

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

[DA 02-3154, MM Docket No. 00-180, RM-9956]

**Digital Television Broadcast Service; Fort Myers, FL****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Fort Myers Broadcasting Company, substitutes DTV channel 9 for DTV channel 53 at Fort Myers. See 65 FR 59389, October 5, 2000. DTV channel 9 can be allotted to Fort Myers, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 26-48-01 N. and 81-45-47 W., with a power of 20, HAAT of 451 meters and with a DTV service population of 1134 thousand. With this action, this proceeding is terminated.

**DATES:** Effective January 6, 2003.**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00-180, adopted November 14, 2002, and released November 20, 2002. 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. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

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

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

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

**Authority:** 47 U.S.C. 154, 303, 334 and 336.**§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under

Florida, is amended by removing DTV channel 53 and adding DTV channel 9 at Fort Myers.

Federal Communications Commission.

**Barbara A. Kreisman,**  
*Chief, Video Division, Media Bureau.*

[FR Doc. 02-29686 Filed 11-20-02; 8:45 am]

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

[DA 02-2815; MM Docket Nos. 01-263, 01-264, 01-265, 01-266, 01-267; RM Nos. 10281, 10282, 10283, 10284, 10285]

**Radio Broadcasting Services; Arkadelphia, Arkansas; Aspermont, Texas; Chino Valley, Arizona; Cotulla, Texas; Junction, TX****AGENCY:** Federal Communications Commission.**ACTION:** Final rule.

**SUMMARY:** In this document, the Audio Division allots new channels to Arkadelphia, AR, Aspermont, TX, Chino Valley, AZ, Cotulla, TX and Junction, TX in a multiple docket Report and Order. At the request of Maurice Salsa, Channel 292A is allotted at Junction, Texas, as the community's second commercial FM transmission service. Channel 292A is allotted at Junction without a site restriction at coordinates 30-29-21 NL and 99-46-18 WL. Mexican concurrence has been received for this allotment. At the request of Charles Crawford, Channel 223A is allotted at Chino Valley, Arizona as the community's second commercial FM transmission service. Channel 223A is allotted at Chino Valley at a site 6 kilometers (3.7 miles) west of the community at coordinates 34-46-10 NL and 112-31-03 WL. Mexican concurrence has been requested for this allotment. At the request of Charles Crawford, Channel 228A is allotted at Arkadelphia, Arkansas, as the community's second commercial FM transmission service. Channel 228A is allotted at Arkadelphia with a site restriction of 11.5 kilometers (7.2 miles) west of the community at coordinates 34-07-10 NL and 93-10-43 WL. See **SUPPLEMENTARY INFORMATION.**

**DATES:** Effective December 9, 2002.**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Maurice Salsa, 5616 Evergreen Valley Drive, Kingwood,

TX 77345 (petitioner for Junction, TX); Charles Crawford, 4553 Bordeaux Ave., Dallas, TX 75205 (petitioner for Chino Valley, AZ and Arkadelphia, AR); Jeraldine Anderson, 1702 Cypress Drive, Irving, TX 75061 (petitioner for Aspermont, TX and Cotulla, TX).

**FOR FURTHER INFORMATION CONTACT:**

Victoria M. McCauley, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket Nos. 01-263, 01-264, 01-265, 01-266, and 01-267, adopted October 16, 2002, and released October 25, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. 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).

At the request of Jeraldine Anderson, Channel 226C2 is allotted at Aspermont, Texas, as the community's first local aural transmission service. Channel 226C2 is allotted at Aspermont with a site restriction of 6.7 kilometers (4.1 miles) at coordinates 33-11-27 NL and 100-14-50 WL.

At the request of Jeraldine Anderson, Channel 289A is allotted at Cotulla, Texas, as the community's second local aural service. Channel 289A is allotted at Cotulla with a site restriction of 5.0 kilometers (3.1 miles) southwest of the community at coordinates 28-24-57 NL and 99-16-49 WL. Mexican concurrence has been received for this allotment.

