DATES: Reply comments due January 26, 2006.

ADDRESSES: You may submit reply comments, identified by WT Docket No. 05–265, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- E-mail: Include the docket number(s) in the subject line of the message.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Eli Johnson at (202) 418–1395, *Eli.Johnson@fcc.gov,* or Won Kim (202) 418–1368, *Won.Kim@fcc.gov,* Wireless Telecommunications Bureau, Spectrum and Competition Policy Division.

SUPPLEMENTARY INFORMATION: This proposed rulemaking, 70 FR 56612, September 28, 2005, concerns a decision to examine whether the Commission's current rules regarding roaming requirements applicable to CMRS providers should be modified given the current state of the CMRS market. The full text of the *NPRM* and comments filed in response to the *NRPM* are available for public inspection on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Federal Communications Commission.

Catherine W. Seidel,

Acting Chief, Wireless Telecommunications Bureau.

[FR Doc. 06–456 Filed 1–18–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1105

[STB Ex Parte No. 647]

Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads

AGENCY: Surface Transportation Board, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) has received a proposal to create a class exemption under 49 U.S.C. 10502 for Class II and Class III railroads [1] from the prior approval requirements for abandonments under 49 U.S.C. 10903. A public hearing was held on August 31, 2004, to discuss the proposal. Before deciding whether to issue a Notice of Proposed Rulemaking (NPR), the Board seeks comments from interested persons on this proposal and possible alternatives to it, as detailed below.

DATES: Notices of intent to participate in this rulemaking process are due on February 2, 2006. Comments are due on March 6, 2006. Replies to comments are due on April 4, 2006.

ADDRESSES: All notices of intent to participate and comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (referring to STB Ex Parte No. 647) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On May 15, 2003, sixty-five short-line and regional carriers (petitioners) [2] filed a petition to institute a proceeding under 49 U.S.C. 10502 to exempt a class of small carriers from the prior approval requirements for abandonments under 49 U.S.C. 10903. Petitioners included a detailed proposal, including revised rules for 49 CFR 1152.50 (exempt abandonments) and 1152.27 (offers of financial assistance). The Board issued a decision on August 13, 2003, to institute a proceeding and held a public hearing on August 31, 2004, to discuss the issues raised in petitioners' filing.

The Board has exclusive and plenary jurisdiction over the abandonment of rail lines. *Chicago & N.W. Transp. Co.* v. *Kalo Brick & Tile Co.,* 450 U.S. 311, 319–21 (1981) *(Kalo Brick); Phillips Co.* v. *Denver & Rio Grande Western R. Co.,* 97 F.3d 1375, 1376–78 (10th Cir. 1996), *cert. denied,* 521 U.S. 1104 (1997). Under 49 U.S.C. 10903, the Board may authorize abandonment if it finds that the present or future public convenience and necessity (PC&N) require or permit the abandonment. In making this public interest determination, the Board

[1] The Board's regulations divide railroads into three classes based on annual carrier operating revenues. Class I railroads are those with annual carrier operating revenues of $250 million or more (in 1991 dollars); Class II railroads are those with annual carrier operating revenues of more than $20 million but less than $250 million (in 1991 dollars); and Class III railroads are those with annual carrier operating revenues of $20 million or less (in 1991 dollars). *See* 49 CFR part 1201, General Instruction 1–1(a).

