

integral components of the motor vehicle, engine, or mechanical equipment and are necessary for the operation of the vehicle, engine, or mechanical equipment, or for the safety of its operator or passengers must be securely installed in the motor vehicle, engine, or mechanical equipment. Such items are not otherwise subject to the requirements of this subchapter.

(2) Equipment (other than vehicles, engines or mechanical equipment) containing lithium batteries must be described as "Lithium metal batteries contained in equipment" or "Lithium ion batteries contained in equipment", as appropriate, and transported in accordance with § 173.185.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

15. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

16. In § 175.8, add a new paragraph (a)(4) to read as follows:

§ 175.8 Exceptions for operator equipment and items of replacement.

(a) * * *

(4) Items containing hazardous materials used by the operator aboard the aircraft when approved by the Administrator of the Federal Aviation Administration.

* * * * *

17. In § 175.10, paragraph (a)(17) is revised to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

(a) * * *

(17) Except as provided in § 173.21 of this subchapter, portable electronic devices (for example, watches, calculating machines, cameras, cellular phones, laptop and notebook computers, camcorders, etc.) containing dry cells or dry batteries (including lithium cells or batteries) and spare dry cells and batteries for these devices, when carried by passengers or crew members for personal use. Each installed or spare lithium battery must be of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria, and each spare battery must be individually protected so as to prevent short circuits (by placement in original retail packaging or by otherwise insulating terminals, e.g., by taping over exposed terminals or placing each battery in a separate plastic bag or protective pouch) and carried in carry-on baggage only. In addition, each installed or spare battery must not exceed the following:

(i) For a lithium metal battery, a lithium content of not more than 2 grams per battery; or

(ii) For a lithium-ion battery, a rating of not more than 100 Wh, except that up to two batteries with a watt hour rating of more than 100 Wh but not more than 300 Wh may be carried.

* * * * *

18. In § 175.75, the last sentence of paragraph (c) and paragraph (e)(1) are revised to read as follows:

§ 175.75 Quantity limitations and cargo location.

* * * * *

(c) * * * The requirements of this paragraph do not apply to ORM–D materials or Class 9 materials, except that lithium batteries, including lithium batteries packed with or contained in equipment may be loaded in an inaccessible manner only if they are packaged in a container approved by the FAA Administrator for such use or carried in a Class C cargo compartment.

* * * * *

(e) * * *

(1) Class 3, Packing Group III, materials that do not meet the definition of another hazard class, Division 6.1 materials except those also labeled FLAMMABLE, Division 6.2, Class 7, or ORM–D materials; Class 9 materials, except that lithium batteries, including lithium batteries packed with or contained in equipment may be loaded in an inaccessible manner only if they are packaged in a container approved by the FAA Administrator for such use or carried in a Class C cargo compartment.

* * * * *

Issued in Washington, DC, on January 6, 2010, under authority delegated in 49 CFR part 1.

Magdy El-Sibaie,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2010–281 Filed 1–8–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No.: 080228336–9133–01]

RIN 0648–AW09

Implementation of Regional Fishery Management Organizations' Measures Pertaining to Vessels that Engaged in Illegal, Unregulated, and Unreported Fishing Activities

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement international conservation and management measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT), Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), Northwest Atlantic Fisheries Organization (NAFO), Western and Central Pacific Fisheries Commission (WCPFC), Inter-American Tropical Tuna Commission (IATTC), and the Agreement on the International Dolphin Conservation Program (AIDCP). The measures pertain to vessels that have been identified by these regional fishery management organizations (RFMOs) as having engaged in illegal, unregulated, and unreported (IUU) fishing activities and included on their respective IUU vessel lists. As a party to these RFMOs, the United States is obligated to take certain actions against the listed IUU vessels in a manner consistent with our laws and policies. This proposed rule would clarify the domestic processes by which the United States intends to meet these obligations. Specifically, it would implement obligations to restrict entry into any port or place of the United States and access to port services by vessels on the IUU vessel lists of the aforementioned RFMOs. It would also prohibit the provision by persons and business entities subject to U.S. jurisdiction of certain services to, and commercial transactions with, such vessels. NMFS is seeking public comment on the proposed rule.

DATES: Written comments must be received by February 25, 2010.

ADDRESSES: Written comments on this action, identified by RIN 0648–AW09, may be submitted by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

- Mail: Mi Ae Kim, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. No comments will be posted for public viewing until after the comment period has closed. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Enter N/A in the required fields if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Mi Ae Kim, Trade and Marine Stewardship Division, Office of International Affairs, NMFS (phone 301-713-9090, fax 301-713-9106, or e-mail mi.ae.kim@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

The effective management of marine fisheries resources, including highly migratory species, fish stocks that migrate between or occur in both the exclusive economic zone (EEZ) of one or more nations and the high seas, and discrete high seas stocks, depends on compliance with the applicable conservation and management measures of regional fisheries management organizations (RFMOs) and domestic laws. To promote compliance with such conservation and management measures and combat IUU fishing, several RFMOs of which the United States is a member have adopted binding measures that establish both procedures for identifying vessels engaged in IUU fishing activities and actions to be taken against such vessels. See IUU Vessel Listing Procedures section below for explanation of how vessels are listed or delisted from RFMO IUU vessel lists. The International Commission for Conservation of Atlantic Tunas (ICCAT), Commission for the Conservation of Antarctic Marine Living Resources

(CCAMLR), Northwest Atlantic Fisheries Organization (NAFO), Western and Central Pacific Fisheries Commission (WCPFC), Inter-American Tropical Tuna Commission (IATTC), and the Agreement on the International Dolphin Conservation Program (AIDCP; the AIDCP is not an RFMO per se, but is referred to as such for the purposes of this action) adopted measures that include closure of ports or markets to vessels that the RFMOs identified as having engaged in IUU fishing activities and included on their respective list of IUU vessels. Such measures can act as a strong deterrent to engage in, or provide support to vessels that engage in, IUU fishing by reducing the profitability of such activities.

