of mercury. The commenter also stated that the U.S. Food and Drug Administration (FDA), the Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) have all tested toothfish for mercury and detected numerous samples with over twice the lawful limits. CBD/TIRN asserted that any NEPA document addressing a regulatory scheme for the importation of seafood products containing high levels of mercury must disclose and analyze these health effects, the societal costs from such effects, and the environmental and health benefits of prohibiting the importation of such a tainted product. The commenter concluded that failure to disclose and analyze these health effects renders the DPEIS infirm.

Response: The issue raised by the commenter concerning the health effects of imported seafood products is beyond the scope of what NMFS analyzed in the

FPEIS for this action. The FDA and the EPA have expertise and responsibility to determine human health impacts from the consumption of toothfish and other seafood. They currently have the capability of testing any species for mercury content and do not allow seafood products exceeding 1 ppm to enter into commerce of the United States. Both the FDA and EPA make the decisions about public health implications of mercury in fish, and to our knowledge, the U.S. government has never banned imports or sale of any particular species of fish due to mercury content. Alternatively, the government has issued advisories on which fish are not safe to eat or which fish are safe to eat only in smaller quantities.

Comment 14: CBD/TIRN commented that the DPEIS is deficient in its review of the current and projected future impacts of climate change on the Antarctic ecosystem. CBD/TIRN commented that significant information on impacts of climate change on krill availability have been published but the DPEIS did not analyze this in either the baseline or cumulative effects. The commenter cited a 2004 article by Atkinson et al., ''Long-term decline in krill stock and increase in salps within the Southern Ocean'' published in Nature: v432: No 7013, p. 100; and a 2004 article by Marris, ''Climate change clouds commercial licence to krill'' published in Nature: v432: No 7013, p. 4.

Response: The proposed regulations and the related portions of the DPEIS and FPEIS consider changes to regulations governing the harvesting of AMLR and trade in AMLR. The proposed requirements impact fishermen and dealers and only indirectly impact the Antarctic ecosystem. The current and projected future impacts of climate change on the Antarctic ecosystem are on a broad scale with global impacts.

The commenter is concerned about the availability of krill for harvest, but the proposed regulations do not advance any change in the amount of krill that can be harvested, only that U.S. flagged krill trawlers must use a seal excluder device, carry scientific observers, and participate in C–VMS. The U.S. AMLR program conducts an annual survey of krill in the Antarctic Peninsula region, and each survey provides information on abundance, availability, recruitment, dispersion, and other important data. This information is presented at CCAMLR, and forms much of the scientific basis for the precautionary catch limits now in force. The actual catch of krill by all fishing nations combined is (and has been) considerably less than the precautionary limit. If future U.S. AMLR surveys indicate a collapse of krill stocks due to climate change or some other possible mechanism, this will be reported to CCAMLR and precautionary catch limits will be adjusted accordingly, or the fishery potentially shut down. Although there are long term trends in krill abundance that have been detected, the overall biomass of krill in the Southern Ocean remains at a level that the impact of human harvest has been inconsequential.

Comment 15: The commenter cited inconsistent discussion in the DPEIS at pages 187 and 257 regarding sperm whale interactions with toothfish vessels and possible mortalities.

Response: NMFS corrected text at page 187 of the FPEIS by deleting the annotation: ''The observer noted two possible sperm whale mortalities.'' Upon rechecking observer reports and the reports of CCAMLR WG-IMAF, NMFS has confirmed that there have been no reported sperm whale mortalities in the entire history of the CCAMLR toothfish fishery (which has 100% observer coverage). However, NMFS notes that there are anecdotal reports of sperm whale mortalities in toothfish fisheries in waters outside the Convention Area. The observer report referred to on page 187 of the DPEIS states that the observer had seen encounters between sperm whales and toothfish longlines on numerous occasions over the course of 4 years as an observer, but he never witnessed any incident that threatened the well being of the whales. In his discussions with other observers, they reported similar experiences. The observer continued by saying in his report (2004 Report by CCAMLR observer on board a U.S. longline vessel) ''considering the total number of longliners fishing for Dissostichus species in CCAMLR waters and the extremely low (possibly only two) incidents of whale mortality during the past 5 years, the real threat to whales is statistically negligible.'' The observer's annotation comment was directed at the entire fleet fishing inside Convention waters over the preceding 5 years (August 2000 to 2004) rather than his observation of the U.S. longline fishing trip he was observing.

