

must comply with 33 CFR part 105 are subject to earlier, rolling compliance dates, as set forth in 33 CFR 105.115(e). The Coast Guard announced the rolling compliance dates, as provided in 33 CFR 105.115(e), at least 90 days in advance via notices published in the **Federal Register**. The final compliance date for all COTP Zones will not be later than April 15, 2009.

On September 30, 2008, we announced the compliance date for COTP Zone Honolulu would be February 12, 2009 (73 FR 56730).

## II. Notice of Facility Compliance Date—American Samoa, COTP Zone Honolulu

Title 33 CFR 105.115(e) currently states that “[f]acility owners and operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the **Federal Register**.” Through this Notice, the Coast Guard informs the owners and operators of facilities subject to 33 CFR 105.115(e) located on American Samoa within COTP Zone Honolulu that the deadline for their compliance with Coast Guard and TSA TWIC requirements has been extended until April 14, 2009.

This extension is being granted due to the fact that approximately 87% of the maritime workers that require TWICs in American Samoa are not native to the island, and do not need to comply with United States immigration laws. They are not issued a visa by the U.S. Department of State (DOS), and therefore they do not meet the immigration standards required for a TWIC, found in 49 CFR 1572.105. This new date provides sufficient time for the Coast Guard, in consultation with TSA, DHS, and DOS, to determine whether there is an equivalent visa category that these workers can use to qualify for a TWIC, or whether the TWIC requirement for facilities in American Samoa needs to be reconsidered, as it was for facilities located in the Commonwealth of the Northern Mariana Islands (72 FR 55043).

We note that this compliance delay ONLY applies to facilities located on the island of American Samoa; facilities subject to 33 CFR part 105 in the remainder of COTP Zone Honolulu must continue to comply with the TWIC requirements beginning February 12, 2009.

You may visit our Web site at [homeport.uscg.mil/twic](http://homeport.uscg.mil/twic) for a listing of all compliance dates by COTP Zone. This list is subject to change; any changes in compliance dates will appear on that Web site and be announced in the **Federal Register**.

Dated: February 9, 2009.

**Mark P. O'Malley,**

*Captain, U.S. Coast Guard, Chief, Ports and Facilities Activities.*

[FR Doc. E9-3119 Filed 2-10-09; 1:00 pm]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 209

[FRA-2007-28573]

**RIN 2130-AB87**

#### Railroad Safety Enforcement Procedures; Enforcement, Appeal and Hearing Procedures for Rail Routing Decisions

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule; clarification.

**SUMMARY:** On November 26, 2008, FRA published the final rule in this docket that established procedures to enable railroad carriers to challenge rail routing decisions made by FRA's Associate Administrator for Safety. The final rule was published with an immediate effective date. Under applicable federal statutes, this document did not qualify for an immediate effective date.

**DATES:** The applicability date for the final rule published at 73 FR 72194 was January 15, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Lucinda Henriksen, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202-493-1345).

**SUPPLEMENTARY INFORMATION:** The final rule in this proceeding, published on November 26, 2008, indicated that it would be effective upon publication. See 73 FR 72194. 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. FRA provided no justification for the immediate effective date in the published rule document and, in fact, FRA 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 Act (CRA), 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 January 15, 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 November 26, 2008, the effective date of the rule. However, because of the issues with the APA and the CRA, this rule could not become applicable or enforceable until January 15, 2009.

Accordingly, FRA acknowledges that the rule was not effective and enforceable until January 15, 2009. FRA 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 January 15, 2009.

Issued in Washington, DC, on February 6, 2009.

**Jo Strang,**

*Acting Deputy Administrator.*

[FR Doc. E9-3073 Filed 2-11-09; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

**RIN 0648-XM03**

#### Fraser River Sockeye Salmon Fisheries; Inseason Orders

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

**ACTION:** Temporary orders; inseason orders; request for comments.

**SUMMARY:** NMFS publishes Fraser River salmon inseason orders to regulate salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2008 salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing dates, times, and areas for the gear types of U.S. treaty Indian and all citizen fisheries during the period the Panel exercised jurisdiction over these fisheries.