The United States is obligated as a member of the RFMOs listed above to undertake specific actions to address IUU fishing activity pursuant to the following measures:

- ICCAT Recommendation 06–12 as amended by Recommendation 07–09 - Recommendation by ICCAT amending the Recommendation by ICCAT to establish a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities in the ICCAT Convention Area,
 - CCAMLR Conservation Measure 10–06 - Scheme to promote compliance by Contracting Party vessels with CCAMLR conservation measures,
 - CCAMLR Conservation Measure 10–07 - Scheme to promote compliance by non-Contracting Party vessels with CCAMLR conservation measures,
 - NAFO Conservation and Enforcement Measure Chapter VI - Scheme to promote compliance by non-contracting party vessels with recommendations established by NAFO,
 - WCPFC Conservation and Management Measure 2007–03 - Conservation and management measure to establish a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities in the western and central Pacific Ocean,
 - IATTC Resolution C–05–07 - Resolution to establish a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities in the eastern Pacific Ocean, and
 - AIDCP Resolution A–04–07 - Resolution to establish a list of vessels presumed to have carried out illegal, unreported and unregulated fishing activities in the Agreement Area.

NMFS is proposing these regulations pursuant to its authority to administer

and enforce the statutes that implement the conventions of the RFMOs mentioned above. Statutes that authorize rulemaking to implement RFMO conservation and management measures include the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971 *et seq.*, the Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431 *et seq.*, the Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601 *et seq.*, the Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.*, the Tuna Conventions Act of 1950, 16 U.S.C. 951 *et seq.*, and the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* These statutes authorize the promulgation of regulations as necessary to carry out the purposes and management measures of each RFMO convention.

At the time of this rulemaking, a total of approximately 90 vessels were listed on the IUU vessel lists of the five RFMOs to which the United States is a party. AIDCP has not developed an IUU vessel list at this time. The procedures for listing and delisting vessels are described below. The lists include mostly harvesting and transport vessels. The United States, however, is generally not a destination for foreign fishing vessels because of the Nicholson Act (46 U.S.C. 55114). Under the Nicholson Act, administered by U.S. Customs and Border Protection, foreign vessels are generally prohibited from unloading fish and fish product that were harvested or taken onboard on the “high seas” in any U.S. port, with the exceptions of unloading in ports in the U.S. territories of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands; certain landings in the U.S. Virgin Islands; and landings pursuant to certain conventions to which the United States is a party. Because the United States is, for the most part, not an offloading port for foreign harvesting vessels, the proposed regulations would primarily concern transport vessels included on the relevant IUU vessel lists.

Table 1 summarizes the measures that parties to the RFMOs are required to implement per the previously-referenced RFMO measures. While there are differences in the specific obligations, the RFMOs share the goal of combating IUU fishing.

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Table 1. RFMO Measures for Listed IUU Vessels

RFMO Measures	IATTC & AIDCP	ICCAT	CCAMLR	NAFO	WCPFC
(a) Prohibit the entry of listed vessels into ports, except in cases of <u>force majeure</u>		✓		✓*	
(b) Deny listed vessels access to ports unless for the purpose of enforcement or for reasons of <u>force majeure</u> or when in danger or distress. Vessels allowed entry to port are to be inspected. Where port access is granted, examine documentation and, where possible, confiscate catch. Also prohibit all non-emergency support.			✓		
(c) Ensure that listed vessels that voluntarily enter ports are not authorized to land, transship, refuel, or resupply but are inspected upon entry					✓
(d) Ensure that listed vessels that enter ports voluntarily are not authorized to land or transship therein; ensure U.S. vessels do not transship with listed vessels	✓				
(e) Prohibit the supply of provisions, fuel or other services to listed vessels; prohibit change of crew except in cases of <u>force majeure</u> .				✓	
(f) Prohibit the landing of fish from listed vessels				✓	
(g) Do not authorize listed vessels to land, transship, refuel, resupply, or engage in other commercial transactions		✓			
(h) Ensure that fishing vessels, support vessels, mother ships or cargo vessels flying U.S. flag do not participate in any transshipment or joint fishing operations with, support or re-supply vessels on IUU list.		✓**	✓	✓**	✓
(i) Prohibit chartering of a listed vessel	✓	✓	✓	✓	✓
(j) Refuse to grant U.S. flag to listed vessels	✓***	✓***	✓	✓	✓
(k) Do not issue a license to listed vessels to fish in waters under U.S. jurisdiction			✓	✓	
(l) Prohibit commercial transactions, imports, landings, and/or transshipment of species covered by RFMO from listed vessels	✓	✓		✓****	✓
(m) Encourage traders, importers, transporters and others involved to refrain from transactions in, and transshipment of, covered species from listed vessels	✓	✓	✓	✓	✓
(n) Collect and exchange information with the aim of searching for, controlling and preventing false import/export certificates for covered species from listed vessels	✓	✓	✓	✓	✓

* NAFO added a provision stating that nothing in its scheme to promote compliance should prevent a Contracting Party from allowing a Non-Contracting Party vessel entry for the purposes of inspection and taking enforcement action.