Based on the fact that there have been no sperm whale mortalities in the U.S. or entire CCAMLR fisheries, NMFS believes its FPEIS corrects the ambiguity caused by the inconsistent language in the DPEIS regarding the impact of the toothfish fishery on sperm whales.

Comment 16: CBD/TIRN commented that little of the information in a recent article on marine mammal interactions with longline fisheries in the Southern Ocean, documenting interactions, entanglements, and deaths of sperm whales and orcas, was discussed in the DPEIS. The commenter cited a 2006 article by Kock et al, ''Interactions Between Cetacean and Fisheries in the Southern Ocean'' published in Polar Biology: 29:379–388.

Response: It is true that there have been documented interactions between longline fisheries and orcas and sperm whales in the Southern Ocean. However while Kock et al (2006) describe gear interaction with orcas and male sperm whales, it is restricted to observations of large numbers of fish taken off longlines by cetacean foraging (depredation), as well as cases of sperm whale entanglements in the lines, and loss of lines. There is nothing in Kock et al (2006) that indicates any observations of orcas or sperm whales having died as a result of longline fisheries in the Southern Ocean.

Comment 17: CBD/TIRN asserted that further authorization of any longline fishing in CCAMLR waters would violate the ESA and MMPA, and that NMFS's issuance of AMLRCA and HSFCA permits to two U.S. flagged longline vessels violated Section 7 of the ESA, 16 U.S.C. 1536(a)(2). CBD/TIRN commented that it appears NMFS violated Section 9 of the ESA as well, 16 U.S.C. 1538, given the information on ''possible sperm whale mortalities'' from one of these vessels contained in the DPEIS. CBD/TIRN went on to say that while NMFS may be able to correct its Section 7(a)(2) violation with a programmatic biological opinion that addresses the entirety of the agency action (i.e.≤ the regulations and all authorized fishing activity), they believe that Section 9 precludes the agency from issuing any further permits to toothfish longline vessels until and unless NMFS receives authorization for such take pursuant to both the ESA and MMPA.

Response: As NMFS explained in its response to Comment 15, there have been no sperm whale mortalities reported in the CCAMLR fisheries. Moreover, NMFS is unaware of any sperm whale mortality caused by a U.S. toothfish vessel. Furthermore, in its March 28, 2006, ''Endangered Species Act Section 7 Consultation Biological Opinion on the Proposed Regulatory Program Implementing Conservation and Management Measures Adopted by the Commission for the Conservation of Antarctic Marine Living Resources'', NMFS concluded that the regulatory regime for CCAMLR (subject of the FPEIS) is not likely to jeopardize the continued existence of endangered

whales (including sperm whales), and that the proposed action may affect but is not likely to adversely affect endangered and threatened sea turtles.

Comment 18: CBD/TIRN pointed out that under Section 101(a)(5)(E) of the MMPA, NMFS can in certain circumstances authorize the incidental take of ESA-listed marine mammals. CBD/TIRN believes that until and unless NMFS issues an authorization under Section 101(a)(5)(E), no take of sperm whales may be allowed. The commenter asserts that because authorization of toothfish longlining will lead to such take, NMFS cannot lawfully authorize such fishing whether it be by permit or regulation. As such, CBD/TIRN comments that NMFS should promulgate regulations banning all such longlining.

Response: As indicated in the responses to Comments 15 and 17, there is no reported sperm whale mortality associated with U.S. toothfish vessels. No takes are anticipated or authorized.

Comment 19: CBD/TIRN stated that longline fisheries for toothfish will kill birds protected under the MBTA. Citing several cases and authorities, CBD/TIRN asserted that, until such take is permitted, NMFS cannot lawfully allow any fishing that is likely to result in the death of such species. CBD/TIRN further asserted that the MBTA applies beyond the territorial sea of the United States.

Response: The MBTA only applies in nearshore waters, seaward to three nautical miles (nm) from the shoreline of the United States. Since the longline fishery for toothfish operates outside three nm, any take of migratory birds incidental to the fishery would not be covered by the MBTA.