[2] The sixty-five carriers are: Allegheny & Eastern Railroad, Inc.; Bradford Industrial Rail, Inc.; Buffalo & Pittsburgh Railroad, Inc.; Carolina Coastal Railway, Inc.; Commonwealth Railway, Inc.; Chicago SouthShore & South Bend Railroad; Chattahoochee & Gulf Railroad Co., Inc.; Connecuh Valley Railroad Co., Inc.; Corpus Christi Terminal Railroad, Inc.; The Dansville & Mount Morris Railroad Company; Eastern Idaho Railroad, Inc.; Genesee & Wyoming Railroad Company; Golden Isles Terminal Railroad, Inc.; H&S Railroad Co., Inc.; Illinois Indiana Development Company, LLC; Illinois & Midland Railroad Company, Inc.; Kansas & Oklahoma Railroad, Inc.; Knoxville & Holston River Railroad Co., Inc.; Lancaster and Chester Railway Company; Laurinburg & Southern Railroad Co., Inc.; Louisiana & Delta Railroad, Inc.; Louisville & Indiana Railroad Company; Minnesota Prairie Line, Inc.; Montana Rail Link, Inc.; New York & Atlantic Railway Company; Pacific Harbor Line, Inc.; Palouse River & Coulee City Railroad, Inc.; Pennsylvania Southwestern Railroad, Inc.; Piedmont & Atlantic Railroad Inc.; Pittsburg & Shawmut Railroad, Inc.; Portland &Western Railroad, Inc.; Rochester & Southern Railroad, Inc.; Rocky Mount & Western Railroad Co., Inc.; St. Lawrence & Atlantic Railroad Company; Salt Lake City Southern Railroad Company; Savannah Port Terminal Railroad, Inc.; South Buffalo Railway Company; South Kansas & Oklahoma Railroad Company; Stillwater Central Railroad; Talleyrand Terminal Railroad, Inc.; Three Notch Railroad Co., Inc.; Timber Rock Railroad, Inc.; Twin Cities & Western Railroad Company; Utah Railway Company; Willamette & Pacific Railroad, Inc.; Wiregrass Central Railroad Company, Inc.; York Railway Company; AN Railway, LLC; Atlantic and Western Railway, Limited Partnership; Bay Line Railroad, LLC; Central Midland Railway; Copper Basin Railway, Inc.; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; The Indiana Rail Road Company; KWT Railway, Inc.; Little Rock & Western Railway, L.P.; M & B Railroad, L.L.C.; Tomahawk Railway, Limited Partnership; Valdosta Railway, L.P.; Western Kentucky Railway, LLC; Wheeling & Lake Erie Railway Company; Wilmington Terminal Railroad, L.P.; and Yolo Shortline Railroad Company.

weighs the burden on shippers and communities from the loss of rail service against the burden on the carrier and interstate commerce from continued operation of the line at issue. *Colorado* v. *United States,* 271 U.S. 153 (1926). The Board considers all relevant factors, including profits or losses incurred from operating the line, costs avoidable by abandonment (such as maintenance and rehabilitation costs) and the opportunity costs incurred by forgoing more profitable use of the carrier's assets elsewhere. *Kalo Brick*, 450 U.S.C. 311, 321 (1981). *See also* 49 CFR part 1152. The statute directs the Board also to consider whether the abandonment will have a serious, adverse impact on rural and community development. 49 U.S.C. 10903(d).

Over the years, Congress has taken steps to minimize needless burdens and delay in the regulatory process. *See Railroad Ventures, Inc.* v. *STB,* 299 F.3d 523, 529 n.1, 530–31 (6th Cir. 2002). Since 1980 it has encouraged the agency to streamline the regulatory process where appropriate. Under 49 U.S.C. 10502, the Board must exempt a transaction, person, or service, in whole or in part, from otherwise applicable statutory provisions when the Board finds that: (1) Continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The Board has used this exemption power to simplify and expedite abandonment cases where it believes that closer regulatory scrutiny is unnecessary, and most requests for abandonment authority are now handled through the exemption process. A carrier seeking abandonment authority may petition the Board for an exemption for a particular line on a case-by-case basis. See 49 CFR 1152.60. Or, if no local traffic has moved over the line in at least 2 years, any overhead traffic can be rerouted, and no formal complaint filed by a user regarding cessation of service over the line is pending or has been decided against the railroad during the 2-year period, a carrier may utilize a class exemption for ''out-of-service lines.'' *See* 49 CFR 1152.50(b); *Exemption of Out of Service Rail Lines,* 2 I.C.C.2d 146, 157–58 (1986), *aff'd sub nom. Illinois Commerce Comm'n* v. *ICC*, 848 F.2d 1246 (D.C. Cir. 1988), *cert.* denied, 488 U.S. 1004 (1989) *(Out-of-Service Exemption).*

Petitioners claim that the existing procedures do not work well for small carriers. Petitioners argue that the data needed to support a full application under 49 U.S.C. 10903, *i.e.*, base and forecast year statistics, come from the Board's Uniform System of Accounts, which only Class I carriers are required to use and report to the Board. Petitioners assert that small carriers typically lack the necessary data. They can try to compile the necessary information or ask the Board for a waiver, but neither option is attractive to small carriers. Petitioners maintain that the first option is too expensive. The second also involves expense, coupled with delay and uncertainty as to whether the waiver will be granted.

Petitioners also claim that filing a petition for exemption for an individual line under 49 U.S.C. 10502(a) poses challenges for small carriers. Although less data are required and filing expenses are lower, petitioners claim that the individual exemption process is too uncertain. Petitioners cite a Board decision that states that petitions for exemption are appropriate only where there is no opposition or operation of the line is clearly unprofitable. *Central Railroad Company of Indiana—Abandonment Exemption)—In Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN*, STB Docket No. AB–459 (Sub-No. 2X) (STB served May 4, 1998). Petitioners argue that this standard discourages use of the petition for exemption process in all but the most routine cases. They also point out that a carrier must make its entire presentation in its initial filing, with no right to respond to comments and protests.

