

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 17, 2006.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 06-3028 Filed 3-28-06; 8:45 am]

**BILLING CODE 6560-50-P**

---

**FEDERAL COMMUNICATIONS COMMISSION**
**47 CFR Part 90**

[WT Docket No. 06-49; FCC 06-24]

**Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) undertakes a reexamination of the Commission's regulations governing the licensing and use of frequencies in the 904-909.75 and 919.75-928 MHz portions of the 902-928 MHz band that are used for the provision of multilateration Location and Monitoring Service (M-LMS band). The reexamination of the M-LMS band is being conducted in order to consider whether M-LMS can be afforded a greater opportunity to provide services while ensuring continued access for other licensed and unlicensed uses that share this band. The Commission believes it is in the public interest to evaluate whether it is possible to revise the rules in a way that would promote more efficient and effective use of this spectrum.

**DATES:** Comments due on or before May 30, 2006. Reply comments are due on or before June 30, 2006.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 06-49, 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: [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- Mail: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

- Hand Delivery/Courier: 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- Accessible Formats: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) for filing comments either by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.fcc.gov/cgb/ecfs> including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

Michael Rowan, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6315, Washington, DC 20554. Phone: (202) 418-1883.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 06-49 released March 7, 2006. The complete text of the *NPRM* is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-09A257, Washington, DC 20554. The *NPRM* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-09B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number, FCC 06-24. The *NPRM* is also available on the Internet at the Commission's Web site through its Electronic Document Management System (EDocs): [http://hraunfoss.fcc.gov/edocs\\_public/SilverStream/Pages/edocs.html](http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html).

*Initial Paperwork Reduction Act of 1995 Analysis:* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002,

Public Law 107-198, see 44 U.S.C. 3506(c)(4).

**I. Introduction**

1. This rulemaking proceeding considers possible measures that could introduce greater flexibility for licensees in the multilateration Location and Monitoring Service (M-LMS) for the purpose of enabling greater responsiveness to changing market conditions, and more efficient and effective use of the M-LMS Band. M-LMS licensees provide service in the 904-909.75 and 919.75-928 MHz portions of the 902-928 MHz band. Multilateration systems track and locate objects over a wide geographic area (e.g., tracking a bus fleet) by measuring the difference in time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points, or from a number of fixed points to the unit to be located. This 14 megahertz of spectrum has been shared by a variety of part 15 devices and, since 1995, has been licensed for specified uses by M-LMS defined in part 90 of the Commission's rules. While the *NPRM* focuses on part 15 and M-LMS operations in the 904-909.75 and 919.75-928 MHz frequency ranges, the Commission acknowledges the many other important uses of these frequencies, including amateur use, and invites such interested parties to comment on the issues raised in the *NPRM*.

2. Although the proceeding originates partly in response to a 2002 Petition for Rulemaking, the Commission initiates this proceeding to evaluate the ability of the part 90 M-LMS rules to afford licensed service providers greater flexibility to respond to changing market conditions. On April 10, 2002, the Wireless Telecommunications Bureau (Bureau) issued a public notice seeking comment on the Petition under RM No. 10403. The Bureau subsequently extended the comment cycle on the Petition. Given the length of time that has passed since the Bureau issued its Public Notice, the Commission is terminating RM No. 10403 and invites interested parties to submit new and/or updated comments and reply comments in WT Docket No. 06-49.

3. While the Commission considers the advantages and disadvantages of rule changes that could facilitate higher-valued licensed uses of the spectrum in the M-LMS Band, the Commission is mindful that this band is shared by a mixture of licensed services (both federal and non-federal), amateur radio operators, and numerous unlicensed devices authorized under part 15 of the

Commission's rules. The Commission makes clear at the outset of this proceeding that the Commission does not seek to alter the rules that govern the relationship among the various federal and non-federal licensed services in this band. Moreover, the Commission recognizes the importance of maintaining the existing accessibility of the band for unlicensed devices, which has led to a proliferation of important public, private, and consumer applications, and for amateur operators. Under 47 CFR 90.361 of the Commission's rules, the Commission has established a "safe harbor" rule providing that part 15 and amateur operations that comply with certain technical parameters will not be considered to be causing harmful interference to M-LMS systems. The safe harbor rule defines technical parameters involving antenna location, gain, and height as well as transmitter power. Given the public interest benefits associated with these uses, the Commission tentatively concludes to retain this safe harbor.