** The ICCAT and NAFO measures include “engage in fish processing operations” in addition to transshipment and joint fishing operations.

*** Refuse to grant flag to listed vessel unless it has changed owner and new owner has provided sufficient evidence demonstrating the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel, or having taken into account all relevant facts, the United States determines that granting the vessel its flag will not result in IUU fishing.

**** NAFO’s comparable measure is “prohibit where traceable imports and landings of fish from IUU vessels.”

Notes:

- AIDCP measures are related to tuna taken in the AIDCP Agreement Area caught by vessels on the AIDCP IUU Vessel List.
- Listed Vessels can include: Fishing Vessels, Support Vessels, Mother-Ships, and Cargo Vessels.
- RFMO measures are adapted for the United States from CCAMLR Conservation Measure 10-06 (2006) and 10-07 (2006); IATTC Resolution C-05-07; AIDCP Resolution A-04-07; ICCAT Recommendation 06-12; WCPFC Conservation and Management Measure 2007-03; NAFO Article 58.
- CCAMLR measure, to not certify export or re-export government authority validation when shipment is declared to have been caught by an IUU vessel, is not included in the table.

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NMFS is proposing a single set of regulations to clarify domestic implementation of IUU vessel list measures under the relevant RFMOs and to facilitate better enforcement of those measures. The regulations

describe the actions that the United States will take, consistent with its international obligations, with respect to foreign, listed IUU vessels. Foreign vessels include vessels not entitled to fly the flag of the United States and

vessels operated under the authority of a country other than the United States.

These regulations detail the authorities of the Assistant Administrator for Fisheries (Assistant Administrator) to take actions against a listed IUU vessel in accordance with the

requirements of the appropriate RFMO conservation measure. The regulations provide the Assistant Administrator some discretion, albeit in accordance with the relevant RFMO measures, in determining the appropriate action to take with respect to a listed IUU vessel seeking entry into, or use of, a U.S. port. For example, the NAFO measure requires vessels on its IUU vessel list to be denied port entry. However, under the NAFO measure and pursuant to these regulations, there is flexibility to allow such vessels into port for information-gathering, inspection, or enforcement purposes if NMFS determines that doing so is appropriate under the specific circumstances and furthers the goals of combating IUU fishing.

These regulations also specify the prohibitions applicable to listed IUU vessels as well as for those persons or entities subject to the jurisdiction of the United States who may consider business relationships with listed vessels. NMFS, in particular the Office of Law Enforcement, will cooperate with the U.S. Coast Guard, U.S. Customs and Border Protection, and other state and Federal agencies as appropriate in the implementation of the rule.

The following describes each section of this proposed rule and the basis for the proposed regulatory text.

Definitions (Section 300.301)

To ensure clarity of the terms used in the proposed rule, definitions are included for landing, processing, and transshipping. The text of the RFMO conventions, the implementing statutes, and regulations related to the RFMOs were considered in developing these regulatory definitions. "Landing" and "transshipping" were defined in some of the documents, but "processing" was not. "Landing" is defined in the CCAMLR regulations (50 CFR 300.101) and in the IATTC regulations (50 CFR 300.21). "Transshipping" is defined in the IATTC regulations (50 CFR 300.21), WCPFC statute and treaty (16 U.S.C. 6901(11) and Part 1, Article 1(h) of the treaty), and CCAMLR regulations (50 CFR 300.101). The definitions for this rule are intentionally broad to capture a broad range of activities that may be covered by the relevant RFMO measures.

"Listed IUU vessel" is also defined to identify the specific vessels to which the rule applies. Listed IUU vessel is defined as a vessel that appears on a final IUU vessel list adopted or approved by an RFMO to which the United States is a party.

Port Entry (Section 300.302)

This proposed rule would allow the Assistant Administrator to deny a foreign, listed IUU vessel entry into ports or places subject to the jurisdiction of the United States, except in cases of *force majeure*. The Assistant Administrator will make a determination about the denial of port entry on a case-by-case basis, taking into account the IUU vessel list that includes the vessel seeking entry and the provisions in the relevant RFMO conservation and management measure that applies to the listed IUU vessel. As shown on Table 1, obligations with respect to the denial of port entry differ across the RFMOs. Denial of port entry may be encouraged or mandatory, subject to certain exceptions, and in some cases accompanied by a requirement to inspect vessels that come into port. The ICCAT and NAFO measures call for prohibiting vessels on their respective IUU vessel lists from entering port, except in cases of *force majeure*. NAFO includes a provision that allows a contracting party to grant port entry to a vessel from a non-contracting party for the purposes of inspection and taking enforcement action. IATTC and WCPFC measures do not call for denial of port entry but obligate their members to ensure that listed vessels that voluntarily enter ports are not authorized to land or transship. The WCPFC measure further states that listed vessels must be inspected upon entry and must not be authorized to refuel or resupply. CCAMLR's conservation measures call for denial of port access except for the purpose of inspecting it and taking other appropriate enforcement action or in cases of *force majeure*. The CCAMLR measures require examination of the vessel's documentation and, where possible, seizure of catch. Given the differences in the measures, the proposed rule was drafted to provide that the Assistant Administrator has discretion in the denial of port entry. This would enable domestic implementation that is flexible, facilitates enforcement and is consistent with the relevant RFMO measures that pertain to the vessel at issue while allowing for the full exercise of NOAA's enforcement authority under other domestic laws such as the Lacey Act (33 U.S.C. 3371 *et seq.*).

