

**FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Part 73**

[DA 01-2856, MM Docket No. 01-332, RM-10334]

**Television Broadcast Service; Pueblo, CO****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Zavaletta Broadcasting of Pueblo, an applicant for a construction permit for a new television station to operate on channel 26+ at Pueblo, Colorado, requesting the substitution of channel 48 for channel 26+ at Pueblo. Channel 48 can be allotted to Pueblo, Colorado, with zero offset consistent with the criteria set forth in the Commission's Public Notice, released on November 22, 1999, DA 99-2605. The coordinates for channel 48 are North Latitude 38°21'30" and West Longitude 104°33'24".

Pursuant to the Commission's Public Notice, we will not accept competing expressions of interest in the use of television channel 48 at Pueblo.

**DATES:** Comments must be filed on or before February 4, 2002, and reply comments on or before February 14, 2002.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Linda G. Coffin, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW, Washington, DC 20005 (Counsel for Zavaletta Broadcasting of Pueblo).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-332, adopted December 10, 2001, and released December 13, 2001. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-

863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

**PART 73—TELEVISION BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Table of Television Allotments under Colorado is amended by removing TV Channel 26+ and adding TV Channel 48 at Pueblo.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 01-31457 Filed 12-20-01; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 222**

[Docket No. 011130288-1288-01; I.D. 092101C]

**RIN 0648-AP64**

**Endangered and Threatened Species; Transfer of Permits**

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

**ACTION:** Proposed rule; request for public comments.

**SUMMARY:** NMFS proposes a rule that would allow the transfer of certain permits issued by NMFS under the Endangered Species Act (ESA) of 1973, as amended. This proposed rule would allow the transfer of permits associated with Habitat Conservation Plans, Safe Harbor Agreements with Assurances and Candidate Conservation

Agreements with Assurances. Currently, if a permit holder wants to sell property to a new owner, the new owner would need to apply for a separate permit. If regulations are put in place to allow transfers, time and money will be saved for NMFS and the new landowner with no adverse impact on the environment.

**DATES:** Written comments on the proposed rule must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Eastern Standard Time on February 4, 2002.

**ADDRESSES:** Comments on this proposed rule should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to (301) 713-0376. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:**

Margaret Lorenz or Lamont Jackson at (301) 713-1401.

**SUPPLEMENTARY INFORMATION:****Background**

NMFS is responsible for implementing the ESA, 16 U.S.C. 1531 *et seq.*, with respect to most threatened and endangered marine species.

NMFS' regulation at 50 CFR 222.305 prohibits the transfer of all permits issued under section 10(a) of the ESA. While the restrictions imposed on permit succession and transferability are well justified for most situations (e.g., scientific research permits), they are unnecessary and inappropriate for enhancement and incidental take permits associated with Habitat Conservation Plans, Safe Harbor Agreements with Assurances and Candidate Conservation Agreements with Assurances. These permits involve substantial long-term conservation commitments, and NMFS negotiates these permits recognizing that there may be succession or transfer in ownership during the term of the permit. The U.S. Fish and Wildlife Service (FWS) which also implements the ESA, issued final regulations on June 17, 1999 (64 FR 32706), allowing the transfer of these enhancement and incidental take permits, provided certain conditions are met. On January 22, 2001 (66 FR 6483),

FWS reconfirmed its decision to allow the transfer of these specific permits.

NMFS believes that a blanket prohibition on transferability of incidental take permits under ESA section 10(a)(1)(B) and enhancement permits issued for Safe Harbor Agreements with Assurances and Candidate Conservation Agreements with Assurances under section 10(a)(1)(A) is too constraining, given the context and purpose of these plans and agreements. This proposed rule (revising 50 CFR 222.305) would remove the prohibition on transferability of incidental take and enhancement permits with respect to these named agreements. However, this proposed rule would require NMFS to determine that the transferee has given adequate written assurance to NMFS that it can and will fulfill the obligations of the permit.

#### Description of Permits

*Safe Harbor Agreements with Assurances:* Under the Safe Harbor policy, non-Federal property owners with an approved agreement will receive assurances that additional land, water, and/or natural resource use restrictions will not be imposed in exchange for their voluntary conservation actions to benefit listed species covered in the agreement. If the Agreement provides a net conservation benefit to the covered species and the property owner meets all the terms of the Agreement, NMFS will authorize the taking of the covered species to enable the property owner to ultimately return the enrolled property back to agreed upon conditions. These assurances will be provided in the property owner's Safe Harbor Agreement and in an associated Enhancement of Survival permit issued under section 10(a)(1)(A) of the ESA.

*Candidate Conservation Agreement with Assurances:* Under this policy, non-Federal property owners who commit, through a Candidate Conservation Agreement with Assurances, to implement conservation measures for a candidate or proposed species, or a species likely to become a candidate or proposed in the near future, will receive assurances that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future. These assurances will be provided in the property owner's Candidate Conservation Agreement with Assurances and in an associated Enhancement of Survival permit issued under section 10(a)(1)(A) of the ESA.

*Habitat Conservation Plans:* The development of a conservation plan (sometimes referred to as a Habitat Conservation Plan (HCP)) is a required element of an application for an incidental take permit, and involves long-term conservation commitments that may "run with the land," or obligate a landowner for the life of the permit. In negotiating such commitments, it is recognized that a succession of owners may purchase or sell the affected property during the term of the permit. Species covered by the conservation measures should not be affected by the change in ownership if the successive owners agree to be bound by the terms of the permit. Property owners are willing to undertake these commitments if they know they can transfer their incidental take authorization (and HCP obligations) to the purchaser. Absent the ability to transfer the permit and thereby obtain long-term assurances of certainty, some landowners may be unwilling to enter into long-term commitments. For many HCPs, both FWS and NMFS issue an incidental take permit. It is confusing and inconsistent if FWS' permits are transferable and NMFS' permits are not.