4. The Commission's goal in the proceeding is to consider whether greater opportunity can be afforded M-LMS licensees to provide services while ensuring continued access for other licensed and unlicensed uses that share this band. This spectrum has desirable propagation characteristics for mobile and other applications offered by both licensed service providers and certain unlicensed users. The Commission therefore believes it is in the public interest to evaluate whether it is possible to revise the rules in a way that would promote more efficient and effective use of this spectrum. The Commission also views this as an opportunity to consider the spectrum access needs of multiple users and to evaluate any proposals that may improve access and use of the band by both M-LMS and part 15 operations.

## II. Background

5. In 1995, the Commission issued a *Report and Order*, 60 FR 15248-02, March 23, 1995, which established the Location and Monitoring Service (LMS) as a new radio service to be licensed in the 902-928 MHz spectrum band. This band is shared by a variety of users under a hierarchy of spectrum usage rights. Specifically, this band is allocated on a primary basis to federal radiolocation systems and Industrial, Scientific, and Medical (ISM) equipment. Federal fixed and mobile services are allocated on a secondary basis to federal radiolocation systems and ISM equipment. LMS licensees are allocated on a secondary basis to federal

users and ISM devices and may not cause interference to and must tolerate interference from these users and devices. Amateur radio operations are allocated on a secondary basis to LMS. Finally, unlicensed devices are authorized under part 15 to use the 902-928 MHz band, but such devices are not afforded interference protection rights and may not cause harmful interference to LMS licensees, amateur operations, or other licensed systems. These unlicensed part 15 devices, which number in the millions, use this spectrum for a variety of purposes, including remote meter reading, utility load management, cordless telephones, wireless local area networks, and other diverse applications.

6. To facilitate sharing of the band by multiple licensed services as well as unlicensed devices, the Commission placed certain limitations on M-LMS operations, including restrictions on the types of services that could be provided, in part to make for less-intensive location-based applications. The Commission anticipated that these M-LMS service restrictions would spur the provision of new vehicle and other location services while also limiting the potential disruption to existing part 15 operations and other users from unrestricted M-LMS system operations. Specifically, the part 90 rules circumscribe the scope of permissible M-LMS service offerings such that licensees may only use non-voice radio techniques to determine the location and status of mobile radio units and may transmit status and instructional messages, either voice or non-voice, only so long as they relate to the location or monitoring functions of the system. In addition, M-LMS licensees are prohibited from using real-time interconnection with the public switched telephone network (PSTN), except for emergency communications sent to or received from a system dispatch point or public safety answering points. The Commission reasoned that these restrictions would ensure that LMS systems are utilized primarily for location service and not as a general messaging or interconnected voice or data service.

7. Apart from restrictions designed to limit the scope and intensity of M-LMS services, and thereby maintain the coexistence of the many varied users of the band, other part 90 provisions also seek to facilitate spectrum sharing by regulating potential interference between M-LMS operations and part 15 devices. Thus, while unlicensed devices must generally avoid harmful interference to licensed services, the Commission adopted a safe harbor rule

for unlicensed devices and amateur operations operating in the band. This rule provides that amateur and part 15 operations conforming to specified technical standards are insulated from claims that such devices cause harmful interference to M-LMS systems. Also, to facilitate coexistence of licensed and unlicensed uses, and in recognition of extensive existing part 15 use of the band, the Commission adopted a rule, 47 CFR 90.361, which requires M-LMS licensees to demonstrate through field tests that their systems do not cause unacceptable levels of interference to part 15 devices. The Commission, however, did not adopt a uniform testing method given the varied technologies, and anticipated that M-LMS licensees and unlicensed users of part 15 devices would collaborate to establish consensus on testing guidelines.