**DATES:** The effective dates for the inseason orders are set out in this

document under the heading Inseason Orders. Comments will be accepted through February 27, 2009.

**ADDRESSES:** You may submit comments, identified by 0648-XM03 by any one of the following methods:

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

Fax: 206-526-6736

Mail: NMFS NWR, 7600 Sand Point Way NE, Seattle, WA 98115.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name address, etc.) 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 PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Peggy Busby, by phone at 206-526-4323, [peggy.busby@noaa.gov](mailto:peggy.busby@noaa.gov)

**SUPPLEMENTARY INFORMATION:** The Treaty between the Government of the United States of America and the Government of Canada concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631-3644.

Under authority of the Act, Federal regulations at 50 CFR part 300, subpart F provide a framework for the implementation of certain regulations of the Commission and inseason orders of the Commission's Fraser River Panel for U.S. sockeye and pink salmon fisheries in the Fraser River Panel Area.

The regulations close the U.S. portion of the Fraser River Panel Area to U.S. sockeye and pink salmon fishing unless opened by Panel orders that are given effect by inseason regulations published by NMFS. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations and are issued by Regional Administrator, Northwest Region, NMFS. Official notification of these inseason actions is provided by two telephone hotline numbers described at 50 CFR

300.97(b)(1). The inseason orders are published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. Therefore, the 2008 orders are being published in this single document to avoid fragmentation.

**Inseason Orders**

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 2008 fishing season. Each of the following inseason actions was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1); those dates and times are listed herein. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220-22:

*Order Number 2008-01: Issued 1 p.m., July 18, 2008*

Treaty Indian Fisheries:

*Areas 4B, 5 and 6C:* Open to drift gillnets from 12 p.m. (noon), Saturday, July 19, 2008 to 12 p.m. (noon), Wednesday, July 23, 2008.

*Order Number 2008-02: Issued 1:30 p.m., July 22, 2008*

Treaty Indian Fisheries:

*Areas 4B, 5 and 6C:* Extended for drift gillnets from 12 p.m. (noon), Wednesday, July 23, 2008, to 12 p.m. (noon), Saturday, July 26, 2008.

*Order Number 2008-03: Issued 1:30 p.m., July 25, 2008*

Treaty Indian Fisheries:

*Areas 4B, 5 and 6C:* Extended for drift gillnets from 12 p.m. (noon), Saturday, July 26, 2008, to 12 p.m. (noon), Tuesday, July 29, 2008.

*Areas 6, 7, and 7A:* Open to net fishing from 6 a.m., Sunday, July 27, 2008 to 10 a.m., Monday, July 28, 2008.

All Citizen Fisheries:

*Areas 7 and 7A Purse seine:* Open from 7 a.m. to 7 p.m., Friday, July 25, 2008.

*Areas 7 and 7A Gillnet:* Open from 8 a.m. to 8 p.m., Friday, July 25, 2008.

*Areas 7 and 7A Reefnet:* Open from 6 a.m. to 6 p.m., Monday, July 28, 2008.

*Order Number 2008-04: Issued 1:30 p.m., July 28, 2008*

Treaty Indian Fishery:

*Areas 4B, 5 and 6C:* Extended for drift gillnets from 12 p.m. (noon), Tuesday,

July 29, 2008 to 12 p.m. (noon), Wednesday, July 30, 2008.

*Areas 6, 7, and 7A:* Open to net fishing from 12:45 p.m., Monday, July 28, 2008, to 3 p.m., Tuesday, July 29, 2008.

All Citizen Fisheries:

*Areas 7 and 7A Purse seine:* Open from 5 a.m. to 9 p.m., Tuesday, July 29, 2008.

*Areas 7 and 7A Reef Net:* Open from 5 a.m. to 9 p.m., Tuesday, July 29, 2008.

*Areas 7 and 7A Gillnet:* Open from 8 a.m. to 12 a.m. (midnight), Tuesday, July 29, 2008.

