

certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and (17) CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Monday, September 17, 2001, will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

A formal order.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: September 10, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-23148 Filed 9-12-01; 11:41 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2001-10612]

Westward I, Viking, Chelsea K, Alaskan Command and Seafisher—Applicability of Preferred Mortgage, Ownership and Control Requirements for Fishing Industry Vessels of 100 Feet or Greater in Registered Length

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on two petitions requesting MARAD to issue determinations that the ownership and control requirements and the preferred mortgage requirements of the American Fisheries Act of 1998 and 46 CFR Part 356 are in conflict with an international investment agreement.

SUMMARY: The Maritime Administration ("MARAD") is soliciting public comments on a petition from the owners and mortgagees of the vessels *Westward I* (Official Number—615165), *Viking* (Official Number—565017), *Chelsea K* (Official Number—976753), and *Alaskan Command* (Official Number—599383) and a petition from the owners of the vessel *Seafisher* (Official Number—575587) (hereinafter the "Vessels"). The petitions request that MARAD issue decisions that the American Fisheries Act of 1998

("AFA"), Division C, Title II, Subtitle I, Pub. L. 105-277, and our regulations at 46 CFR part 356 (65 FR 44860 (July 19, 2000)) are in conflict with the U.S.-Japan Treaty and Protocol Regarding Friendship, Commerce and Navigation, 206 UNTS 143, TIAS 2863, 4 UST 2063 (1953) ("U.S.-Japan FCN" or "Treaty"). The petitions are submitted pursuant to 46 CFR 356.53 and section 213(g) of AFA, which provide that the requirements of the AFA and the implementing regulations will not apply to the owners or mortgagees of a U.S.-flag vessel documented with a fishery endorsement to the extent that the provisions of the AFA conflict with an existing international agreement relating to foreign investment to which the United States is a party.

If MARAD determines that the AFA and MARAD's implementing regulations conflict with the U.S.-Japan FCN, the requirements of 46 CFR part 356 and the AFA will not apply to the extent of the inconsistency with respect to each specific vessel. Accordingly, interested parties are invited to submit their views on the petitions and whether there is a conflict between the U.S.-Japan FCN and the requirements of both the AFA and 46 CFR part 356. In addition to receiving the views of interested parties, MARAD will consult with other Departments and Agencies within the Federal Government that have responsibility or expertise related to the interpretation of or application of international investment agreements.

DATES: You should submit your comments in order to ensure that Docket Management receives them not later than September 24, 2001. Prior to the two petitions that are the subject of this notice, we published seven different notices relating to potential conflicts between the AFA and the Japan-FCN. No comments from the public were received in response to any of the petitions. Because we have not received any public comments in regard to previous notices and because the present petitions do not present novel issues, we are using a shortened comment period of ten days for this notice.

ADDRESSES: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dms.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at

the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal Holidays. An electronic version of this document and all documents entered into this docket may be obtained over the internet from the Docket Management System at <http://dms.dot.gov> by typing in the last four digits of the docket number provided at the beginning of this notice.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel at (202) 366-5320. You may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR-222, 400 Seventh St., SW., Washington, DC 20590-0001 or you may send e-mail to John.Marquez@marad.dot.gov.

SUPPLEMENTARY INFORMATION: The AFA was enacted in 1998 to give U.S. interests a priority in the harvest of U.S.-fishery resources by increasing the requirements for U.S. Citizen ownership, control and financing of U.S.-flag vessels documented with a fishery endorsement. MARAD was charged with promulgating implementing regulations for fishing industry vessels of 100 feet or greater in registered length while the Coast Guard retains responsibility for vessels under 100 feet.

Section 202 of the AFA, raises, with some exceptions, the U.S.-Citizen ownership and control standards for U.S.-flag vessels that are documented with a fishery endorsement and operating in U.S.-waters. The ownership and control standard was increased from the controlling interest standard (greater than 50%) of section 2(b) of Shipping Act, 1916 ("1916 Act"), as amended, 46 App. U.S.C. 802(b), to the standard contained in section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), which requires that 75 percent of the ownership and control in a vessel owning entity be vested in U.S. Citizens. In addition, section 204 of the AFA repeals the ownership grandfather "savings provision" in the Anti-Reflagging Act of 1987, Pub. L. 100-239, section 7(b), 101 Stat 1778 (1988), which permits foreign control of companies owning certain fishing vessels.

Section 202 of the AFA also amended 46 App. U.S.C. 31322(a) and established new requirements to hold a preferred mortgage on a vessel of 100 feet or greater in registered length that is documented with a fishery endorsement. However, those requirements were subsequently amended on July 24, 2001, by section 2202 of the Supplemental Appropriations Act, 2001, Public Law

107–20. The amendments revise the requirements to hold a preferred mortgage on fishing industry vessels of 100 feet or greater, delay the effective date of 46 U.S.C. 31322(a)(4), as amended, to April 1, 2003, and require MARAD to suspend until April 1, 2003, any consideration of a lender's citizenship status in determining whether 75% of the interest in a vessel is owned and controlled by U.S. Citizens.