Currently, as described in more detail below, most foreign-flagged vessels are required to submit a notice of arrival to the Coast Guard when entering a port or place of the United States. The notice of arrival from a listed IUU vessel will trigger an interagency consultation. The

Assistant Administrator will take the results of the interagency consultation into consideration when making a determination on whether to deny a listed IUU vessel entry into a U.S. port. For example, a vessel on NAFO's IUU vessel list may be allowed entry into port for inspection if the Assistant Administrator determines, in consultation with other agencies, that inspection of the vessel is necessary to verify its identity. As many IUU vessels conceal their name and/or identification number (such as the call sign or Lloyds/International Maritime Organization number) and information on IUU vessels lists is often incomplete, an inspection may be necessary to verify that the vessel is in fact the one included on the relevant IUU list.

Vessels flying the flag of the United States would not be prohibited from port entry by the proposed rule in the event such a vessel becomes listed on an RFMO IUU vessel list. Rather, the United States will exercise its authority as a flag state to address the IUU fishing activities of U.S. vessels. The conservation and management measures adopted by the RFMOs to which the United States is a party obligate the United States to take action against its vessels and, where applicable, its nationals for activities that violate or contravene such measures. NOAA's authority to take this action comes from the statutes implementing the international fisheries agreements to which the United States is party. The United States satisfies its obligation by promulgating, and subsequently enforcing, the regulations implementing those statutes. For example, for ICCAT fisheries, regulations are generally promulgated under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act, and the enforcement actions are generally brought under the MSA authority.

The range of enforcement actions that the United States is authorized to take against its nationals is established by the language of the statutes themselves. In general, U.S. fisheries law allows for imposition of civil monetary penalties and permit sanctions (including suspension and revocation of permits), forfeiture of vessels and catch, and criminal penalties for certain violations. NMFS has determined that exercising its flag state authority is a more effective means of addressing IUU activity by U.S. flagged vessels than denial of port privileges.

Access to Port Services (Section 300.303)

For any foreign vessel on an IUU vessel list that enters the United States, the proposed rule would allow the Assistant Administrator to (1) conduct inspections of the vessel, (2) deny the vessel port services, including, but not limited to, refueling, resupplying, and disembarking or embarking crew, and (3) prohibit the vessel from conducting commercial transactions, including, but not limited to, transshipping and landing product. As with denial of port entry, the proposed rule provides the Assistant Administrator with discretion to consider, on a case-by-case basis, which of the above actions to take against the listed IUU vessel. Such a decision would take into account the provisions in the relevant RFMO conservation and management measure, consultations with other agencies as appropriate, and any other relevant factors.

NMFS believes that the flexible approach in the proposed rule is appropriate given the differences in the various RFMO measures (see Table 1). Vessel inspections are required by the conservation measures of CCAMLR and WCPFC. The NAFO measure states that a port State member can allow a vessel entry into its ports for the purpose of conducting an investigation. The ICCAT, IATTC and AIDCP measures do not explicitly require inspections. However, as a sovereign State, the United States has broad authority independent of RFMO measures to inspect a vessel that is in a U.S. port or place, including vessels listed by ICCAT, NAFO, IATTC, and AIDCP. Especially where applicable law allows for the sharing of information gathered during inspections with RFMOs and foreign governments, port and at-sea inspections serve as a critical tool in the effort to combat IUU fishing.

As for denial of port services, ICCAT and WCPFC conservation measures state that refueling and resupply are not to be authorized. CCAMLR measures also require all non-emergency support to be prohibited. Similarly, NAFO calls for prohibitions on the supply of provisions, fuel and other services to, and change of crew on, listed IUU vessels except in cases of *force majeure*. IATTC and AIDCP measures do not include such prohibitions. The proposed rule could result in the denial of port services (e.g., refueling, resupplying, disembarking and embarking crew) to all foreign vessels on the ICCAT, WCPFC, CCAMLR, and NAFO IUU vessel lists, with certain exceptions essential to the safety,

health, and welfare of the crew or in cases of *force majeure*.

The proposed rule would also allow the Assistant Administrator to prohibit listed IUU vessels from engaging in commercial transactions, such as transshipping and landing, in accordance with applicable provisions of RFMO conservation and management measures. According to the measures of IATTC, AIDCP, ICCAT, and WCPFC, listed IUU vessels are to be prohibited from transshipping or landing product. The measures of CCAMLR and NAFO do not specify these prohibitions. However, in the CCAMLR measure, listed IUU vessels that are granted port access are to be inspected and, where possible, their catch confiscated. In the NAFO measure, listed IUU vessels are to be denied entry into ports and landings of fish from listed IUU vessels are to be prohibited. Although the NAFO measure does not explicitly require a prohibition on transshipments by listed vessels, it does prohibit members' vessels from participating in any transshipment with listed IUU vessels. NMFS believes that the proposed rule is consistent with the intent of the CCAMLR and NAFO measures. Under the proposed rule, the prohibition on commercial transactions would apply broadly to vessels on the CCAMLR and NAFO IUU vessel lists, as well as those on the IUU vessel lists of IATTC, AIDCP, ICCAT, and WCPFC. Providing the Assistant Administrator with broad authority to prohibit all listed IUU vessels from transshipping or landing product in any U.S. port or place would facilitate enforcement and therefore is necessary and appropriate to carry out the purpose of the relevant RFMO conservation measures.