Comment 20: CBD/TIRN commented that the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), and their implementing regulations also apply to the harvesting and importation of AMLRs. 50 CFR 300.102(c). CBD/TIRN stated that any new conclusion to the contrary will not survive legal scrutiny.

Response: In the response to Comment 19, NMFS has stated its opinion that the MBTA only applies in nearshore waters, seaward to three nautical miles (NM) from the shoreline of the United States. The ESA does apply to the harvesting and importation of AMLRs and NMFS conducted a Section 7 consultation for this action. Moreover, NMFS has not prepared a Take Reduction Plan for whales in the Southern Ocean because there have been no takes of sperm whales in the longline fishery in the Convention Area.

Comment 21: CBD/TIRN raised their concern that under NMFS' current practice, NMFS has issued, and will continue to issue permits to individuals and entities that have been associated with illegal fishing or illegal importation of toothfish. NMFS's knowing facilitation of this illegal fishing runs completely counter to the spirit and letter of AMLRCA, the HSFCA, and the treaties these statutes were intended to implement. In scoping CBD/TIRN requested that the DPEIS should specifically analyze whether any changes to NMFS's current regulations are necessary to prevent a recurrence of such a scenario. CBD/TIRN commented that the DPEIS and the proposed regulations show little sign that NMFS is serious about complying with its international obligations to reduce IUU fishing. CBD/TIRN believes that the proposed regulations likewise do little to prevent a recurrence of such an egregious scenario.

Response: NMFS lawfully issued AMLR harvesting permits to the owner of the vessels cited by the commenter. The two CCAMLR observers on board these vessels reported no illegal activity while these vessels were fishing. NMFS' goal of eliminating IUU fishing was furthered by the issuance of the permits in accordance with all applicable laws and regulations to the U.S.-flagged vessels. By asserting its control over the vessels' permit to fish, NMFS was able to ensure compliance with CCAMLR conservation measures by the vessels owner and operators. During the period that the vessels were U.S. owned and flagged, NMFS observed no illegal activity surrounding the operation of either vessel through close monitoring by NOAA-authorized observers, NOAA/NMFS for Law Enforcement, and the NOAA vessel monitoring system.

The final rule combined with additional statutory authorities (including proposed amendments to AMLRCA), are sufficient to ensure that U.S. flagged vessels and U.S. nationals can be effectively prosecuted for illegal fishing operations and trafficking of IUU fish product. NOAA/NMFS is seeking to amend AMLRCA at the next opportunity to increase the maximum civil penalty allowed under AMLRCA to ensure that NOAA/NMFS's penalty options will be sufficient to address all violations. NOAA/NMFS will continue to cooperate with foreign governments to identify and pursue enforcement actions against foreign companies and foreign nationals that are identified as IUU fishers or participants in illegal trafficking of IUU fish product.

Comment 22: CBD/TIRN believes the C–VMS, scientific observer, and seal excluder device requirements should apply to all U.S. flagged vessels fishing for toothfish even if they are outside of the CCAMLR Area (i.e., not fishing for AMLR under the proposed definitional change). If need be, NMFS should implement this requirement pursuant to its authority under the HSFCA in addition to AMLRCA to ensure applicability wherever these vessels fish.

Response: This final rule requires U.S. vessels harvesting AMLR in the Convention Area to operate C–VMS on board from the time of leaving port to the time of returning to port, consistent with AMLRCA. The seal excluder devices and observer requirements are also required for U.S. vessels harvesting AMLR in the Convention Area, consistent with AMLRCA. This requirement will not apply to U.S. flagged vessels which do not have an AMLR harvesting permit and which are fishing for toothfish outside the Convention Area. NMFS is considering the development of regulations to amend its HSFCA regulations to, among other things, require VMS usage for all U.S. flagged vessels fishing anywhere on the high seas.

Comment 23: CBD/TIRN opposes the exemption of ''small artisanal boats'' fishing in the EEZs of Chile or Peru from the C–VMS requirement. The commenter believes that these countries do not effectively regulate IUU fishing and that allowing such imports opens the door for fraud as fish illegally caught elsewhere can be labeled as having been caught by such vessels operating in such a manner. Additionally, the commenter stated that the regulations do not define ''small artisanal boats.''