Section 213(g) of the AFA provides that if the new ownership and control provisions or the mortgage provisions are determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party, such provisions of the AFA shall not apply to the owner or mortgagee on October 1, 2001, with respect to the particular vessel and to the extent of the inconsistency. MARAD's regulations at 46 CFR 356.53 set forth a process wherein owners or mortgagees may petition MARAD, with respect to a specific vessel, for a determination that the implementing regulations are in conflict with an international investment agreement. Petitions must be noticed in the **Federal Register** with a request for comments. The Chief Counsel of MARAD, in consultation with other Departments and Agencies within the Federal Government that have responsibility or expertise related to the interpretation of or application of international investment agreements, will review the petitions and render a decision within 120 days of the receipt of a fully completed petition.

Interested parties are advised that, in light of the above mentioned amendments to the preferred mortgage requirements for fishing industry vessels of 100 feet or greater, we will be required to amend our regulations. Furthermore, Congress has explicitly stated that MARAD should not consider the citizenship of the lender in determining whether a vessel is eligible for documentation with a fishery endorsement until the new requirements related to mortgagees become effective on April 1, 2003. Consequently, we will not issue a determination at this time with respect to the mortgagee issues addressed in the petitions. The preferred mortgages on the Vessels will remain valid and subject to the current requirements of 46 U.S.C. 31322, as in effect prior to the passage of the AFA, until the new statutory and regulatory requirements related to preferred mortgages become effective on April 1, 2003.

The Petitioners

The petitioners with respect to the vessels *Westward I*, *Viking*, *Chelsea K*, and *Alaskan Command* are: (1) The owners of the vessels, Maruha Corporation, Maruha's three wholly owned subsidiaries, Western Alaska Fisheries, Inc., Westward Seafoods, Inc., and Maruha Capital Investment, Inc., as well as Horizon Trawlers, Inc., H&G, LLC, Pyramid Fishing Company, Westward Limited Partnership, Viking Limited Partnership, Ocean Dynasty Limited Partnership, and Alaskan Command Company; and (2) the mortgagees with respect to the vessels, Westward Limited Partnership and Overseas Fishery Cooperation Foundation.

The petitioners with respect to the *Seafisher* are the owners of the vessel, M/V Savage, Inc., Cascade Fishing, Inc., and Daito Suisan, Ltd.

Requested Action

The owners and mortgagees of *Westward I*, *Viking*, *Chelsea K*, and *Alaskan Command* have requested a consolidated filing for the vessels. MARAD's regulations require at 46 CFR 356.53(c) that a separate petition be filed for each vessel for which the owner or mortgagee is requesting an exemption unless the Chief Counsel authorizes a consolidated filing. The Chief Counsel hereby authorizes the consolidated filing by Petitioners relating to the four vessels. The owners of the *Seafisher* have filed a separate petition.

The Petitioners seek a determination from MARAD under section 213(g) of the AFA and 46 CFR 356.53 that they are exempt from the requirements of sections 202, 203 and 204 of the AFA and 46 CFR part 356 on the ground that the requirements of the AFA and 46 CFR part 356, as applied to Petitioners with respect to the Vessels, conflict with U.S. obligations under U.S.-Japan FCN. The Petitioners request a determination that the restrictions placed on foreign ownership, foreign financing and foreign control of U.S.-flag vessels documented with a fishery endorsement contained in 46 CFR part 356 and sections 202, 203 and 204 of the AFA do not apply to Petitioners.

Petitioner's Description of the Conflict Between the FCN Treaty and Both 46 CFR Part 356 and the AFA

MARAD's regulations at 46 CFR 356.53(b)(3) require Petitioners to submit a detailed description of how the provisions of the international investment agreement or treaty and the implementing regulations are in

conflict. The entire text of the FCN Treaty is available on MARAD's internet site at <http://www.marad.dot.gov>. The descriptions submitted by the Petitioners of the conflict between the FCN Treaty and both the AFA and MARAD's implementing regulations form the basis on which the Petitioners' requests that the Chief Counsel issue rulings that 46 CFR part 356 does not apply to the Petitioners with respect to the Vessels. The Petitioners' descriptions of how the provisions of the U.S.-Japan FCN are in conflict with both the AFA and 46 CFR part 356 may be obtained by contacting John T. Marquez, Jr. at the numbers and address provided above under **FOR FURTHER INFORMATION** or from the Docket Management System by following the instructions above under **ADDRESSES**.

Dated: September 10, 2001.

By Order of the Acting Deputy Maritime Administrator.

Joel Richard,

Secretary, Maritime Administration.

[FR Doc. 01–23071 Filed 9–13–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34082 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34082¹ to permit the trackage rights to expire, as they relate to the operations extending from Temple, TX, to Fort Worth, TX, on September 23, 2001.

DATES: This exemption is effective on September 23, 2001. Petitions to reopen must be filed by October 4, 2001.

¹ On August 9, 2001, UP concurrently filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by The Burlington Northern and Santa Fe (BNSF) to grant temporary overhead trackage rights to UP over approximately 129.2 miles of BNSF trackage extending from BNSF milepost 218.1, near Temple, TX, to BNSF milepost 6.1, near Fort Worth, TX. See *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34082 (STB served Aug. 29, 2001). The agreement is scheduled to expire on September 23, 2001. The trackage rights operations under the exemption were scheduled to be consummated on August 20, 2001.