Petitioners claim that these deficiencies force carriers to forgo seeking abandonment authority until a line is eligible for the Out-of-Service Exemption. Petitioners assert that the result is that when a prudent small carrier makes the subjective business decision that a particular line is no longer viable, it will increase rates on the line and divert resources away from the line to other more productive parts of its system. This, in turn, forces any remaining traffic to find more economical alternatives. When the line becomes eligible, the carrier would then invoke the class exemption for out-of-service lines. Petitioners argue that this process wastes resources and deters potential offers of financial assistance (OFAs) to continue rail service under 49 U.S.C. 10904, because shippers will already have found alternative transportation and the physical assets will have deteriorated for at least 2 years.

To alleviate these perceived shortcomings in the Board's current procedures, petitioners have proposed a new class exemption for Class II and Class III carriers seeking abandonment authority. Under petitioners' proposal, Class II and Class III carriers would be eligible to abandon their lines by invoking a notice procedure. The carrier would publish relevant commercial and engineering information about the line in local newspapers and national railroad industry publications, in addition to filing with the Board a notice to be published in the **Federal Register**. Such a notice would contain: 3 years of aggregate carload and revenue data; a statement of physical condition of the line; an estimate of the rehabilitation, if any, that would be needed to bring the line up to Federal Railroad Administration class 1 standards; the net liquidation value (NLV) of the line; and information concerning connecting carriers, interchange locations, and any operating rights of third parties over the line. Other data would be made available upon request to an OFA offeror. Petitioners' proposed changes to the Board's abandonment rules are contained in the Appendix to the Board's decision served on January 19, 2006. A copy of the Board's decision is available on the Board's Web page at *http://www.stb.dot.gov* or by contacting ASAP Document Solutions at (202) 306–4004.

Under Petitioners' proposal, carriers that availed themselves of this class exemption procedure would waive any claim for the value of the line in excess of NLV. Also, if an OFA sale were consummated and the subject line connected only to the abandoning carrier, the abandoning carrier would be required to provide the purchaser with either haulage or trackage rights (at the abandoning carrier's choice), at commercially reasonable rates, to move any traffic to and from any connecting carrier with which traffic has moved during the 24 preceding months. The proposal would create a longer OFA filing period of 90 days and would, at the abandoning carrier's option, delay the need to file the historic and environmental reports required under the Board's environmental rules at 49 CFR 1105.7 and 1105.8 until after the OFA process. Under the proposal, carriers that elected to defer such reports would obtain only discontinuance authority and would not be able to remove track structure until such reports were completed.

In order to adopt a class exemption for small carrier abandonments, we would first have to find that, as a class, regulation of these transactions is not necessary to carry out the rail transportation policy of 49 U.S.C.

10101. *See* 49 U.S.C. 10502. This analysis would require that we determine whether, on balance, those sometimes conflicting policies would be promoted or hindered by exemption from regulatory requirements that otherwise would apply. *See Out-of-Service Exemption,* citing *Baggett Transportation Co.* v. *U.S.,* 666 F.2d 524, 530–31 (11th Cir. 1982). If regulation is not necessary, we would also have to find that either (a) the transactions are of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Petitioners argue that their proposal would meet this statutory test and should be issued for public review and comment and adopted. At the same time, petitioners acknowledged at the public hearing that some technical difficulties could exist with their rules as proposed and expressed a willingness to work with the Board in perfecting and improving them. Therefore, the Board is now issuing this Advance Notice of Proposed Rulemaking to request public comment on whether the proposed class exemption could meet the statutory criteria and allow the Board to meet its environmental responsibilities. Also, the Board seeks comment as to whether and how to improve the proposed rules. Finally, the Board is also seeking comment as to whether other changes to the Board's processes could alleviate the alleged deficiencies with the current abandonment process that petitioners have identified for Class II and Class III carriers. After reviewing the comments, the Board will decide whether to issue an NPR in this proceeding.

While we welcome comments on all aspects of petitioners' proposal, and any alternatives, we will briefly outline below initial concerns we have with the class exemption, as proposed by petitioners. First, section 10903 requires the Board to balance competing interests in determining whether the PC&N require or permit abandonment. Petitioners' proposed class exemption would require a finding that the balancing analysis under section 10903 is unnecessary for some classes of carriers based only on their annual revenue. Petitioners' proposal does not appear to contain sufficient data to support such a finding. To decide whether to issue an NPR proposing specific changes for Class II and Class III carriers, it would be useful to know the average length of lines abandoned by such carriers and the average number of shippers affected by such abandonments. In addition, some measure of the typical effect on local communities by such abandonments and the effects of deferred maintenance and increased rates on continued service on low volume lines would be helpful.

