

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. From November 1, 2006, to April 1, 2007, in § 117.667, suspend paragraph (a) and add paragraphs (d) and (e) to read as follows:

§ 117.667 St. Croix River.

* * * * *

(d) The draws of the Burlington Northern Santa Fe Railroad Bridge, Mile 0.2, and the Hudson Railroad Bridge, Mile 17.3, shall operate as follows:

(1) From April 1 to October 31:

(i) 8 a.m. to midnight, the draws shall open on signal;

(ii) Midnight to 8 a.m., the draws shall open on signal if notification is made prior to 11 p.m.,

(2) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(e) The draw of the Prescott Highway Bridge, Mile 0.3, need not open for river traffic and may be maintained in the closed-to-navigation position from November 1, 2006 to April 1, 2007.

Dated: October 23, 2006.

J.R. Whitehead,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 04-186 and 02-380; FCC 06-156]

Unlicensed Operation in the TV Broadcast Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allows low power devices to operate on unused television channels in locations where such operations will not result in harmful interference to TV and other authorized services. The Commission believes that this plan will provide for more efficient and effective use of the TV spectrum and will significantly benefit the public by allowing the development of new and innovative types of devices and services for businesses and consumers, without disrupting television and other authorized services using the TV bands.

DATES: Effective December 18, 2006.

FOR FURTHER INFORMATION CONTACT:

Hugh Van Tuyl, Office of Engineering and Technology, (202) 418-7506, e-mail Hugh.VanTuyl@fcc.gov, or Alan Stillwell, Office of Engineering and Technology (202) 418-2925, e-mail Alan.Stillwell@fcc.gov, TTY (202) 418-2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order*, ET Docket No. 04-186 and ET Docket No. 02-380, FCC 06-156, adopted October 12, 2006, and released October 18, 2006. The full text of this document is available 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.

Summary of the Report and Order

1. On May 13, 2004, the Commission adopted a *Notice of Proposed Rule Making* (NPRM), 69 FR 34103, June 18, 2004, in this proceeding in which it proposed to allow unlicensed operation in the TV bands at locations where frequencies are not in use by licensed services. To ensure that no harmful interference to TV stations and other authorized users of the spectrum will occur, the Commission proposed to define when a TV channel is unused and to require unlicensed devices to incorporate "smart radio" features to identify the unused TV channels in the area where they are located. For the purpose of establishing a plan for minimizing interference, the Commission proposed to classify unlicensed broadband devices to be used in the TV bands into two general functional categories. The first category would consist of lower power "personal/portable" unlicensed devices, such as Wi-Fi like cards in laptop computers or wireless in-home local area networks (LANs). The second category would consist of higher power "fixed/access" unlicensed devices that are generally operated from a fixed location and may be used to provide a commercial service such as wireless broadband Internet access. The Commission proposed that fixed/access devices incorporate a geo-location method such as a Global Positioning System (GPS) receiver or be

professionally installed, and that they must access a database to identify vacant channels at their location. It proposed to require that personal/portable devices operate only when they receive a control signal from a source such as an FM or TV station that identifies the vacant TV channels in that particular area. The Commission also sought comment on the use of spectrum sensing to identify vacant TV channels, but did not propose any specific technical criteria for spectrum sensing.

2. In the *First Report and Order*, the Commission takes a number of important first steps towards allowing the introduction of new low power devices in the broadcast television spectrum (TV bands) on channels/frequencies that are not being used for authorized services (hereinafter referred to as "TV band devices"). The goal in this proceeding is to allow such devices to operate on unused television channels in locations where such operations will not result in harmful interference to TV and other authorized services. The Commission believes that this plan will provide for more efficient and effective use of the TV spectrum and will significantly benefit the public by allowing the development of new and innovative types of devices and services for businesses and consumers, without disrupting television and other authorized services using the TV bands. Because transmissions in the TV band are subject to less propagation attenuation than transmissions in other bands where lower power operations are permitted (such as unlicensed operations in the 2.4 GHz band), operations in the TV bands can benefit a wide range of service providers and consumers by improving the service range of wireless operations, thereby allowing operators to reach new customers. While there will be significant benefits to the public from its actions, the Commission recognizes that it must balance these benefits with the need to protect authorized services in the TV bands from harmful interference.

