

By letter dated February 26, 2002, WVDEP sent us a status report regarding the required program amendments codified at 30 CFR 948.16

(Administrative Record Number WV-1276). The report included 14 attachments, and outlined actions taken in an attempt to satisfy the required program amendments. The actions include proposed policies, rules and laws, form changes, and referrals to legal staff. In addition, WVDEP stated that law and rule changes that would satisfy some of the required amendments would be proposed during the 2002 regular legislative session, and that none of the proposed revisions would be implemented without OSM approval. In the end, the State failed to pass legislation on the required program amendments codified at 30 CFR 948.16(nnn) concerning the use of an unjust hardship criterion in support of granting temporary relief of an order, (ooo) concerning economic feasibility related to appeals to the Environmental Quality Board concerning the WVSCMRA, and (oooo) concerning coal removal incidental to development.

By letter dated March 8, 2002, WVDEP sent us revisions to two of the attachments it had sent us in its February 26 letter (Administrative Record Number WV-1280). The March 8, 2002, letter also included one new attachment intended to address the required amendment at 30 CFR 948.16(sss) relating to water supply replacement waivers.

In the March 25, 2002, **Federal Register** (67 FR 13577-13585), we reopened the comment period to provide the public an opportunity to review and comment on the topics discussed in the January 15, 2002, meeting; WVDEP's February 26 and March 8, 2002, submittals; and related information that we provided to WVDEP (Administrative Record Number WV-1285). The comment period closed on April 9, 2002.

In our May 1, 2002, decision (67 FR 21904) on these amendments, we removed all of the required amendments, including the required amendments at 30 CFR 948.16(nnn), (ooo), and (oooo) where the State failed to take legislative action, and the required amendment at 30 CFR 948.16(sss) where the State committed to implementing its program consistent with the Federal law and regulations despite the existing State language being inconsistent with Federal provisions.

#### Need for the Correction

On January 9, 2003, the United States District Court for the Southern District of West Virginia in *West Virginia*

*Highlands Conservancy v. Norton*, Civil Action No. 2:00-1062 (S.D. W.Va. Jan. 9, 2003), vacated OSM's decisions to remove the required program amendments codified in the Federal regulations at 30 CFR 948.16(nnn), (ooo), (sss), and (oooo).

To implement this decision, we are amending the Federal regulations at 30 CFR 948.16 to reinstate the required program amendments at (nnn), (ooo), (sss), and (oooo) that we deleted in the May 1, 2002, **Federal Register**. We are requiring that within 60 days of publication of this notice, West Virginia must submit either proposed amendments or descriptions of amendments together with timetables for enactment that will satisfy these required amendments.

#### Administrative Procedure Act

The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because, consistent with the Court's opinion, this rule merely reinstates required program amendments that the Court remanded to OSM for reconsideration. Therefore, opportunity for prior comment is unnecessary and we are issuing this regulation as a final rule.

In addition, under 5 U.S.C. 553(d)(3), we find good cause for dispensing with the 30-day delay in the effective date of this final rule because we are merely restoring required program amendments that the court remanded to OSM for reconsideration.

Dated: January 28, 2003.

**Brent Wahlquist,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR Part 948 is amended as set forth below:

#### PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 948.16 is amended by adding paragraphs (nnn), (ooo), (sss), and (oooo) to read as follows:

#### § 948.16 Required regulatory program amendments.

\* \* \* \* \*

(nnn) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise § 22B-1-7(d) to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3, of the West Virginia Code.

(ooo) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise § 22B-1-7(h) by removing reference to Article 3, Chapter 22.

\* \* \* \* \*

(sss) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise CSR § 38-2-14.5(h) and § 22-3-24(b) to clarify that the replacement of water supply can only be waived under the conditions set forth in the definition of "Replacement of water supply," paragraph (b), at 30 CFR 701.5.

\* \* \* \* \*

(oooo) By May 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR § 38-2-23.

\* \* \* \* \*

[FR Doc. 03-4969 Filed 3-3-03; 8:45 am]

BILLING CODE 4310-05-P

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 2 and 90

[WT Docket No. 01-90; ET Docket No. 98-95; RM-9096; FCC 02-302]

#### Regarding Dedicated Short-Range Communication Services in the 5.850-5.925 GHz Band (5.9 GHz Band)

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; dismissal.