Second, Congress considered eliminating the PC&N test for all carrier abandonments during the consideration of the ICC Termination Act of 1995 (ICCTA), but ultimately did not do so. The House bill contained a proposed section 10703 that would have replaced section 10903 and 10904 and converted all applications for abandonment or discontinuance authority from the current PC&N standard into a notification process to ''maximize the opportunity for the line to be acquired for continued operation by a smaller railroad, even though the line is revenue deficient for a large trunk carrier.'' H.R. Rep. No. 104–422, at 180–81(1995) (Conf. Rep.), *as reprinted* in 1995 U.S.C.C.A.N. 865–66. The Senate amendment instead removed outdated provisions from the abandonment statute. The conference substitute passed by Congress retained the PC&N standard as formulated in the Senate amendment. The Board requests comments on how the Board could justify going beyond the action Congress took in ICCTA.

Third, under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4331–4335, the Board is required to examine the potential environmental impacts of proposed licensing actions subject to the Board's jurisdiction, including abandonments. The Section of Environmental Analysis (SEA) is the office responsible for ensuring compliance with NEPA and the National Historic Preservation Act, 16 U.S.C. 470 (NHPA). Under 49 CFR 1105.6(b)(2), SEA prepares Environmental Assessments (EAs) in most rail abandonment cases, analyzing the potential environmental and historic issues, and recommending appropriate mitigation. SEA bases its analysis on information submitted by the carrier in the form of an environmental and historic report that sets forth the details of the proposed action, potential environmental impacts, and summarizes consultations conducted with relevant Federal, State, and local entities. Petitioners' proposal would allow carriers the option of delaying the environmental and historic reports until after the OFA period has expired. This, they argue, would eliminate waste and expense by preventing the preparation of unnecessary reports in cases where an OFA results in the continued operation of the line. If a carrier elects to delay its reporting, under petitioners' proposed rules the carrier would have discontinuance authority until the environmental and historic reporting requirements are completed.

Discontinuance authority, however, also generally triggers the need for completion of an EA prior to the time the discontinuance of service is authorized. *See* 49 CFR 1105.6(b)(3). Petitioners acknowledge this by providing in their proposal that a carrier that utilizes this process would certify that the discontinuance would not result in operational changes exceeding the thresholds set forth at 49 CFR 1105.7(e)(4) and (5), and that the carrier had no plans to alter or remove any historic properties. Petitioners also compare their suggested discontinuance authority process to what takes place under a lawful embargo, *i.e.*, a temporary cessation of rail service. The Board requests comments regarding whether the proposal put forth by petitioners would allow the Board to meet its responsibilities under NEPA and NHPA.

At the hearing, the Association of American Railroads (AAR) urged the Board to seek to expedite and improve its current historic review process, which, it believes, can significantly delay railroad abandonments. AAR stated that it was eager to work with the Board outside this proceeding to explore options to streamline the Board's historic reviews. AAR also indicated its support of the former Chairman's suggestion of meetings with representatives of the rail industry, the historic preservation community, and SEA. Since the hearing, SEA has consulted with representatives from AAR and the American Short Line and Regional Railroad Association (ASLRA) to determine the scope of the carriers' concerns. SEA has also provided extensive background information on the nature of these concerns to the Advisory Council on Historic Preservation (ACHP) and has apprised ACHP that the Board would like its assistance in developing appropriate streamlining options. In addition, SEA has met with the Executive Director of the National Conference of State Historic Preservation Officers (NCSHPO). With the assistance of an ASLRA representative, SEA is currently completing work on a White Paper, as requested by the NCSHPO. Furthermore, SEA has developed, at the carriers' suggestion, a guidance document (available on the Board's Web site under the ''Environmental'' button) to assist carriers in complying with NHPA in Board proceedings and thereby avoid unnecessary delay. SEA will continue working with the carriers and the

historic preservation community on the streamlining initiative.

Finally, at the public hearing and in written testimony, the representatives of organized labor raised an additional concern regarding the class exemption as originally proposed. The unions expressed concern that it would be possible to create small carriers with few or no employees to act as a way to avoid labor protection. For example, they stated, a Class I railroad could spin off a failing line to a small-carrier shell with no or few employees under the class exemption for sales to Class III carriers, *see* 49 CFR 1150 subpart E, thus avoiding labor protection. The ''small carrier'' could then use petitioners' proposed class exemption to abandon the line. Petitioners have acknowledged that such a practice would be a concern and expressed a willingness to explore ways to protect against such possibilities, such as including a holding period before the abandonment class exemption could be utilized. The Board requests public comment on whether to propose such a holding period, and if so, what the holding period should be and how it would work.