3. The Commission also recognizes the importance of conducting tests to ensure that whatever standards are ultimately adopted for TV band devices will protect incumbent radio services from harmful interference. Given the complex and novel sharing issues presented here, it intends to conduct several types of testing, and also encourages interested parties to conduct tests and submit their results into the record of this proceeding. Interested parties that conduct their own tests for the record should provide a test plan that explains in detail the assumptions used and the reasons supporting them.

4. In order to provide sufficient time for the Commission and industry to develop appropriate technical standards for TV band products as well as lead time for industry to design and produce new products, it intends to adopt a Second Report and Order specifying final requirements for devices in the TV bands in the fall of 2007. This will allow the Commission's Laboratory to begin accepting applications for certification of these devices in the TV bands by late 2007. Certification will be granted if the application, upon review, is found to comply with the new technical rules and will allow the manufacture and shipment of products to distribution points. These devices will not be available for sale at retail until after the DTV transition ends on February 17, 2009.

5. The Commission is convinced based on the record in this proceeding that it can adopt rules to allow fixed low power operation on unused spectrum in the TV bands without causing harmful interference to authorized services. There are several factors supporting this conclusion. First, upon completion of the DTV transition, there will be significant unused TV spectrum available in many areas in the country, either because of the separations required between authorized stations to avoid interference or because available TV channels have not been assigned and other services are not using vacant channels. Also, based on the Commission's experience in developing rules for U-NII devices, it believes that it is reasonable to expect that existing technology, such as that used for spectrum sensing, can be adapted to allow devices to identify unused spectrum in a given geographic area and thus allow sharing of the TV bands. Further, the Commission notes that the IEEE 802.22 working group with broad based support is in the process of developing a standard to enable fixed devices to successfully share spectrum with authorized services in the TV bands. Finally, these devices will operate at relatively low power levels and, it is easier to protect incumbent operations in the TV bands, including wireless microphones, when devices are limited to fixed operation.

6. The Commission will exclude low power devices from operating on TV channels 37 and 52–69 to prevent interference to radio astronomy operations and the WMTS on channel 37. Also, channels 52–69 have been reallocated for services other than broadcast television and will no longer be part of the TV bands after the transition. The Commission will also exclude personal/portable TV band

devices from operating on channels 14–20 in all areas of the country to prevent possible interference to public safety and other operations in the PLMRS/CMRS. Because personal/portable devices are easily transported and used anywhere, the Commission believes that the most prudent approach to protecting public safety and other PLMRS/CMRS operations on channels 14–20 is to prohibit personal/portable low power TV band devices from operating on those channels in all areas of the country.

7. *Implementation Date.* The Commission will allow low power TV band devices to be marketed immediately after the end of the DTV transition on February 17, 2009, but not before. The Commission believes that this schedule is appropriate for several reasons. First, there are fewer vacant channels available during the DTV transition because most TV stations are currently broadcasting both an analog and a digital signal. There are thus about twice as many TV channels in use now as there will be after the end of the transition when full service analog broadcasting ceases. Also, the TV band is in a state of flux as the Commission develops the final DTV table of allotments and some TV stations still must change channels. In this regard, there will be adjustments in DTV channels that affect the availability of channels in individual markets throughout the remainder of the transition. The Commission also notes the concerns of a number of parties about possible disruption to the DTV transition if unlicensed devices are permitted to operate in the TV bands prior to the end of the DTV transition. The Commission believes that the risk of creating uncertainty that would impede the DTV transition outweighs the benefit of allowing operation of low power devices at a slightly earlier date, especially given that some proponents of low power devices have indicated they would need up to 21 months after the adoption of final technical rules to bring such devices to market. For these reasons, the Commission will allow TV band devices on the market only after the end of DTV transition.

Final Regulatory Flexibility Certification

8. The Regulatory Flexibility Act of 1980, as amended (RFA)¹ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings,

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”² The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴ A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵

9. In the *First Report and Order*, the Commission decides to allow low power fixed devices to operate on unused spectrum on TV channels 5–13, and 21–51, excluding channel 37. Operation will not be permitted prior to further action by the Commission to develop technical rules that allow devices to operate on those channels without causing interference. Because the Report and Order does not adopt any rules or other compliance requirements, the Commission certifies that the actions in the *First Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *First Report and Order* including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the *First Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

Ordering Clauses

10. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), 303(r) and 307, this First Report and Order and Further Notice of Proposed Rule Making *is hereby adopted*.

² 5 U.S.C. 605(b).

³ 5 U.S.C. 601(6).