Response: NMFS has provided its rationale for this exemption in the preambles to the proposed regulation and this final regulation. U.S. dealers seeking to import toothfish or toothfish products originating from small artisanal boats fishing in the EEZ of Peru or Chile will 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. Chile regulates fishing by regions within its EEZ and artisanal boats do not operate in the same regions as large freezer vessels. NMFS does not believe a definition of ''small artisanal boats'' is necessary and wants to maintain flexibility in applying this exemption to vessels incapable of navigating beyond the EEZ.

As artisanal boats harvesting and shipping small amounts of fresh fish are not equipped to reach CCAMLR restricted areas, they are not suspected of this type of infraction. Also, 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 final rule, DCDs for shipments of fresh toothfish from Chile will be reviewed without a fee-for-service charge. Shipments of all frozen toothfish, including those in quantities of less than 2,000 kg, will still require preapproval.

Comment 24: CBD/TIRN commented that the DPEIS did not analyze the environmental effects of exemptions discussed above in Comments 22 and 23 and believes that absent such an analysis, NMFS cannot claim that the impacts will not be significant.

Response: As explained in its response to Comment 22, AMLRCA does not provide NMFS with the authority to regulate fishing for toothfish outside of the CCAMLR Convention Area. If NMFS were to propose a requirement under the HSFCA that all U.S. flagged vessels fishing for toothfish wherever found must use VMS, then NMFS would need to amend its HSFCA regulations and conduct applicable environmental and socio-economic analyses. As indicated in its response to Comment 23, imports of toothfish harvested by ''small artisanal boats'' in the EEZs of Chile and Peru consist primarily of small quantifies of fresh toothfish. In addition, 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. Therefore, NMFS believes there to be at most only a negligible risk of IUU toothfish being imported as harvested from either the Chilean or Peruvian artisanal fishery.

Comment 25: CBD/TIRN believes that shortening portions of the preapproval requirement from 15 days to 3 days will greatly reduce NMFS's opportunity to investigate the shipment of toothfish to verify its legality. They also believe that exempting all fresh toothfish would open the door for further fraud. CBD/TIRN believes the preapproval provisions should be broadened to apply to all shipments of toothfish, whether frozen or fresh. The commenter believes the proposed changes will weaken NMFS's oversight and increase the likelihood of illegally caught toothfish being imported into the United States. Also, CBD/TIRN asserts that because the DPEIS does not analyze the environmental effects of including these exemptions in the regulations, NMFS cannot claim that the impacts will not be significant.

Response: NMFS's only change requires that dealers supply the U.S. Customs 7501 number at least 3 working days prior to a frozen or fresh toothfish shipment's arrival instead of at least 15 days as currently required. All other information on the ''Application for Preapproval of Catch Documents'' would remain unchanged enabling NMFS to verify and validate all other information pertaining to each shipment. In most cases dealers are not able to obtain a U.S. Customs 7501 number 15 days in advance of a shipment's arrival. NMFS disagrees that shortening the 15-day advance notification period to a 3-day advance notification period will greatly reduce NMFS's opportunity to investigate the shipment to verify its legality, because all information needed to verify and validate a shipment of toothfish for entry will still be required 15 days in advance. NMFS uses the 7501 numbers to perform a post entry confirmation and to perform compliance analysis for enforcement purposes. NMFS also disagrees that exempting shipments of fresh toothfish over 2,000 kgs from the preapproval system will open the door for fraud and will facilitate smuggling into the United States. Exempting fresh shipments above 2,000 kg encompasses only about 2 percent of all toothfish entering the United States. These shipments must be reported within 24 hours of import, just as all fresh shipments of 2,000 kg or less have been reported since the inception of the preapproval process. These documents are then checked for validity. None of the enforcement cases involving illegal imports have involved fresh product.

The proposed rule recognizes that most dealers are unable to comply with the current requirement to submit the Customs 7501 number 15 days prior to the shipment's arrival. Therefore, NMFS is now requiring the submission of this form at least 3 working days prior to the shipment's arrival and no environmental impacts are anticipated. In addition, because the customs number is not necessary for verifying and validating the shipment of toothfish, but rather as a tool in retrospective compliance analysis, NMFS does not expect this change to result in any increase in shipments of IUU toothfish.

