

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served July 13, 1992 (published in the *Federal Register* on July 14, 1992, at 57 FR 31165), the Interstate Commerce Commission (Commission) proposed to expand the scope of its 49 CFR 1180.2(d)(2) class exemption. That exemption, as it existed in 1992 and as it continues to exist today, exempts from the otherwise applicable prior approval requirements the acquisition or continuance in control of a nonconnecting railroad or one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a Class I railroad. In the NPR, the Commission proposed to expand the 49 CFR 1180.2(d)(2) exemption so that it would embrace any transaction that required approval and authorization under former 49 U.S.C. 11343, provided that the transaction did not involve (i) the merger or control of at least two Class I railroads, (ii) a reduction in the number of noncommonly-controlled railroads conducting operations between any two points, or (iii) a reduction from three to two in the number of noncommonly-controlled railroads serving any interchange point.

The ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (ICCTA), which was signed into law by President Clinton on December 29, 1995, abolished the Commission, established the Board, reenacted (with certain changes not presently of consequence) the relevant statutory provision, and transferred to the Board responsibility for the performance of functions respecting that statutory provision. See ICCTA section 101 (abolition of the Commission); new 49 U.S.C. 701(a), as enacted by ICCTA section 201(a) (establishment of the Board); new 49 U.S.C. 11323, as enacted by ICCTA section 102(a) (this is the post-1995 version, as respects railroads, of what had been 49 U.S.C. 11343); new 49 U.S.C. 702, as enacted by ICCTA section 201(a) (except as otherwise provided, the functions previously performed by the Commission shall henceforth be performed by the Board); ICCTA section 204(b)(1) (any proceeding pending before the Commission at the time of the enactment of ICCTA shall be transferred to the Board, insofar as that proceeding concerns functions transferred to the

Board). In accordance with the mandate of ICCTA section 204(b)(1), the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding, which had been instituted by the Commission in the 1992 NPR, was transferred to the Board.

We have decided to withdraw the rule proposed by the Commission in the 1992 NPR and to discontinue the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding. Our experience with the administration of cases handled under new 49 U.S.C. 11323 has led us to conclude that there is no pressing necessity for the expansion of the 49 CFR 1180.2(d)(2) class exemption. Any 49 U.S.C. 11323 transaction that is not embraced by any of the existing 49 CFR 1180.2(d) class exemptions but that would be embraced by the expanded 49 CFR 1180.2(d)(2) class exemption proposed by the Commission can be handled under the individualized exemption procedures now codified at 49 CFR part 1121, and appropriate determinations can be made on a case-by-case basis.

Small Entities

The Board certifies that the action taken in this proceeding will not have a significant economic impact on a substantial number of small entities.

Environmental and Energy Considerations

The action taken in this proceeding will not significantly affect either the quality of the human environment or the conservation of energy resources.

Board Releases Available Via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's website at "WWW.STB.DOT.GOV."

Decided: November 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 991118308-9308-01; I.D. 101899C]

RIN 0648-AN33

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Control Date

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

ACTION: Advance notice of proposed rulemaking; notice of control date for the Pacific Coast groundfish fishery; request for comments.

SUMMARY: This document announces a control date of September 16, 1999, after which vessels eligible for benefits under the American Fisheries Act (AFA) may be subject to restrictions on participation in the Pacific Coast groundfish fisheries. The intended effect of announcing this control date is to discourage speculative entry into the Pacific coast groundfish fisheries by AFA-qualified vessels while the Pacific Fishery Management Council (Council) develops recommendations to protect the Pacific Coast groundfish fisheries from adverse impacts caused by the AFA.

DATES: Comments may be submitted in writing by December 27, 1999.

