



## The Antarctic and Southern Ocean Coalition

The Antarctica Project  
ASOC Secretariat  
1630 Connecticut Ave., N.W.  
Washington, DC 20009 USA  
Tel +1 202 234-2480  
Fax +1 202 387 4823  
antarctica@igc.org  
www.asoc.org

November 14, 2002

Dean Swanson  
International Fisheries Division  
Office of Sustainable Fisheries  
NMFS  
1315 East-West Highway  
Silver Spring, MD 20910  
fax 301-713-2313, 4 pages total

**RE: Antarctic Marine Living Resources; CCAMLR Ecosystem Monitoring Permits; Vessel Monitoring System; Catch Documentation Scheme; Fishing Season; Registered Agent; and Disposition of Seized AMLR: Proposed rule (Federal Register/Vol. 67, No. 204/October 22, 2002; Docket No. 021016236-2236-01; I.D. 082002A)**

Dear Mr. Swanson:

The Antarctic and Southern Ocean Coalition (ASOC)<sup>1</sup> is pleased to have the opportunity to comment on the proposed rule under 50 CFR Part 300, **Antarctic Marine Living Resources; CCAMLR Ecosystem Monitoring Permits; Vessel Monitoring System; Catch Documentation Scheme; Fishing Season; Registered Agent; and Disposition of Seized AMLR** which appeared in the October 22, 2002 Federal Register, vol. 67, no. 204.

The Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) was established under the Antarctic Treaty System to sustainably manage Antarctica's living marine resources. However, countries that are not members of CCAMLR are not bound by its measures. *The Antarctic Marine Living Resources Convention Act of 1984* (P.L.98-623) provides the authority for the United States, as a contracting party to CCAMLR, to implement its obligations under CCAMLR. These obligations include domestically implementing Conservation Measures agreed at the annual meeting of CCAMLR Parties.

At the 1999 CCAMLR meeting, a Catch Documentation Scheme (CDS) was adopted to allow Parties to

---

<sup>1</sup>The Antarctic and Southern Ocean Coalition is an international coalition of 240 conservation organizations in 47 countries that has, since 1977, worked to safeguard the Antarctic environment. Twenty-six of our members are based in the U.S. ASOC has observer status at the meetings of the Commission on the Conservation of Antarctic Marine Living Resources.

trace *Dissostichus eleginoides* and *Dissostichus mawsoni* (Patagonian and Antarctic toothfish, respectively) from the Southern Ocean to the market place and oblige member nations not to accept illegally-caught (IUU) fish<sup>2</sup>. This scheme was adopted, by consensus of the Contracting Parties, in response to out-of-control pirate fishing on *D. eleginoides*. However, the CDS has not had the desired effect of stopping IUU fish from entering international trade. On the contrary, it has allowed illegal catch – falsely reported as having been caught outside the CCAMLR area – to enter legal trade with proper documentation. The catch from these illegal and unregulated fisheries has annually exceeded the legal (regulated) fisheries – in the 2001/02 season, CCAMLR estimated that pirate fishers caught 25,527 tonnes of toothfish – in excess of the regulated catch of 23,212 tonnes. This is based on data submitted to CCAMLR and extrapolated from sightings of illegal fishing vessels, and is, by CCAMLR’s admission, a gross underestimate. Many of the vessels that engage in this illegal, unregulated and unreported fishing are flagged in non-CCAMLR member countries. This means that they are not obliged to implement the CDS, or any of CCAMLR’s Conservation Measures.

Given this situation, it is imperative that only toothfish caught in accordance with CCAMLR's measures are allowed to enter the trade, and it is incumbent on CCAMLR Parties to assure that only toothfish caught in compliance with CCAMLR’s measures enter their ports. However, the significant loopholes in the CDS, coupled with its limited reach, make it difficult for even conscientious states like the U.S. to block the importation of illegally-caught fish. The proposed rule should enable the U.S. to block importation of this fish.

Adding to this is the large number of vessels flagged to CCAMLR members that are also involved in illegal fishing, as they have discovered creative ways to circumvent compliance with CCAMLR’s measures. The primary loophole they have exploited is documenting toothfish caught within CCAMLR’s waters as having been caught outside the Convention Area, in FAO Statistical Areas 51 and 57 in the Indian Ocean. The proposed rule will allow the U.S. to block imports of toothfish from these areas, a move we support.

The Antarctic and Southern Ocean Coalition, which lobbied on behalf of adoption of the CDS, enthusiastically supports the U.S. adopting a rule which will close some of the loopholes in the CDS and strengthen the original rule implementing the CDS for the U.S. We firmly believe that this rule is needed to allow the U.S., through NMFS, to meet its obligations under CCAMLR in implementing the CDS.

It should be obvious that the CDS will not, of itself, stop pirate fishing for toothfish. This can only occur if importing countries have regulations in place to allow them to reject landings of toothfish of questionable origin. The original regulations that implemented the CDS for the U.S. (xyz) were a good first start. The comments that we submitted on those regulations noted several deficiencies in those regulations. In particular, we commented that advance notification must be required for all imports of toothfish. In our comments of May 20, 2000, we stated: **“Advance verification of the data contained in the DCDs [Dissostichus Catch Documents] is viewed by the Antarctic and Southern Ocean Coalition as crucial to the effectiveness of the CDS. Building in adequate time for the National Marine Fisheries Service to verify each certificate, in advance of the release of each shipment is essential to the success of the program.”** We are pleased that the proposed rule seeks to implement this requirement, thus closing a significant deficiency in the original regulations.