Prohibitions (Section 300.304)

The proposed rule prohibits a foreign, listed IUU vessel from entering any port or place subject to the jurisdiction of the United States if it was denied entry by the Assistant Administrator. It also prohibits such vessels from obtaining port services or engaging in commercial transactions if such activities have been denied.

The proposed rule would make it unlawful for any person subject to the jurisdiction of the United States to engage in commercial transactions with a listed IUU vessel, unless authorized to do so by the Assistant Administrator. Such transactions include, but are not limited to:

- Transshipment,
- Processing fish harvested or landed by a listed vessel or processing fish using a listed vessel,
- Joint fishing operations,

- Providing supplies, fuel, crew, or otherwise supporting a listed vessel, or
- Chartering or entering into a chartering arrangement.

Except for the measures of IATTC and AIDCP, the RFMO conservation measures require that their members ensure that fishing vessels, support vessels, mother ships and cargo vessels flying their flags do not support, resupply, or participate in any transshipment or joint fishing operations with vessels on the IUU lists. NAFO further requires members to ensure that such vessels do not engage in fish processing operations with a vessel on their IUU vessel list. All six RFMO measures require that chartering of listed vessels be prohibited (see Table 1). Except for CCAMLR and NAFO, the RFMO measures also require prohibiting commercial transactions involving species covered by the RFMO with listed IUU vessels. While there are differences between the RFMO measures, NMFS is proposing a broad approach: the proposed rule would prohibit all of the above activities, irrespective of which IUU vessel list a vessel is on, subject to the exception spelled out below. NMFS believes that this approach would facilitate compliance by U.S. persons by simplifying what actions must not occur with any vessels on the IUU vessel lists of these RFMOs. In addition, this approach would serve to prevent U.S. persons from being implicated with listed IUU vessels and, thereby, possibly prevent U.S.-flagged vessels from being considered for inclusion on IUU vessel lists.

Recognizing that there are differences between RFMO measures, an exception has been added so that the prohibitions listed in § 300.304(c) would not apply to persons that provide port services to, or engage in other prohibited transactions with, a listed IUU vessel that enters a port or place subject to the jurisdiction of the United States following a decision by the Assistant Administrator to allow the vessel to access port services or engage in commercial transactions. As the Assistant Administrator may allow certain port services for certain listed IUU vessels, in accordance with the relevant RFMO conservation measures, the prohibitions would not apply to those persons who engage in commercial transactions with a listed IUU vessel if the Assistant Administrator has authorized such activities, including in cases of *force majeure* and where the Assistant Administrator has determined that such services are essential to the safety, health, and welfare of the crew.

The proposed rule would apply the prohibitions on commercial transactions with listed IUU vessels to all persons subject to the jurisdiction of the United States rather than to U.S.-flagged vessels. RFMO measures of ICCAT, CCAMLR, NAFO, and WCPFC specify prohibitions of specific commercial activities (e.g., transshipment, joint fishing operations, support, and re-supply) for several vessel types, but IATTC, AIDCP, ICCAT, and WCPFC also include prohibitions on commercial transactions that are not specific to vessels. The proposed rule applies generally to persons, which will simplify and thus facilitate enforcement and ensure more effective implementation of the various RFMO measures.

Measures Not Addressed in This Proposed Rule

As shown on Table 1, the RFMOs also obligate the United States to take the following measures as a flag state:

- Deny the U.S. flag to listed IUU vessels (required by all RFMOs),
- Prohibit issuing a license to listed IUU vessels to fish in waters under U.S. jurisdiction (required by CCAMLR and NAFO),
- Prohibit imports of species managed by the RFMO from listed IUU vessels (required by all RFMOs),
- Encourage dealers, importers, transporters and others involved to refrain from transactions in, and transshipment of, covered species from listed IUU vessels (required by all RFMOs), and
- Collect and exchange information with the aim of searching for, controlling and preventing false import/export certificates for species managed by the RFMO from listed IUU vessels (required by all RFMOs).

These measures either have been or, if appropriate, will be implemented by the United States in separate regulatory and non-regulatory actions. With respect to the first bullet, U.S. flags are granted by the U.S. Coast Guard. NMFS will coordinate with the appropriate Coast Guard office to ensure that listed vessels are not granted the U.S. flag. With respect to the second bullet, foreign vessels would not be granted a license to fish unless the United States, through the Department of State, entered into a governing international fishery agreement and at this time the only such agreement is with Russia. This governing international fishery agreement includes cooperation between the United States and Russia to address illegal or unregulated fishing activities on the high seas in the North Pacific Ocean and Bering Sea. With

respect to the third bullet, the RFMO measures require prohibitions on conducting commercial transactions, imports, landings, and transshipment of species managed by RFMOs from listed vessels. As described earlier, this proposed rule would prohibit persons subject to U.S. jurisdiction from engaging in commercial transactions, which can include landings from, and transshipment with, listed IUU vessels. The prohibition on imports from IUU vessels has already been implemented for ICCAT-managed species (50 CFR 635 Subparts D and E). Similar prohibitions for species managed by other RFMOs may be incorporated into the respective implementing regulations, as necessary. The last two bullet items (m and n in Table 1) are not regulatory in nature. NMFS conducts outreach and encourages U.S. fishing and support industries to consult RFMO IUU vessel lists before making commercial arrangements with listed vessels and, specifically, to avoid providing to IUU vessels any support or services that are prohibited by the relevant RFMO (item m in Table 1). As for collecting and exchanging information with the aim of searching for, controlling, and preventing false import/export certificates for covered species from listed vessels (item n in Table 1), the United States is a founding and active member of the International Monitoring, Control, and Surveillance Network, which works multilaterally to exchange fisheries and enforcement information.