*Order Number 2008-05: Issued 1:30 p.m., July 29, 2008*

Treaty Indian Fishery:

*Areas 4B, 5 and 6C:* Extended for drift gillnets from 12 p.m. (noon), Wednesday, July 30, 2008 to 12 p.m. (noon), Saturday, August 2, 2008.

*Areas 6, 7, and 7A:* Open for net fishing from 3 p.m., Tuesday, July 29, 2008 to 11:59 p.m. (midnight), Thursday, July 31, 2008.

All Citizen Fisheries:

*Areas 7 and 7A Purse Seine:* Open from 5 a.m. to 9 p.m., Wednesday, July 30, 2008 and from 5 a.m. to 9 p.m., Thursday, July 31, 2008.

*Areas 7 and 7A Gillnet:* Open from 8 a.m. to 11:59 p.m., Wednesday, July 30, 2008, and from 8 a.m. to 11:59 p.m., Thursday, July 31, 2008.

*Areas 7 and 7A Reef Net:* Open from 5 a.m. to 9 p.m., Wednesday, July 30, 2008 and from 5 a.m. to 9 p.m., Thursday, July 31, 2008.

*Order Number 2008-06: Issued 11:30 a.m., August 1, 2008*

Treaty Indian Fisheries:

*Areas 4B, 5 and 6C:* Previously announced drift gillnet fishery scheduled to close at 12 p.m. (noon), Saturday, August 2, 2008 will close at 6 p.m., Friday, August 1, 2008.

**Classification**

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comments is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for public comment between the time the stock abundance information is available to

determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

Moreover, such prior notice and opportunity for public comment is impracticable because not closing the fishery upon attainment of the quota would allow the quota to be exceeded and thus compromise the conservation objectives established preseason, and it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA also finds good cause to waive the 30-day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This action is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 3636(b).

Dated: February 9, 2009.

**Emily H. Menashes,**

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

[FR Doc. E9-3055 Filed 2-11-09; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0809251266-81485-02]

**RIN 0648-XM86**

#### Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring a portion of its 2009 commercial summer flounder quota to the Commonwealth of Virginia and the State of New Jersey. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

**DATES:** Effective February 9, 2009 through December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Management

Specialist, (978) 281-9244, FAX (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 28,952 lb (13,132 kg) of its 2009 commercial quota to Virginia to cover the summer flounder landings of three North Carolina vessels granted safe harbor in Virginia due to mechanical issues between January 2 and January 6, 2009. In addition, North Carolina has agreed to transfer 1,033 lb (469 kg) of its 2009 commercial quota to New Jersey to cover the summer flounder landings of one North Carolina vessel granted safe harbor in New Jersey due to mechanical issues on December 18, 2008. Although this event occurred at the end of the previous fishing year, both states have agreed to apply their transfer amounts to the 2009 quota allocations. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2009 are: North Carolina, 2,917,924 lb (1,323,184 kg); Virginia, 2,317,924 lb (1,051,393 kg); and New Jersey, 1,796,946 (1,051,393 kg).

#### Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: February 9, 2009

**Emily H. Menashes,**

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

[FR Doc. E9-3021 Filed 2-9-09; 4:15 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 080408542-8615-01]

**RIN 0648-XM20**

#### Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Pacific Whiting Allocation

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

**ACTION:** Reapportionment of surplus Pacific whiting allocation; request for comments.

**SUMMARY:** NMFS has determined that 4,000 metric tons (mt) of the shore-based sector allocation and 6,000 mt of the mothership sector allocation would not be used by December 31, 2008. Therefore, NMFS has reapportioned the surplus whiting to the catcher/processor sector of the fishery.

**DATES:** Effective from 1400 local time (l.t.) November 26, 2008, until December 31, 2008, unless modified, superseded or rescinded. Comments will be accepted through February 27, 2009.

**ADDRESSES:** You may submit comments, identified by the RIN number 0648-XM20, by any one of the following methods:

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

- Fax: 206-526-6736, Attn: Becky Renko

- Mail: Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Becky Renko

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) 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 PDF file formats only.