⁴ 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, 15 U.S.C. S 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.”

⁵ Small Business Act, 15 U.S.C. S 632.

11. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *First Report and Order and Further Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060322083-6288-03; I.D. 032006C]

RIN 0648-AU04

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Recreational Grouper Fishery Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the seasonal closure provisions of a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule establishes a seasonal closure of the recreational fishery for gag, red grouper, and black grouper in or from the Gulf exclusive economic zone (EEZ). The intended effect of this final rule is to help maintain recreational landings at levels consistent with the red grouper rebuilding plan while minimizing potential shift of fishing effort to associated grouper species.

DATES: This final rule is effective December 18, 2006.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA), are available from Andy Strelcheck, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727-824-5305; fax 727-824-5308; e-mail Andy.Strelcheck@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Andy Strelcheck, telephone 727-824-5305; fax 727-824-5308; e-mail Andy.Strelcheck@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure, the Council recommended and NMFS published a proposed rule to implement a regulatory amendment that included a recreational bag limit for Gulf red grouper of one fish per person per day, a zero grouper bag limit for captain and crew of a vessel operating as a charter or headboat, and a February 15 to March 15 seasonal closure of the recreational fishery for gag, red grouper, and black grouper. NMFS requested public comment on the proposed rule through May 1, 2006 (71 FR 16275, March 31, 2006). However, in response to public comment expressing concern about the proposed seasonal closure and because a pertinent, new gag assessment was pending, NMFS separated the proposed management measures into two final rules--one addressing the bag limit provisions, and one addressing the seasonal closure. The bag limit provisions were published in a final rule (71 FR 34534, June 15, 2006) which became effective July 17, 2006. Implementation of the final rule containing the seasonal closure was deferred pending the results of the new gag assessment.

This final rule establishes a February 15 to March 15 seasonal closure of the recreational fishery for gag, red grouper, and black grouper. The seasonal closure will help restrict recreational red grouper landings to levels specified in the rebuilding plan and will prevent or minimize increases in fishing mortality on gag and black grouper that could result from a shift in fishing effort due to the more restrictive red grouper bag limit. A new stock assessment for gag completed in July 2006 indicates the Gulf of Mexico gag stock is undergoing overfishing. Thus, this seasonal closure also contributes to necessary reductions in fishing mortality for gag. The closure is consistent with the existing seasonal closure of the commercial fishery for gag, red grouper, and black grouper and would make the closure more equitable for both user groups and should help improve compliance and enforceability. In addition, the closure will provide further protection for these species

because it occurs during important spawning periods for all three species. Black grouper are included in the seasonal closure, in part, because they are similar in appearance to gag and, therefore, difficult for fisherman to distinguish from gag. If black grouper were not included in the closure, compliance with the closure, and therefore the closure's effectiveness would be compromised. For all of these reasons, NMFS believes the seasonal recreational closure for gag, red grouper, and black grouper is warranted.

Additional rationale for the measures in the regulatory amendment is provided in the preamble to the proposed rule and is not repeated here. A summary of public comments and NMFS' responses on the bag limit provisions of the proposed rule are provided in the final rule published June 15, 2006 (71 FR 34534). A summary of public comments received by NMFS on the seasonal closure provisions of the proposed rule and NMFS' responses are provided below. Comments and NMFS' responses to those comments regarding the economic impacts of the closed season are provided under the Classification section of this document.

Comments and Responses

Comment 1: Eight commenters opposed the February 15 to March 15 recreational seasonal closure and believed the closure period would severely impact the livelihood of charter boat captains, crew, and their families.

Response: A 34- to 45-percent reduction is needed to return recreational red grouper landings to levels specified in the rebuilding plan. The February 15 to March 15 closure, when combined with bag limit provisions published in a final rule (71 FR 34534) on June 15, 2006, is estimated to reduce red grouper landings by 34 percent and gag and black grouper landings by 7 percent. The closure includes important spawning seasons for all three species and would overlap the 1-month commercial fishery grouper closure. Prohibiting harvest of all three species will prevent effort shifting from occurring and reduce fishing mortality. Relative to the other closure alternatives considered by the Council, this alternative would result in the fewest cancelled trips and forgone revenues of the closure alternatives considered by the Council.

Comment 2: One commenter suggested creating a closed season of September 15 to October 15 instead of February 15 to March 15.

Response: The seasonal closure was proposed for February 15 to March 15