IUU Vessel Listing Procedures

ICCAT, CCAMLR, NAFO, WCPFC, IATTC, and AIDCP use similar criteria and procedures for listing and delisting vessels (see the respective conservation and management measures available on the RFMO websites). The process for listing and delisting vessels can span several months, involving notifications to RFMO members and non-contracting parties, gathering of information, and consideration of the information at RFMO meetings. These RFMOs may list vessels that engaged in activities that undermine the effectiveness of conservation and management measures, such as:

- Fishing in an RFMO's management (or convention) areas without authorization,
- Failing to record or declare their catches, or making false reports,
- Using prohibited fishing gear in contravention of conservation measures, or
- Transshipping with, or participating in joint operations with, re-supplying, or re-fueling vessels included in IUU vessel lists.

Each RFMO seeks information from member countries and other entities about vessels that violate any relevant conservation and management measures. In the case of ICCAT, CCAMLR, NAFO, and WCPFC, a flag state that has a vessel that allegedly engaged in IUU activity is provided notice about the submittal of information to the RFMO for consideration of its inclusion on the IUU vessel list. The Executive Secretary, Director, or other RFMO official uses all submitted information to compile a draft list of IUU vessels by a pre-determined time specific to their RFMO (except NAFO, which compiles a provisional list but not a draft list). The draft list and supporting information are then provided to all members of the RFMO and to the nation of the vessel presumed to have carried out the IUU activity. Using information sent in response to the draft list, a provisional list of IUU vessels is compiled and distributed to members along with supporting information prior to an RFMO's annual meeting. Decisions to adopt the provisional IUU list are determined during the annual meetings. Decisions on removal of vessels from the list adopted the prior year are also made at the annual meeting. However, in the case of ICCAT and WCPFC, vessels can also be removed outside of the annual meetings. Additionally, ICCAT and NAFO may add vessels outside of the annual meetings on the grounds that they have been listed by another RFMO. Adoption of IUU vessel lists is governed by procedural rules of each RFMO.

Generally, an RFMO will remove vessels from its provisional or final IUU vessels lists if the vessels are determined not to have taken part in IUU fishing or if effective action has been taken in response to the IUU fishing in question, such as prosecution and imposition of sanctions of adequate severity. Other factors that could also lead to removal of a vessel from an RFMO's IUU vessel list include a change in vessel ownership where the new owner can establish that the previous owner no longer has any legal, financial, or real interests in the vessel or exercises control over it and the new owner has not participated in IUU fishing.

Given that the RFMO annual meetings occur at different times of the year (generally IATTC and AIDCP in June, NAFO in September, CCAMLR at the end of October and early November, ICCAT in November, and WCPFC in December) the composition of the lists changes throughout the year. The websites of each RFMO should be

monitored for the latest IUU vessel lists. Internet links to the RFMO vessel lists are provided below in the RFMO IUU Vessel Lists section.

Coordination With Other Federal Agencies

NMFS is coordinating with the U.S. Coast Guard (USCG) to ensure these regulations are compatible with Coast Guard operations. Coast Guard regulations require foreign vessels to give notice prior to entering a U.S. port or place of destination (defined in 33 CFR 160.204 as any port or place in which a vessel is bound to anchor or moor). Generally, all foreign vessels greater than 300 gross tons must provide notice of their arrival at least 96 hours in advance, in accordance with 33 CFR 160.212(a)(3). The vessels are required to report electronically the vessel name, voyage, cargo, crewmembers, and other information to the Coast Guard's National Vessel Movement Center (NVMC) at least 96 hours before entering the port or place of destination. The Coast Guard is in the process of modifying the regulation to eliminate the exception for foreign vessels less than 300 gross tons (73 FR 76295, December 16, 2008).

When the NVMC receives a notice of arrival, NVMC staff examines the information and then transmits the relevant information to Customs and Border Protection and to the Coast Guard Captain of the Port. NMFS will provide the IUU vessel lists and any changes made thereto, along with other relevant information, to the Coast Guard for inclusion in their maritime domain monitoring system. For any vessels on RFMO IUU vessel lists, the Coast Guard would notify NMFS and the Department of State of the impending arrival. Such notification would trigger interagency consultations, among, at a minimum, the Department of State, Coast Guard, and NMFS to determine the most appropriate course of action in light of RFMO requirements.

Due to interjurisdictional issues related to the proposed rule, NMFS is also coordinating with the Department of State, Customs and Border Protection, the Office of the U.S. Trade Representative and other relevant agencies and offices on this rulemaking.