Because shipments of fresh toothfish in excess of 2,000 kg constitute less than two percent of toothfish shipments and because these shipments still must be reported within 24 hours and documented, NMFS anticipates no increase in imports of IUU toothfish as a result of this change.

Comment 26: CBD/TIRN supports the requirement for electronic catch documents.

Response: As indicated in its response to Comment 2, NMFS believes the requirement to use electronic DCDs for toothfish imports will effectively guard against importation of IUU toothfish with forged paper documentation.

Comment 27: CBD/TIRN supports the proposed rule's provisions governing the use of scientific observers. They also believe that such requirements should be applied to all U.S. flagged vessels fishing for toothfish even if fishing outside of the CCAMLR area. CBD/TIRN states that, if need be, NMFS should implement this requirement pursuant to its authority under the HSFCA in addition to AMLRCA to ensure consistency in the regulations.

Response: As indicated in its response to Comment 22, AMLRCA does not provide NMFS with the authority to regulate fishing for toothfish outside of the CCAMLR Convention Area. Instead, NMFS is considering the development of regulations to amend its HSFCA regulations and, if such a rulemaking is undertaken, the public will be given an opportunity to comment.

Comment 28: CBD/TIRN supports the proposed rule's provisions requiring U.S. flagged vessels trawling for krill in the CCAMLR Convention Area to use seal excluder devices. The commenter also believes that this requirement should be applied to all U.S. flagged vessels fishing for krill even if fishing outside of the CCAMLR area. CBD/TIRN states that, if need be, NMFS should implement this requirement pursuant to its authority under the HSFCA in addition to AMLRCA to ensure consistency in the regulations.

Response: The final rule requires seal excluder devices on all U.S. vessels trawling for krill in CCAMLR Convention Area fisheries; however, NMFS does not believe it has the authority under AMLRCA to regulate trawling for krill outside of the CCAMLR Convention Area. NMFS is considering the development of regulations to amend its HSFCA regulations and, if such a rulemaking is undertaken, the public will be given an opportunity to comment.

Comment 29: CBD/TIRN commented that NMFS must take all necessary measures to ensure that the krill trawl fishery reaches the Zero Mortality Rate Goal (ZMRG) required by the MMPA. They assert that because NMFS has not calculated Potential Biological Removal (PBR) for the affected stocks, NMFS cannot be certain that the fishery is in

compliance with the ZMRG requirement. They also comment that the DPEIS does not analyze this factor. CBD/TIRN comments that until and unless NMFS can ensure compliance with the MMPA, NMFS cannot lawfully issue any AMLRCA harvesting permits for the krill fishery.

Response: For a fishery to reach the Insignificance Threshold, or the target level of incidental mortality and serious injury under the ZMRG, annual incidental serious injury and mortality of a marine mammal stock in a given fishery must be below 10% of PBR (50 CFR 229.2). NMFS does not have sufficient information to calculate PBR level for marine mammal stocks found outside of the U.S. EEZ. The relative abundance of Antarctic fur seals was estimated as 1.5 million in 1990 and is thought to have since increased to over 4 million (CCAMLR Final Programmatic EIS). In 2003/2004, a total of 158 Antarctic fur seals were observed taken by the single U.S. permitted trawl krill fishing vessel in the CCAMLR region, 142 of which were mortalities. As a result, a permit provision was added requiring the use of a seal excluder device and any other gear modifications or fishing practice that reduces or eliminates Antarctic fur seal bycatch. In the 2004/2005 fishing season the U.S. vessel used the required seal excluder device and as a result 24 Antarctic fur seals were incidentally taken, 16 of which were mortalities (2005 Report of the CCAMLR SC). This vessel did not fish in the CCAMLR region in the 2005/2006 fishing season and has not applied at this time to fish during the 2006/2007 season. The vessel has indicted that should it fish again for krill in the CCAMLR Convention Area it will further modify the seal excluder device to address the problems identified by the CCAMLR SC. This modification would be a requirement of any permit NMFS would issue to the vessel.