ADDRESSES: Comments may be mailed to Jerry Mallet, Chairman, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: The Pacific Fishery Management Council at 503-326-6352; or Bill Robinson at 206-526-6140; or Svein Fougner at 562-980-4000.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council (Council) established under section 302(a)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(F)) is considering recommendations for approval by NMFS of conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by the AFA (Pub.L. 105-277, Div. C, Title II, October 21, 1998, 112 Stat. 2681-616; 16 U.S.C. 1851 note; 46 U.S.C. 101 note, 12102, 31322; 46 App. 1274 note), or by any

fishery cooperatives in the Alaska pollock fishery, as required by section 211(c)(3)(A) of the AFA. Pursuant to the AFA, the Council's recommendations are due to NMFS not later than July 1, 2000. The AFA at section 211(b)(5) also provides that catcher/processors and motherships eligible under the AFA are prohibited from harvesting or processing fish in any U.S. fishery outside Alaska, except the Pacific whiting fishery, unless harvesting or processing by those catcher-processor motherships is specifically authorized under a fishery management plan. Pacific whiting is a major component of the species aggregate in the Pacific Coast groundfish fisheries.

Conservation and management measures under consideration by the Council to offset adverse impacts of the AFA include possible restrictions on participation in the Pacific coast groundfish fisheries by vessels eligible for benefits under the AFA (AFA-qualified vessels). During its September 13-17, 1999, meeting in Portland, Oregon, the Council adopted September 16, 1999, as a control date to be used in placing restrictions on participation in the Pacific Coast groundfish fisheries by AFA-qualified vessels. In making this announcement, NMFS and the Council intend to prevent speculative entry into the fisheries after the control date by AFA-qualified vessels, while the Council develops and analyzes its recommendations. The control date applies to catcher vessels in the mothership and shore-based sectors of the Pacific whiting fishery, and to all other non-whiting groundfish fisheries in which catch is landed shoreside. The control date provides notice to AFA-qualified vessels that might seek to participate in the Pacific Coast groundfish fisheries that current requirements for accessing these fisheries may change. Vessels entering the fisheries after the control date may be subject to new restrictions that do not

currently exist, and they may not receive credit for fishing after the control date.

The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982 (47 FR 43964, October 5, 1982), and has been amended 10 times. Implementing regulations for the FMP and its amendments are codified at 50 CFR part 660, Subpart G.

The AFA, enacted in 1998, reduced the harvest capacity in the Alaska pollock fishery by retiring nine Bering Sea catcher/processors. It also redistributed pollock allocations between the inshore and offshore sectors, and defined conditions for creating fishery cooperatives in the pollock fleet. Vessels that participate in such cooperatives are likely to have increased flexibility in arranging their fishing schedules and could consider entering additional fisheries.

At its September 13-17, 1999, meeting, the Council and its Groundfish Advisory Panel heard proposals from West Coast fishers and processors concerned that some AFA-qualified vessels with no previous or low levels of participation in the Pacific groundfish fishery will increase their fishing effort in the Pacific Coast groundfish fishery. A particular problem is posed if AFA-qualified vessels participating in pollock fishing cooperatives rearrange their pollock fishing schedules to allow them time to fish in non-pollock fisheries such as the Pacific Coast groundfish fishery. To participate in most limited entry groundfish fisheries vessels only need to purchase a general limited entry permit. No permit is required to participate in the open access fisheries. Because new permit holders and entrants into the open access fishery currently have access rights that are equal to those who have historically participated in the fishery, speculative entry may be encouraged. Additional effort could exacerbate existing management problems and erode the effectiveness of

future measures recommended by the Council.

The Council unanimously voted to establish a control date of September 16, 1999, and to initiate the development of recommendations to restrict AFA-qualified vessels from participating in the Pacific Coast groundfish fishery if, during a qualifying period between January 1, 1994, and September 16, 1999, the vessel: (1) did not harvest at least 50 metric tons (mt) of Pacific whiting in the mothership sector; (2) did not land at least 50 mt of Pacific whiting in the shore-based sector; or (3) did not land groundfish shoreside in the Pacific Coast groundfish fishery (not including fish landed in the Pacific whiting fishery).

Implementation of any management measures for the fishery will require amendment of the regulations implementing the FMP and may also require amendment of the FMP itself. Any action will require Council development of a regulatory proposal with public input and a supporting analysis, NMFS approval, and publication of implementing regulations in the **Federal Register**. If catch history is used as basis for participation, it is likely that AFA-qualified vessel participation in the fishery after the control date will receive little or no credit. Fishers are not guaranteed future participation in the groundfish fishery, regardless of their date of entry or level of participation in the fishery.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*; Pub. L. 105-277, Div. C, Title II, October 21, 1988.

Dated: November 18, 1999.

William Fox,

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

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