RFMO IUU Vessel Lists

NMFS maintains an internet website where internet links to relevant conservation measures and IUU vessel lists can be found <http://www.nmfs.noaa.gov/ia>. The following are the current Internet website links for RFMO IUU vessel list conservation measures and their vessel lists:

International Commission for the Conservation of Atlantic Tunas (ICCAT)
Conservation Measure: <http://www.iccat.int/en/RecsRegs.asp> (Select Key 07–09 and 06–12)

IUU Vessel List: <http://www.iccat.int/en/IUU.asp>

Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)

Conservation Measures: http://www.ccamlr.org/pu/e/e_pubs/cm/06-07/10-06.pdf,

http://www.ccamlr.org/pu/e/e_pubs/cm/06-07/10-07.pdf

IUU Vessel List: <http://www.ccamlr.org/pu/E/sc/fish-monit/iuu-vess-list.htm>

Northwest Atlantic Fisheries Organization (NAFO)

Conservation Measure: <http://www.nafo.int/fisheries/frames/fishery-iuu.html>

IUU Vessel List: <http://www.nafo.int/fisheries/frames/fishery-iuu.html>

Western and Central Pacific Fisheries Commission (WCPFC)

Conservation Measure: <http://www.wcpfc.int/vessels#IUU>

IUU Vessel List: <http://www.wcpfc.int/vessels#IUU>

Inter-American Tropical Tuna Commission (IATTC)

Conservation Measure: <http://www.iattc.org/PDFFiles2/C-05-07-IUU-Vessel-list.pdf>

IUU Vessel List: <http://www.iattc.org/VesselRegister/IUU.aspx?Lang=en>

Agreement on the International Dolphin Conservation Program

Conservation Measure: <http://www.iattc.org/PDFFiles2/A-04-07%20IUU%20vessel%20list.pdf>

Classification

This proposed rule is published under the authority of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*), Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 *et seq.*), Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 *et seq.*), Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901–6910), Tuna Conventions Act of 1950 (16 U.S.C. 951–962), and the Marine Mammal Protection Act (11 Stat. 1122; 16 U.S.C. 1361 *et seq.*). The NMFS Assistant Administrator has determined that this proposed action is consistent with the provisions of these and other applicable laws, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as

required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities of the United States. The following elements should be included in an IRFA: a description of the action, why it is being considered, the legal basis for the action, description and where feasible an estimate of the number of small entities to which the action applies, description of the projected reporting, record-keeping and other compliance requirements, and an identification of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule. The action, why it is being considered, and its legal basis are described in detail earlier in the preamble. There are no new reporting or recordkeeping requirements contained in this action. This proposed rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules. The remaining IRFA elements are described below.

The proposed rule allows the NMFS Assistant Administrator to deny a listed IUU vessel entry into a port or place of the United States, in accordance with applicable provisions of RFMO conservation and management measures. The proposed rule also allows the Assistant Administrator, in accordance with applicable provisions of RFMO conservation and management measures, to prohibit certain transactions, such as transshipping with, processing fish using, or supplying provisions or fuel to IUU vessels. The following is the analysis of the economic impacts on small entities.

The proposed rule would apply to U.S. entities that engage in or could engage in commercial transactions with vessels that are on the final IUU vessel lists adopted or approved by ICCAT, CCAMLR, NAFO, WCPFC, IATTC, and AIDCP. Such transactions include: (1) engaging in transshipment with a listed IUU vessel, (2) processing fish harvested or landed by a listed IUU vessel or processing fish using a listed IUU vessel, (3) participating in joint fishing operations with a listed IUU vessel, (4) providing supplies, fuel, crew, or otherwise support a listed IUU vessel, or (5) chartering or entering into a chartering arrangement with a listed IUU vessel.

If this proposed rule goes into effect, U.S. entities (i.e., persons, businesses) would not be able to legally conduct business with vessels that are on the IUU vessel lists of RFMOs to which the U.S. is a party, subject to certain exceptions. The potential for transactions between these entities and

listed IUU vessels is limited, however, due to the small number of attempts made by listed IUU vessels to enter U.S. ports.

In the aggregate, approximately 90 vessels are listed as IUU vessels by IATTC, ICCAT, CCAMLR, NAFO, and WCPFC. To date, none of these vessels are flagged to the United States. According to information recently compiled by Pew Environment Group, about 87 percent of all the vessels listed by the six RFMOs to which the United States is a party are harvesting vessels (<http://www.portstateperformance.org>). As foreign harvesting vessels are generally prohibited from unloading fish in the United States by the Nicholson Act, most listed IUU vessels would not likely arrive in U.S. ports. As a result, U.S. entities would not normally conduct business with these vessels.

Coast Guard data show that only two listed IUU vessels have ever come into U.S. ports. The lack of port visits by listed IUU vessels, or foreign fishing vessels generally, indicates an extremely low likelihood of transactions between U.S. entities and listed IUU vessels. Coast Guard holds records of notices of arrivals and departures from commercial vessels. The records are for vessels measuring 300 gross tons or greater, except for the foreign vessels that entered any port or place in the Seventh Coast Guard District (includes South Carolina, most of Georgia and Florida, Puerto Rico, and U.S. Virgin Islands) where all vessels, irrespective of their capacity, must provide such notices. The requirements for notices of arrival are under 33 CFR part 160 subpart C. The non-harvesting vessels that are on the IUU vessel lists are over 300 gross tons, in which case, most arrivals by these vessels would be contained in the Coast Guard database. That database shows that two listed IUU vessels arrived in U.S. ports in 2007. This was a negligible portion of the total 135,499 arrival notices submitted to the Coast Guard by 12,148 commercial vessels that same year.

