

several importers of toothfish or their representatives and several environmental organizations. All commenters supported the need for the proposed regulations in general. Some had specific concerns.

Comment 1: One commenter said that the proposed change regarding registered agents was unnecessary because any foreign-based importer of record must, under Customs Service regulations, appoint a registered agent in the United States authorized to accept service of process.

Response: NMFS disagrees that requiring a registered agent is unnecessary. The registered agent required in Customs Service regulations is not necessarily authorized to facilitate the implementation of NMFS regulations. However, it would be acceptable to NMFS for any foreign-based importer of record to appoint the same registered agent to NMFS and to the Customs Service.

Comment 2: One commenter strongly supported the proposal to prohibit the importation of *Dissostichus* ssp. identified as being harvested from Food and Agriculture Organization (FAO) Statistical Areas 51 and 57. Other commenters opposed the proposal, believing that NMFS lacks sufficient evidence that these areas cannot sustain a healthy fishery. One of these latter commenters argued that: the proposed action is based on speculation and inconsistent data; that action should not be taken until a stock assessment is completed; that NMFS does not have information that the DCDs from these areas are fraudulent; and that NMFS and CCAMLR should examine other alternatives.

Response: As the preamble to the proposed rule states, in October 2001, the Chair of the Scientific Committee advised CCAMLR that the catches reported in Area 51 were not credible. This same advice was ardently concurred in by the Scientific Committee in October 2002. In 2002, CCAMLR noted the following advice from the Scientific Committee:

-The catches attributed by catch documentation scheme (CDS) reports outside the Convention Area in Areas 51 and 57 were unlikely to have come from those areas (as explained in the preamble to the proposed rule) and most likely came from within the Indian Ocean sector of the Convention Area;

-Illegal, unregulated, and unreported (IUU) catches within the Indian Ocean sector of the Convention Area were most likely to be underestimated;

-The current levels of IUU fishing reported from Areas 51 and 57 would

have seriously depleted whatever stocks might have been present in those areas;

-Current levels of IUU fishing have depleted stocks in Division 58.4.4, and Subareas 58.6 and 58.7, while the catch rates in Division 58.5.1 have declined substantially.

CCAMLR noted with great concern that the information presented by the Scientific Committee indicated continued high levels of IUU fishing in the Convention Area. The majority of Members of CCAMLR agreed that catches reported from Areas 51 and 57 were not credible. They also expressed concern that the information reported in catch documents did not match available knowledge of toothfish distribution and potential biomass for waters in these two adjacent areas, outside the Convention Area.

After extensive discussion at CCAMLR XXI concerning the use of VMS to confirm areas of harvest for vessels fishing outside the Convention Area and specifically on the high seas, it was concluded that most flag states whose vessels had reported large catches from high seas areas had not, in fact, implemented the required VMS in accordance with the applicable CCAMLR conservation measure. Although some states reported compliance with this requirement, it came to light during the discussions that there were serious flaws in the types of systems being used including, but not limited to, the use of manual systems that could be easily manipulated, systems that could simply be turned on and off at will, systems not inspected at port for proper operation, and even the complete absence of any operational VMS on some vessels. Therefore, verification of catch dates and locations of harvest on the high seas by landing or importing states via VMS reports is not a viable option. The view of the United States, in light of these shortcomings and without the reliability of verification procedures, is that there is no alternative to the implementation of a ban on all imports whose catch is reported as having been harvested from FAO Areas 51 and 57.

CCAMLR requested all Members fishing for toothfish on the high seas outside the Convention Area to again submit verifiable documentation next year on VMS and other catch verification procedures. In particular, the reports should include verification procedures, specifications of the VMS equipment installed on board each fishing vessel, and details of software used to monitor the position and movement of vessels. Australia tabled a proposal for a centralized VMS, or a dual reporting VMS system that would

provide CCAMLR with real-time VMS information on all fishing vessels. Although most Members supported the idea that CCAMLR should receive VMS data, some took the view that this information should be provided to CCAMLR from the fishing monitoring center of the vessel's flag state. The United States, along with Australia, viewed this support as progress but believes that it does not provide the level of integrity to the VMS data that would give importing states a well-documented instrument to supply solid verification of catch.

The combination of the lack of confidence that catches are being reported accurately from vessels claiming to fish on the high seas, specifically FAO Areas 51 and 57, and the failure of CCAMLR Members to either adopt a centralized VMS system or to fully comply with the current VMS requirements convinces NMFS that a ban on the importation of toothfish originating in Areas 51 or 57 is the only solution.

Comment 3: One commenter strongly supported the proposal to require VMS transponders on all U.S. fishing vessels authorized to fish for AMLRs.

Response: NMFS agrees.

Comment 4: One commenter supported the proposal to prohibit the importation of toothfish harvested in violation of CCAMLR's conservation measures even if accompanied by a SVD CD.

Response: NMFS agrees.

Comment 5: One commenter did not want seized AMLRs to be allowed to re-enter trade, but also did not want them destroyed.

Response: NMFS has not resolved all issues associated with the disposition of AMLRs denied entry and has decided to continue to reserve § 300.116(d), "Disposition of resources denied entry" as a place-holder for future regulations governing this issue.

Comment 6: One commenter supports requiring preapproval as proposed for § 300.113.

Response: NMFS agrees.

Changes From the Proposed Rule

Section 300.107(c)(1)(iii) was clarified to say that fish taken from either Statistical Area 51 or Statistical Area 57 would not be issued a preapproval.

Section 300.107(c)(7) and the reference to it in § 300.107(c)(1)(ii) have been removed because they created a 60-day exception to a requirement for a DCD which expired in 2000.

The paragraphs in § 300.113 have been redesignated to include a new paragraph (c) regarding the simplified means to be used for collecting fees for