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.

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

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—RADIO BROADCAST SERVICES**

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

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

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 223A at Chino Valley.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 228A at Arkadelphia.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Aspermont, Channel 226C2, Channel 289A at Cotulla, and Channel 292A at Junction.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 02–29579 Filed 11–20–02; 8:45 am]

**BILLING CODE 6712–01–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 021107268–2268–01; I.D. 102402A]

**RIN 0648–AQ54**

**Taking and Importing Marine Mammals; Taking of Marine Mammals Incidental to Power Plant Operations**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is amending the regulations governing the unintentional take of small numbers of seals incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH. The purpose of this amendment is to replace the power plant's official owner/operator's name with a generic owner/operator designation. The technical amendment will also remove mitigation measures that are no longer applicable to the owner/operator of the Seabrook Station nuclear power plant.

**DATES:** Effective November 21, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, NMFS, 301–713–2055, ext 128, or David Gouveia, Northeast Regional Office, NMFS, 978–281–9280.

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

A final rule authorizing the unintentional take of small numbers of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) incidental to the routine operation of the Seabrook Station nuclear power plant was issued for the North Atlantic Energy Services Corporation (NAESC) on May 25, 1999 (64 FR 28114). That final rule put in place the regulations found at § 216.132, which state that under a Letter of Authorization (LOA) the NAESC, specifically, may incidentally but not intentionally, take marine mammals in the course of operating the station's intake cooling water system while in possession of a valid LOA issued by NMFS. The regulations also require that the LOA holder report, within 6 months from the issuance of a final rule, to the Administrator, Northeast Region, NMFS on possible mitigation measures effecting the least practicable adverse impacts on seals.

**Need for Correction**

Subsequent to the publication of the final rule, a tentative sale agreement was reached between the NAESC and the FPL Energy Seabrook, LLC, for the Seabrook Station nuclear power plant. The closing date for the sale of the Seabrook Station nuclear power plant is tentatively scheduled for the fall of 2002. As noted above, the regulations authorizing the unintentional take of seals specifically names the NAESC as the owner. Since the sale of the power plant is imminent, this action will change the regulatory language regarding the power plant ownership to a generic owner/operator designation.

In addition, the final rule contains a reporting requirement and a schedule for implementation of mitigation measures, which are no longer applicable to the owner/operator of the Seabrook Station nuclear power plant. Specifically, § 216.134 requires NAESC to issue a report to NMFS by January 2000 regarding possible mitigation measures to address any adverse impacts on seals. The report was generated and the recommended mitigation measure (installation of seal deterrent barriers on all three cooling water system intakes) was completed prior to January 2000; therefore, this amendment will remove this reporting requirement and implementation schedule since NAESC has already complied with this requirement. Consequently, this final rule corrects the regulatory language to reflect the fact

that this reporting requirement and schedule are no longer applicable, by reserving § 216.134 and removing cross-references to that section in § 216.135(i) and § 216.136(a)(3).

**Classification**

The Assistant Administrator for Fisheries (AA) finds that providing prior notice and opportunity to comment on this final rule is unnecessary, because the rule merely removes the specific name of the power plant's owner/operator, inserts a generic designation in its place, removes the requirement that has already been complied with and has no future effect, and removes cross-references to that former section. This action does not change the number of regulated entities, nor does it create new requirements or relieve any current restrictions. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive requirements for prior notice and opportunity for comment. Also, because this final rule does not impose any new requirements on entities subject to these regulations, it is not a substantive rule subject to a 30-day delay in effective date under 5 U.S.C. 553(d).

This final rule is exempt from review under Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Dated: November 16, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

**PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.132 is revised to read as follows:

**§ 216.132 Permissible methods of taking.**

Under a Letter of Authorization issued to the owner/operator of Seabrook Station nuclear power plant, the owner/operator may incidentally but not intentionally, take marine mammals specified in § 216.130 in the course of operating the station's intake cooling water system.