

White-bellied Storm—*Fregetta grallaria*.

White-chinned—*Procellaria aequinoctialis*.

White-headed—*Pterodroma lessoni*.

Wilson's Storm—*Oceanites oceanicus*.

Pigeon

Cape—*Daption capense*.

Pintail

South American Yellow-billed—*Anas georgica spinicauda*.

Prion

Antarctic—*Pachyptila desolata*.

Narrow-billed—*Pachyptila belcheri*.

Shag

Blue-eyed—*Phalacrocorax atriceps*.

Shearwater

Sooty—*Puffinus griseus*.

Skua

Brown—*Catharacta lonnbergi*

South Polar—*Catharacta maccormicki*.

Swallow

Barn—*Hirundo rustica*.

Sheathbill

American—*Chionis alba*.

Tern

Antarctic—*Sterna vittata*.

Arctic—*Sterna paradisaea*.

§ 670.25 [Amended]

3. In § 670.25, remove the word “rossi” and add, in its place, the word “rossii”.

§ 670.29 [Amended]

4. In § 670.29, add two additional ASPAs at the end of the section as follows:

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ASPAs 159, Summit of Mt. Melbourne, North Victoria Land.

ASPAs 160, Botany Bay, Cape Geology, Victoria Land.

[FR Doc. 01-22533 Filed 9-6-01; 8:45 am]

BILLING CODE 7555-01-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 010719181-1181-01; I.D. 062501A]

RIN 0648-AP35

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

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

ACTION: Interpretive rule.

SUMMARY: NMFS issues a rule clarifying NMFS' interpretation of the Antarctic Marine Living Resources Convention Act of 1984 (AMLRCA) which prohibits the import into the United States of *Dissostichus eleginoides* (Patagonian toothfish), *Dissostichus mawsoni* (Antarctic toothfish), and products from such fish harvested in violation of a conservation measure in force with respect to the United States. NMFS interprets this prohibition as applying to Patagonian and Antarctic toothfish and products from such fish, even if such fish or products are accompanied by a validated *Dissostichus* Catch Document (DCD), if the fish were harvested in violation of a conservation measure in force with respect to the United States. NMFS issues this interpretative rule because of recent requests for permits from U.S. importers wishing to receive toothfish that were harvested in violation of a conservation measure in force with respect to the United States, seized by a foreign law enforcement authority, and accompanied by DCDs validated by the country that seized the fish. The intent of this interpretation is to clarify that under United States law, such fish cannot be imported into the United States.

DATES: This rule is effective September 7, 2001.

ADDRESSES: Copies of the Regulatory Impact Review supporting this action may be obtained from Dean Swanson or Mark Wildman, International Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Swanson or Mark Wildman at 301-713-2276.

SUPPLEMENTARY INFORMATION: The Antarctic fisheries are managed in

accordance with the Convention on the Conservation of Antarctic Marine Living Resources (Convention). Under the authority of the AMLRCA, 16 U.S.C. 2431 *et seq.*, NMFS implements conservation measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) through regulations at 50 CFR part 300, subpart G. In accordance with CCAMLR's requirements, the Secretary of the Department of Commerce (Secretary) has implemented a Catch Documentation Scheme (CDS) for Patagonian and Antarctic toothfish, which requires that shipments of such product be accompanied by validated documentation. At CCAMLR's October/November 2000 annual meeting, CCAMLR discussed the difficulties experienced by some Member countries that had seized or confiscated a catch or shipment of Patagonian or Antarctic toothfish and wished to export it to another country. CCAMLR considered a proposal that would have allowed a Member country that had seized toothfish to issue a new “DCD” and sell the fish in the international market. However, there was insufficient support to adopt that proposal, and CCAMLR agreed to discuss the proposal further. Since last November, the United States has received requests for permits from importers wishing to receive illegally harvested toothfish accompanied by DCDs validated by the countries that seized such fish.

The purpose of the AMLRCA is to provide legislative authority for implementation of the Convention. (16 U.S.C. 2431(b)). The AMLRCA states that it is illegal for any person to “ship, transport, offer for sale, sell, purchase, import, export, or have custody, control or possession of any antarctic living marine resource (or part or product thereof) which he knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States” (16 U.S.C. 2435 (3)). Neither the Convention nor any of CCAMLR's conservation measures currently contains a provision for “cleansing” illegally harvested toothfish. Thus, in light of the explicit statutory prohibition and the lack of international agreements to the contrary, NMFS interprets U.S. law to prohibit the import of illegally harvested, seized fish even if it is accompanied by a validated DCD. The fact that the fish has been seized by a foreign law enforcement authority and that it is accompanied by a DCD issued by the country that seized the fish, does not change the fact that the fish was harvested in violation of a conservation

measure. Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this interpretive rule is not significant.

Dated: August 30, 2001.

John Oliver

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

[FR Doc. 01-22553 Filed 9-6-01; 8:45 am]

BILLING CODE 3510-22-S