

553. In addition, in accordance with the Congressional Review provisions in SBEWFA, at 5 U.S.C. 801(a)(4), a final rule cannot “take effect” until the rule is submitted to Congress in accordance with 5 U.S.C. 801(a)(1). The rule was submitted to Congress on March 12, 2009.

According to the procedures established by the Administrative Committee of the **Federal Register** under the **Federal Register** Act (44 U.S.C. Chapter 15), the amendments to the Code of Federal Regulations (CFR) set out in this final rule were incorporated into the CFR on August 21, 2008, the effective date of the rule. However, because of the issues with the APA and the Congressional Review provisions, this rule could not become operative until March 13, 2009.

Accordingly, MARAD acknowledges that the rule was not operative and enforceable until March 13, 2009. MARAD further notes that because the rule establishes procedures that have not yet been utilized, neither the public, nor any regulated entities, were harmed in the interim period between publication of the rule and March 13, 2009.

Dated: March 9, 2009.

By Order of the Maritime Administrator.

**Christine Gurland,**

*Acting Secretary, Maritime Administration.*  
[FR Doc. E9–5787 Filed 3–17–09; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### 46 CFR Part 390

[Docket No. MARAD 2008 0075]

RIN 2133–AB71

#### Capital Construction Fund

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Final rule; clarification.

**SUMMARY:** On September 30, 2008, the Maritime Administration published the final rule in this docket to implement provisions of the Energy Independence and Security Act of 2007 and amend the definition of a “qualified vessel” under the Capital Construction Fund. The final rule was published with an effective date of the date of publication. Prior to publication, we inadvertently failed to submit the rule to Congress and the General Accounting Office (GAO), as required by the Congressional Review provisions in the Small Business Regulatory Enforcement Fairness Act

(SBREFA). Therefore, the rule was not applicable on the date of publication.

**DATES:** The applicability date for the final rule published at 73 FR 56738 (September 30, 2008) was March 13, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Murray Bloom, Chief, Division of Maritime Programs, Maritime Administration at 202–366–5320, via e-mail at [Murray.Bloom@dot.gov](mailto:Murray.Bloom@dot.gov), or by writing to Murray Bloom, Office of the Chief Counsel, Maritime Administration, MAR–222, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### Background

For complete background and regulatory analysis, see the original document published September 30, 2008 (73 FR 56741). This final rule indicated that it would be effective upon publication. Pursuant to Section 553 of the Administrative Procedure Act (APA), codified at 5 U.S.C. 553, with certain exceptions, substantive rules cannot take effect less than 30 days after publication, unless the agency finds good cause for doing so and provides a written explanation of any good cause found when the rule is published. The Maritime Administration (MARAD) provided no justification for the immediate effective date in the published rule document and, in fact, MARAD did not intend to avail itself of the good cause exception of 5 U.S.C. 553. In addition, in accordance with the Congressional Review provisions in SBREFA at 5 U.S.C. 801(a)(4), a final rule cannot “take effect” until the rule is submitted to Congress in accordance with 5 U.S.C. 801(a)(1). The rule was submitted to Congress on March 12, 2009.

According to the procedures established by the Administrative Committee of the Federal Register under the Federal Register Act (44 U.S.C. Chapter 15), the amendments to the Code of Federal Regulations (CFR) set out in this final rule were incorporated into the CFR on September 30, 2008, the effective date of the rule. However, because of the issues with the APA and the Congressional Review provisions, this rule could not become operative or enforceable until March 13, 2009.

Accordingly, MARAD acknowledges that the rule was not operative and enforceable until March 13, 2009. MARAD further notes that because the rule establishes procedures that have not yet been utilized, neither the public, nor any regulated entities, were harmed in the interim period between

publication of the rule and March 13, 2009.

By Order of the Maritime Administrator.

Dated: March 9, 2009.

**Christine Gurland,**

*Acting Secretary, Maritime Administration.*

[FR Doc. E9–5792 Filed 3–17–09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XN75

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 ft (18.3 m) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (< 18.3 m) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 Pacific cod total allowable catch (TAC) allocated to catcher vessels < 60 ft LOA using hook-and-line or pot gear in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 16, 2009, through 2400 hrs, A.l.t., December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 Pacific cod TAC allocated to catcher vessels < 60 ft LOA using hook-and-line or pot gear in the BSAI is 3,033 metric tons as established by the 2009 and 2010 final harvest specification for

groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2009 Pacific cod directed fishing allowance allocated to catcher vessels less than 60 ft LOA using hook-and-line or pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels < 60 ft LOA using hook-and-line or pot gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels < 60 ft LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 12, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 13, 2009.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9-5825 Filed 3-13-09; 4:15 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 09100091344-9056-02]

RIN 0648-XN83

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2009 total allowable catch (TAC) of pollock for Statistical Area 620 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 14, 2009, through 1200 hrs, A.l.t., August 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2009 TAC of pollock in Statistical Area 620 of the GOA is 5,413 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2009 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed

fishing allowance of 5,300 mt, and is setting aside the remaining 113 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 12, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 13, 2009.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9-5830 Filed 3-13-09; 4:15 pm]

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