Specific comments on several components of the proposed rule follow.

---

<sup>2</sup>The term “illegal” in this letter refers to fish that has not been caught in compliance with CCAMLR’s conservation measures. Since non-Parties are not bound by CCAMLR’s measures, we are using it as shorthand for fish caught in either the “illegal, unregulated or unreported (IUU)” fisheries.

## 1. Vessel monitoring Systems (VMS)

ASOC supports the proposal to require VMS on board all U.S. fishing vessels – both those that target krill and finfish. The CCAMLR VMS conservation measure requires this on board all vessels targeting finfish, so the U.S. is obligated to require VMS on U.S. vessels that intend to target toothfish. As noted in the proposed rule, although not currently required by CCAMLR, VMS on board vessels targeting krill is necessary to facilitate the collection of data needed for sound management of krill fisheries. CCAMLR scientists have been requesting this information to allow recommendations on managing the fishery.

## 2. Ban on Imports of Toothfish from Certain High Seas Fishing Areas

ASOC strongly supports the proposal to prohibit the issuance of a permit allowing import of *Dissostichus spp.* identified as being harvested from FAO Statistical Areas 51 and 57. CCAMLR scientists and most governments have stated that few if any toothfish can be found in these areas. In 2001 and 2002, CCAMLR's Scientific Committee stated that practically all catches claimed as being caught in these areas in fact represented catches taken as a result of illegal fishing inside the CCAMLR area. Despite this, three CCAMLR Members, and at least one Non-member, continue to authorize catches claimed to be caught in these areas.

In the 2000/2001 season, 9000 tonnes were claimed to be caught in Area 51. After the Scientific Committee questioned this, a large percentage of the catches “shifted” to Area 57. Since May 2000, 21,232 tonnes – with an approximate retail value of \$415,000,000 – have been listed as being caught in Areas 51 and 57. The economic incentives to continue authorizing these catches are too great to expect this practice to end. This is why the U.S. – as the second largest toothfish importing nation – needs to ban the importation of toothfish from these areas until independent scientific surveys confirm the present of toothfish at commercially-viable levels.

**ASOC urges that this ban on imports extends to all unregulated high seas areas** (i.e., waters not under the control of CCAMLR or a state). Catches are also reported in FAO high seas Statistical Areas 41, 47, and 87, although these catches are also likely from CCAMLR waters. Increased scrutiny caused a fair amount of the reported catch in Area 51 to shift to Area 57 this past season, and it is not unreasonable to expect that we will see an increased level of catches being reported in these additional areas now that Area 57 is under scrutiny. Limiting the ban to Areas 51 and 57 increases the likelihood that illegal catch from inside the Convention Area will be attributed to these three areas. Unless the U.S. prohibits the importation of catches claimed as being caught in unregulated high seas areas, NMFS will still not be able to prevent IUU toothfish from these areas entering the U.S. if it is accompanied by a validated DCD.

## 3. Specially Validated DCD (SVDCD)

ASOC agrees with the prohibition on the import of toothfish harvested in violation of CCAMLR's conservation measures even if accompanied by a Specially Validated DCD (SVDCD). As we stated in our April 7, 2000 comments, “**allowing illegally caught fish to enter the U.S. is a violation of Sec. 306 of P.L. 98-623** which states: ‘It is unlawful for any person ... (3) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control or possession of, any Antarctic marine living resource...which he [sic] knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States pursuant to article IX of the [CCAMLR] Convention....’ ASOC supports adding a definition of SVDCD to NMFS's CCAMLR regulations.

#### 4. Disposition of Seized AMLR

As stated in previous comments, seized AMLR must not be allowed to re-enter trade, to remove all economic incentives for IUU fishing. ASOC does not support destroying the fish, and would prefer it be donated to a food bank, or some organization that aids indigent people.

#### 5. Dealer Permits and Pre-approval

**The Antarctic and Southern Ocean Coalition view advance verification of the data contained in the DCDs as crucial to the effectiveness of the CDS.** Advance notification would allow the authorities familiar with the CDS and DCDs to review the forms to make sure violations have not occurred, to check with the Flag State that issued the DCD or with the CCAMLR Secretariat, as necessary, and it would heighten the ability of Customs officials to reject illegally caught toothfish as they will be notified in advance of all pre-approved shipments. Advance verification would enhance trade by allowing approved toothfish to enter trade quickly.

We appreciate the opportunity to provide these comments, and would be pleased to discuss them with you. Please contact Beth Clark, at The Antarctica Project, at 202-234-2480, or Gerry Leape at the National Environmental Trust, at 202-887-1346.

Sincerely,

Beth Clark  
Director  
The Antarctica Project

Gerald Leape  
Director, Marine Conservation Program  
National Environmental Trust

Andrea Kavanagh  
Campaign Manager  
*Take a Pass on Chilean Sea Bass*

David Raney  
Chair, National Marine Wildlife and Habitat Committee  
Sierra Club

Randall D. Snodgrass  
Director, Government Relations  
World Wildlife Fund