This proposed rule would alleviate the constraints on permit transferability to allow those who have permits associated with HCPs, Safe Harbor Agreements with Assurances and Candidate Conservation Agreements with Assurances the flexibility to transfer permits to qualified purchasers, and eliminates inconsistency between the regulations of the two agencies administering the ESA.

The proposed rule would allow transfer of these permits only so long as the successor or transferee owners meet the general qualifications for holding the permits and agree to the terms of the HCP, Safe Harbor Agreement with Assurances or Candidate Conservation Agreement with Assurances.

#### Description/Overview of the Revisions to Permit Regulations

Section 222.305(a) would be revised to allow transferability of permits issued under 50 CFR parts 222, 223, and 224 where NMFS determines the transferee has given adequate written assurance (signing of a contract) that they can and will fulfill the obligations of the permit.

This proposed rule does not apply to scientific research permits issued under ESA section 10(a)(1)(A). It applies only to incidental take permits, and enhancement permits issued under section 10(a)(1)(A) in association with a Safe Harbor Agreement with Assurances or Candidate Conservation Agreement with Assurances. Further, any permits

issued by NMFS for scientific research and enhancement for ESA-listed species, including marine mammals (50 CFR 222.308 (b),(c), 216.41) are not transferable (50 CFR 216.35), and this proposed rule will not affect this restriction or the regulations at 50 CFR 216.41 and 222.308(b)(c). These permits are not transferable because they are part of scientific research permits issued under section 10(a)(1)(A), and require that the holder/principal investigator be qualified to conduct the research and enhancement activities described in the original application and permit.

#### Public Comments Solicited

NMFS requests comments on any aspect of this proposed rule. NMFS particularly would like to hear from individuals who have experience with FWS' rule for transferring incidental take permits.

#### Classification

NMFS has determined that this proposed rule is consistent with the ESA and with other applicable laws.

#### National Environmental Policy Act

Since the changes in this proposed rule do not individually or cumulatively have a significant impact on the quality of the human environment, this proposed rule has been determined to be categorically excluded under the National Environmental Policy Act.

#### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

#### Regulatory Flexibility Act

This proposed rule will establish the process for transfers of incidental take permits when a new party acquires land subject to an existing, ongoing HCP, Safe Harbor Agreement with Assurances or Candidate Conservation Agreement with Assurances. It will reduce the costs to both the transferees and the agency. Currently, the transfer of an incidental take permit or an enhancement permit to a new landowner can be accomplished only by the new landowner submitting an application for its own permit (using the pre-existing conservation plan or agreement developed by the prior landowner). That permit would then be processed by NMFS and new documents prepared to issue a new permit would be accompanied by a simultaneous surrender of the permit held by the prior landowner. Under this system, the time required for processing a new permit will always result in a lapse in coverage between the date of the acquisition of

the land by the new owner and the issuance of the new permit. Under this proposed rule, the transfer process would be streamlined and paperwork reduced. As long as the new landowner is appropriately qualified, the permit can be transferred by a simple assignment and assumption agreement between NMFS and the new landowner. NMFS would save time and document preparation and processing expenses, as would the landowner involved. This proposed rule would decrease the costs of permit transfers on both large and small businesses alike. Thus, the economic effects of the proposed rule will be positive.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, since the rule would reduce cost associated with land transfers.

#### *Paperwork Reduction Act*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. This requirement has been submitted to OMB for approval. Public reporting burden for a permit transfer is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Public comment is sought regarding:* whether this proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES** above), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

#### *Executive Order 13132—Federalism*

Executive Order 13132 requires that agencies take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law or impose substantial direct compliance cost on state and local governments (unless required by statute). Neither of these circumstances is applicable to this proposed rule.

#### **List of Subjects in 50 CFR Part 222**

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: December 14, 2001.

**William T. Hogarth,**  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 222 is proposed to be amended as follows:

#### **PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES**

1. The authority citation for part 222 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et. seq.*; 16 U.S.C. 742a *et. seq.*; 31 U.S.C. 9701. Section 222.403 also issued under 16 U.S.C. 1361 *et. seq.*

2. In § 222.305, paragraph (a)(1) is revised and paragraph (a)(3) is added to read as follows:

#### **§ 222.305 Rights of succession and transfer of permits.**

(a)(1) Except as otherwise provided in this section, permits issued pursuant to parts 222, 223, and 224 of this chapter are not transferable or assignable. In the event that a permit authorizes certain business activities in connection with a business or commercial enterprise, which is then subject to any subsequent lease, sale or transfer, the successor to that enterprise must obtain a permit prior to continuing the permitted activity, with the exceptions provided in paragraphs (a)(2) and (a)(3) of this section.

\* \* \* \* \*

(3) Permits issued under § 222.307 or for an enhancement permit issued under § 222.308, as part of a Safe Harbor Agreement with Assurances or Candidate Conservation Agreement with Assurances, may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided NMFS determines that:

(i) The proposed transferee meets all of the qualifications under parts 222, 223, or 224 (as applicable) for holding a permit;

(ii) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or other agreement or plan associated with the permit and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(iii) The proposed transferee has provided such other information as NMFS determines is relevant to process the transfer.

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