Given the large estimated abundance of Antarctic fur seals, the current low rate of incidental serious injury and mortality would likely be below 10% of PBR. Therefore, NMFS can confidently assume that the fishery is in compliance with the Insignificance Threshold, or ZMRG. Further, at the 2006 Antarctic Treaty Consultative Meeting, the Antarctic Treaty Parties delisted the Antarctic fur seal from its list of Specially Protected Species. The delisting reflected the much increased abundance of fur seals. Even with this increased abundance, only 95 fur seals were reported caught during fishing operations in 2005/2006, during which time no U.S. krill trawl vessel was operating.

Comment 30: CBD/TIRN commented that the proposed change to the definition of ''Antarctic Marine Living Resources'' (''AMLRs'') would allow toothfish harvested outside of the CCAMLR area to be harvested by U.S. vessels without an AMLRCA permit. CBD/TIRN believes that NMFS has authority under AMLRCA to require such permits for ''all species of *Dissostichus* wherever found'' and the change in definition would open the door for fraud and facilitate IUU fishing by U.S. flagged vessels. Additionally, the commenter requested that if NMFS proceeds with this regulatory change, that NMFS should simultaneously promulgate regulations pursuant to the HSFCA that apply all the same provisions as under AMLRCA to all U.S. flagged toothfish vessels to ensure consistency in the management and harvest of toothfish and to prevent fraud.

Response: While the proposed and final rule would not require an AMLRCA permit to harvest toothfish on the high seas wherever found, any U.S. vessel fishing for toothfish outside the CCAMLR Convention Area would be required to have a permit issued by NMFS under the HSFCA. NMFS disagrees that the regulatory change in the definition of ''AMLRs'' would open the door for fraud and facilitate IUU fishing by U.S. flagged vessels. The final rule preserves the requirement that all imports of toothfish, wherever harvested, comply with U.S. import permit conditions and DCD controls.

Comment 31: CBD/TIRN commented that NMFS's statement that ''areas within the Convention Area subject to national jurisdiction, such as the areas * * * claimed by the United Kingdom, are not considered high seas areas'' needs clarification. The commenter points out that various U.S. statutes apply to the ''high seas'' and that for many of these statutes the ''high seas'' includes all areas outside of the territorial waters of other nations. CBD/TIRN states that NMFS must clarify that AMLRCA, the ESA, MMPA, NEPA, and other relevant statutes apply to U.S. flagged vessels fishing in these areas even if they are claimed by other nations as part of that nation's EEZ. Further, CBD/TIRN comments that the DPEIS does not analyze the environmental effects of making this change in the regulations and without such an analysis, NMFS cannot claim that the impacts will not be significant.

Response: In the proposed rule, NMFS stated that the ''[a]reas 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.'' 71 FR 39642 (July 13, 2006). By this statement, NMFS meant that these areas are not considered high seas for purposes of the HSFCA. Therefore, NMFS would not issue any HSFCA permits to U.S. vessels wishing to fish in such areas.

Comment 32: CBD/TIRN has no objection to the proposed regulatory provisions requiring information on harvesting vessels.

Response: NMFS expects this information on harvesting vessels will assist in data collection, management decisions, and aid in enforcement.

Changes From the Proposed Rule

The proposed rule had provided for a 60-day period for dealers to transition to the use of E–CDS. NMFS has concluded that the 30-day delay in effectiveness for the final rule under the Administrative Procedure Act provides sufficient time for this transition.

For purposes of clarification, NMFS made some non-substantive changes to the wording of application requirements for dealer permits under § 300.114(b).

Also for clarification purposes, NMFS made a slight change in the definition of ''national observer'' in § 300.101. Similarly, NMFS revised § 300.113 to ensure that the public understood that this section on scientific observers applies to national and international observers as defined in § 300.101.

Classification

The Act

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

National Environmental Policy Act

A ''Final 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 November 24, 2006 (71 FR 67864). It discusses the impact on the natural and human environment of the actions taken in this final rule. The Record of Decision (ROD) for the FPEIS was signed by the Assistant Administrator for Fisheries, NMFS, on May 25, 2007, and is available to the public (see **ADDRESSES**).