**SUMMARY:** In this document the Federal Communications Commission incorporates into the licensing and service rules for the 5.9 GHz band, issues raised in two petitions for reconsideration filed in response to the Allocation Report and Order because the issues raised in them address issues concerns the licensing and services rules. As a consequence, the Commission dismisses the two petitions as moot and incorporates them into the

docket to the licensing and service rules.

**ADDRESSES:** Federal Communications Commission 445 12th Street, SW., TW-A325, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:**

Nancy M. Zaczek at (202) 418-7590, Gerardo Mejia at (202) 418-2895 or via e-mail at [nzaczek@fcc.gov](mailto:nzaczek@fcc.gov) or [gmejia@fcc.gov](mailto:gmejia@fcc.gov), or via TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Order*, FCC 02-302, adopted on November 7, 2002, and released on November 15, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365 or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

1. Dismissal of Petitions for Reconsideration. Further, the FCC also seek comment on issues raised by two Petitions for Reconsideration or Clarification of the Allocation Report and Order. PanAmSat sought reconsideration of the FCC's decision that prior coordination between DSRC operations applications and Fixed Satellite Service (FSS) uplinks is unnecessary. Mark IV Industries sought reconsideration or clarification of the power levels and emission mask requirements established in the Allocation Report and Order. The FCC dismisses these two petitions for reconsideration as moot because the FCC is seeking comment on the issues raised through an NPRM which published on January 15, 2003 (68 FR 1999), and, with the benefit of a fuller record, will address those issues in this proceeding, *i.e.*, WT Docket 01-90.

**I. Ordering Clause**

2. The Petitions for Reconsideration or Clarification of the Allocation Report and Order, ET Docket No. 98-95, filed by PanAmSat Corporation and Mark IV Industries Limited, I.V.H.S. Division are dismissed as moot.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. 03-4870 Filed 3-3-03; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[I.D. 022403C]**

**RIN 0648-AQ70**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Charter Vessel and Headboat Permit Moratorium**

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

**ACTION:** Notice of availability of a corrected amendment; request for comments.

**SUMMARY:** NMFS has submitted an amendment to correct Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico (Amendment 14) and South Atlantic and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20) for review, approval, and implementation by the agency.

Specifically, this amendment will eliminate one eligibility criterion in the final rule implementing Amendment 14 and Amendment 20, which states that the charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following: An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002). The corrected amendment also reopens the application process for obtaining Gulf charter vessel/headboat moratorium permits and extends the applicable deadlines; extends the expiration dates of valid or renewable open access permits for these fisheries; and extends the expiration date of the moratorium to account for the delay in implementation.

**DATES:** Written comments must be received on or before May 5, 2003.

**ADDRESSES:** Comments must be mailed to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the corrected amendment, which includes an environmental

assessment (EA), a regulatory impact review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727-570-5305; fax: 727-570-5583.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, 727-570-5305; fax 727-570-5583; e-mail: [Phil.Steele@noaa.gov](mailto:Phil.Steele@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any fishery management plan or plan amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or plan amendment, immediately publish a document in the **Federal Register** stating that the plan or plan amendment is available for public review and comment.

NMFS promulgated the charter moratorium regulations (67 FR 43558, June 28, 2002) to implement Amendment 14 and Amendment 20. However, after reviewing the administrative record, NMFS determined that the amendments contained an error that did not correctly reflect the actions approved by the Gulf of Mexico Fishery Management Council (Council). Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive charter vessel/headboat (for-hire) permits under the moratorium approved by the Council would be able to receive permits under the promulgated regulations. In order to ensure that no qualified participants in the fishery are wrongfully excluded under the moratorium, due to an error in the amendments, and to fully comply with Magnuson-Stevens Act requirements, NMFS prepared this corrected amendment to address this error and, as such, to reflect the actions approved by the Council. Specifically, this corrected amendment will eliminate one eligibility criterion in the final rule which states that the charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish is limited to the following: An owner of a vessel that had a valid Gulf charter vessel/headboat permit on the effective date of the final rule (July 29, 2002). The corrected amendment also reopens the application process for obtaining Gulf charter vessel/headboat moratorium permits and extends the applicable