With regard to the possible economic effects of this action, NMFS anticipates that U.S. entities would not be significantly affected by this action because they should be able to offset lost business opportunities by conducting business with non-listed vessels. Thus, small entities would not be significantly affected by the prohibitions in the proposed rule.

A no-action alternative, where NMFS would not promulgate the proposed rule, was analyzed. This alternative to the proposed rule may demonstrate the least burden or economic impact to

small entities. However, the financial risks associated with business transactions with listed IUU vessels likely have already caused U.S. entities to avoid such business transactions. The RFMOs adopted their IUU vessel list measures several years ago, and NMFS has advised U.S. entities of the potential ramifications of conducting business with a listed IUU vessel as the United States and other countries are obligated to carry out RFMO IUU vessel measures, such as port entry restrictions. Even under the no-action alternative, listed IUU vessels that transport fish product from the United States may not be able to deliver that product to any country that has implemented the relevant RFMO conservation and management measures.

NMFS does not expect a substantial number of small entities to be affected by the proposed rule because arrival attempts by listed IUU vessels into the ports or places of the United States are so few in number. Thus, only a handful of potential transactions would likely be affected as a result of this proposed rulemaking. For any entities that could be affected, NMFS expects that the proposed rule would not have a significant economic impact because the number of legal vessels entering the United States would far exceed the number of listed IUU vessels that could attempt to enter the United States.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Fishing vessels, Illegal, unreported or unregulated fishing, Foreign relations, Treaties.

Dated: January 4, 2010.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. Subpart P is added to part 300 to read as follows:

Subpart P—Vessels on IUU Vessel Lists

Sec.

300.300 Purpose and Scope.

300.301 Definitions.

300.302 Port entry by foreign, listed IUU vessels.

300.303 Port access by foreign, listed IUU vessels.

300.304 Prohibitions.

Subpart P—Vessels on IUU Vessel Lists

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 5601 *et seq.*; 16 U.S.C.

6901–6910; 16 U.S.C. 951–962; and 11 Stat. 1122; 16 U.S.C. 1361 *et seq.*

§ 300.300 Purpose and scope.

(a) This subpart implements internationally-agreed measures pertaining to foreign vessels determined to have engaged in illegal, unregulated, and unreported (IUU) fishing and placed on IUU vessel lists of the:

(1) International Commission for the Conservation of Atlantic Tunas (ICCAT),

(2) Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)

(3) Northwest Atlantic Fisheries Organization (NAFO),

(4) Western and Central Pacific Fisheries Commission (WCPFC),

(5) Inter-American Tropical Tuna Commission (IATTC), and

(6) Parties to the Agreement on the International Dolphin Conservation Program (AIDCP).

(b) For purposes of this subpart, the above organizations are referred to as regional fishery management organizations (RFMOs). Each of these RFMOs adopts or approves an IUU vessel list in accordance with their respective rules and procedures. The lists are publicly available at each RFMO's website. The regulations in this subpart apply to all persons subject to the jurisdiction of the United States wherever they are.

§ 300.301 Definitions.

In addition to the terms defined in § 300.2, the terms used in this subpart have the following meanings.

Landing means to begin to offload fish, or to offload fish from any vessel.

Listed IUU Vessel means a vessel that is included on a final IUU vessel list adopted or approved by an RFMO to which the United States is a party.

Processing means the preparation or packaging of fish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil.

Transshipping means the offloading, unloading, or transferring of fish or fish products from one vessel to another.

§ 300.302 Port entry by foreign, listed IUU vessels.

The Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, deny a foreign, listed IUU vessel entry to any port or place subject to the jurisdiction of the United States, except in cases of *force majeure*.

§ 300.303 Port access by foreign, listed IUU vessels.

If a foreign, listed IUU vessel is allowed to enter a port or place subject to the jurisdiction of the United States, the Assistant Administrator may, in accordance with applicable provisions of RFMO conservation and management measures, take one or more of the following actions:

- (a) Inspect the vessel;
- (b) Deny the vessel access to port services, including but not limited to refueling, resupplying, or disembarking or embarking of crew; or
- (c) Prohibit the vessel from engaging in commercial transactions including, but not limited to, transshipping or landing product.

§ 300.304 Prohibitions.

(a) It is unlawful for a foreign, listed IUU vessel denied entry under § 300.302

to enter any port or place subject to the jurisdiction of the United States.

(b) It is unlawful for any foreign, listed IUU vessel to obtain port services or engage in commercial transactions, or attempt to obtain such services or engage in such transactions, if such activities have been denied or prohibited under § 300.303(b) and/or § 300.303(c) or if the vessel has been denied entry under § 300.302.

(c) It is unlawful for any person, without prior authorization from the Assistant Administrator, to engage in commercial transactions with listed IUU vessels. Such transactions include, but are not limited to:

- (1) Transshipment;
- (2) Processing fish harvested or landed by a listed IUU vessel or processing fish using a listed IUU vessel;

(3) Joint fishing operations;

(4) Providing supplies, fuel, crew, or otherwise supporting a listed IUU vessel; or

(5) Chartering or entering in a chartering arrangement with a listed IUU vessel.

(d) The prohibitions listed in § 300.304(c) shall not apply when the Assistant Administrator has authorized a listed IUU vessel to access such port services or engage in such commercial transactions, in accordance with applicable provisions of RFMO conservation and management measures, including in cases of force majeure and where the Assistant Administrator has determined that such services are essential to the safety, health, and welfare of the crew.

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