Regulatory Flexibility Act

NMFS announced that it had prepared an Initial Regulatory

Flexibility Analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act, to describe the economic impacts the proposed regulation may have on small entities. No comments were received from the public on the IRFA or the economic impacts of the proposed rule. NMFS has now prepared a Final Regulatory Flexibility Analysis (FRFA), as required by section 603 of the Regulatory Flexibility Act, to describe the economic impacts this final rule may have on small entities. Small entities within the scope of this final rule include individual U.S. vessels and U.S. dealers (importers and re-exporters). NMFS intended the analysis to aid in the consideration of regulatory alternatives that could minimize the economic impact on affected small entities.

Summary of FRFA

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

A summary of the significant issues raised by public comments 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 final 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.

Reasons for Selecting Alternatives Adopted and Description of Recordkeeping, Reporting, or Compliance Requirements

1. *Centralized VMS.* CCAMLR adopted Conservation Measure 10–04 to implement C–VMS. In implementing Conservation Measure 10–04, NMFS considered two alternatives: The final 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 onboard 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)). 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 C–VMS requirement in this final 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's 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 final 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 final 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 final rule (preferred alternative) tightens and improves the import/re-export control program that the United States maintains for AMLR. The final rule allows 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 exempts 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 final rule for an estimated 8 preapproval applications for 78 dealers is $124,800. Therefore, because the final 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 final rule (the preferred alternative) requires that all imports of toothfish be documented using the electronic format recommended by CCAMLR. The final rule increases the security and reliability of catch documents and facilitates 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 final rule 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 Web site 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. NMFS also rejected the no-action alternative because the final rule will enhance the agency's ability to verify the validity of toothfish imports, assuring importers of legal catch.

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 final 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 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 final 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 final rule clarifies 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 final rule requires 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 are 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 final rule (the preferred alternative) amends the definition of ''Antarctic marine living resources'' by deleting ''All species of *Dissostichus* wherever found'' from the definition. This change clarifies 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 final rule also adds or amends 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 final rule (preferred alternative) defines and clarifies 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 final 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 preamble to the final rule requests 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.

Executive Order 12866

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

Paperwork Reduction Act

This final 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 of 576 hours.

This rule also contains new or revised collection of information requirements that were approved by OMB on October 10, 2006. These new or revised requirements 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 final 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 × 5 vessels = $2,250.00 annualized cost for the fleet; (b) annual vessel VMS maintenance per vessel = $350 × 5 vessels = $1,750.00 annualized maintenance, for the fleet; and (c) annual vessel transmission costs: $54.00 × 5 vessels = $270.00 for the fleet. As indicated earlier in this Classification section under Summary of the FRFA, where C–VMS is discussed, for U.S.-flagged vessels currently participating in AMLR fisheries, compliance costs associated with the final 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 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. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

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

This action should not result in any adverse effects on endangered species or marine mammals.

List of Subjects in 50 CFR Part 300

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

Dated: August 16, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 300, subpart G 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, ''Transship'' is removed, in the definition of ''Antarctic marine living resources or AMLR(s)'' paragraph (2) is removed and paragraph (3) is redesignated as paragraph (2) and revised; and definitions for ''Export'', ''Import'', ''International observer'', ''Mobile transceiver unit'', ''National observer'', ''Office for Law Enforcement (OLE)'', ''Port State'', ''Re-export'', ''Seal excluder device'', and ''Transship or transshipment'' are added in alphabetical order; and the definitions of ''Land or landing'' and ''Vessel Monitoring System (VMS)'' are revised to read as follows:

§ 300.101 Definitions.

* * * * *

Antarctic marine living resources or AMLR(s) * * *

(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 transshipped 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 or a foreign flagged vessel 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.

* * * * *

Transship 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, transship 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 document and export 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.

* * * * *

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

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

■ 7. New § 300.113 is added to read as follows:

§ 300.113 Scientific observers.

This section applies to national and international observers as defined in § 300.101.

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

(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 an injury or death during the entire deployment, from the point of hire location to return, equivalent to the standards of the North Pacific Groundfish Observer Program set forth in § 679.80 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 the observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers of the vessel; and

(2) *Safe conditions.* (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 § 300.114(a)(1). 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. With the exception of the U.S. Customs 7501 entry number, 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 must supply the U.S. Customs 7501 entry number at least three working days prior to 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. New § 300.116 is added 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 OLE, 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 an 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.

[FR Doc. E7–16589 Filed 8–22–07; 8:45 am]

BILLING CODE 3510–22–P