Given our initial concerns about some aspects of petitioners' class exemption, as proposed, and the perceived shortcomings petitioners see in the current abandonment regulations for smaller carriers, the Board also requests public comments on other possible ways to improve the abandonment process, and address the kinds of concerns petitioners have raised. For example, the 2-year out-of-service exemption has reportedly worked well since it has been adopted. Would a 1-year out-of-service exemption alleviate some of the frustrations with the current process evidently experienced by small carriers? Also, prior to ICCTA, 49 U.S.C. 10904(b) directed the agency to grant an abandonment application if no protest had been received within 30 days of filing. Would a similar, ''no-protest'' abandonment process for a petition for exemption improve upon the current process for small carriers? The Board seeks comments on these and any other proposals interested persons might submit.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 9, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 06–392 Filed 1–18–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 051227348–5348–01; I.D. 020105C]

Endangered and Threatened Species: Withdrawal of Proposals to List and Designate Critical Habitat for the Oregon Coast Evolutionarily Significant Unit (ESU) of Coho Salmon

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

ACTION: Proposed rule; withdrawal.

SUMMARY: In June 2004, we (NMFS) proposed that the Oregon Coast coho Evolutionarily Significant Unit (ESU) (*Oncorhynchus kisutch*) be listed as a threatened species under the Endangered Species Act (ESA). In June 2005, we extended the 1-year deadline for the final listing determination by 6 months in light of public comments received and an assessment by the State of Oregon concluding that the Oregon Coast coho ESU is viable (that is, likely to persist into the foreseeable future under current conditions). After considering the best available scientific and commercial information available, we have concluded that the ESU is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so within the foreseeable future. We have determined that the Oregon Coast coho ESU does not warrant listing as an endangered or threatened species under the ESA at this time. Therefore we have decided to withdraw the proposed rule to list this ESU. On December 14, 2004, we proposed critical habitat for the Oregon Coast coho ESU. Because we are withdrawing the proposed listing determination, we are also withdrawing the proposed rule to designate critical habitat for this ESU.

ADDRESSES: NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, Oregon, 97232.

FOR FURTHER INFORMATION CONTACT: Dr. Scott Rumsey, NMFS, Northwest Region, Protected Resources Division, at (503) 872–2791, or Marta Nammack, NMFS, Office of Protected Resources, at (301) 713–1401. Reference materials regarding this determination are available upon request or on the Internet at *http://www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Previous Federal ESA Actions Related to Oregon Coast Coho

In 1995, we completed a comprehensive status review of West Coast coho salmon (Weitkamp et al., 1995) that resulted in proposed listing determinations for three coho ESUs, including a proposal to list the Oregon Coast coho ESU as a threatened species (60 FR 38011; July 25, 1995). On October 31, 1996, we announced a 6-month extension of the final listing determination for the ESU, pursuant to section 4(b)(6)(B)(i) of the ESA, noting substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the assessment of extinction risk and the evaluation of protective efforts (61 FR 56211). On May 6, 1997, we withdrew the proposal to list the Oregon Coast coho ESU as threatened, based in part on conservation measures contained in the Oregon Coastal Salmon Restoration Initiative (later renamed the Oregon Plan for Salmon and Watersheds; hereafter referred to as the Oregon Plan) and an April 23, 1997, Memorandum of Agreement (MOA) between NMFS and the State of Oregon which further defined Oregon's commitment to salmon conservation (62 FR 24588). We concluded that implementation of harvest and hatchery reforms, and habitat protection and restoration efforts under the Oregon Plan and the MOA substantially reduced the risk of extinction faced by the Oregon Coast coho ESU. On June 1, 1998, the Federal District Court for the District of Oregon issued an opinion finding that our May 6, 1997, determination to not list Oregon Coast coho was arbitrary and capricious (*Oregon Natural Resources Council* v. *Daley*, 6 F. Supp. 2d 1139 (D. Or. 1998)). The Court vacated our determination to withdraw the proposed rule to list the Oregon Coast coho ESU and remanded the determination to NMFS for further consideration. On August 10, 1998, we issued a final rule listing the Oregon Coast coho ESU as threatened (63 FR 42587), basing the determination solely on the information and data contained in the 1995 status review (Weitkamp et al., 1995) and the 1997 proposed rule (62 FR 24588; May 6, 1997).

In 2001 the U.S. District Court in Eugene, Oregon, set aside the 1998 threatened listing of the Oregon Coast