8. Although M-LMS services have not developed as anticipated in the M-LMS Band, users of unlicensed part 15 devices continue to find the 902-928 MHz environment well suited for important applications that benefit consumers. Since adoption of the LMS rules, there has been continued growth in the use of unlicensed devices in this spectrum. Consumers and businesses benefit greatly from their ability to use unlicensed devices in the 902-928 MHz band, and such devices continue to operate effectively despite the assignment of higher-priority spectrum usage rights to M-LMS and other licensed uses of the band.

## III. Discussion

9. Since 1995, the Commission has sought to provide for, and encourage, the coexistence of both licensed and unlicensed uses in the M-LMS Band. While the unlicensed use of this band has successfully provided consumers with numerous spectrum-based products, the licensed plan for this band has not similarly led to the development of new services. In the *NPRM*, the Commission seeks comment on whether the Commission can take steps to provide M-LMS licensees additional flexibility to respond to changing market conditions while protecting other licensed applications and federal applications and minimizing interference to unlicensed users.

10. The Commission seeks comment on the feasibility of modifying the part 90 LMS rules in ways that would provide greater flexibility to M-LMS licensees while maintaining continued access for unlicensed devices and other users in this band. The current M-LMS rules place significant restrictions on M-LMS operations that were designed

in large measure to limit interference among the variety of users within this band. The Commission inquires whether these restrictions might unnecessarily restrict the use of the band and impede more efficient use of spectrum. The Commission notes that these restrictions were in place at the time the licensees decided to acquire the M-LMS spectrum at auction. A consequence of these restrictions, however, has been that M-LMS licensees may be unnecessarily prevented from providing other services, even as technical advances and market demands change what may be feasible within the interference parameters established for this band. The Commission seeks comment on whether the existing restrictions may be impeding the development of more services of greater value to the public, as well as comment on the feasibility of changing certain rules to provide licensees additional flexibility.

#### *A. Restrictions on Permissible Communications and Interconnection*

11. The Commission seeks comment on whether restricting M-LMS use to vehicle location and other location-based services continues to serve the public interest. Recent actions by the Commission have advanced the broader development of location-based services in other bands. Shortly after adoption of the M-LMS rules, the Commission adopted its initial E-911 rules, requiring all commercial mobile radio service (CMRS) carriers to meet standards for identifying the location of emergency callers and passing this information to the relevant public safety entities. In addition, there are several non-LMS service providers that offer location service to consumers and businesses. Under these circumstances, the Commission seeks comment on whether there is any public interest benefit associated with continuing to limit M-LMS service flexibility to promote vehicle and other location-based services in the nation's transportation infrastructure? Alternatively, should the Commission maintain these restrictions to preserve M-LMS as essentially a location-based service, but provide licensees with some additional flexibility to offer their location-based services by, e.g., eliminating spectrum aggregation constraints, testing conditions, or limits on non-vehicular offerings?

12. Commenters should consider whether it is possible to replace some or all of the M-LMS service restrictions with more flexible rules that would allow licensees to provide additional services, provided they would not cause

any significant increase in interference to other users in the band. Specifically, the Commission seeks comment on the extent to which stricter power limits or other technical restrictions, could limit the potential for interference between more flexible licensed use and existing unlicensed use of the M-LMS Band. Should M-LMS licensees be permitted to provide any type of service, whether or not it is location-based, provided they comply with such limits? Would such an approach be more effective than existing use restrictions in promoting flexibility for M-LMS licensees, protecting other licensed and federal users, and minimizing interference to part 15 users? In addition, should the Commission eliminate limits on real time interconnection limiting such applications to emergency communications only?

13. Assuming it is technically feasible to afford flexibility without major consequences to part 15 devices, are there reasons why the Commission should not extend to M-LMS additional flexibility to meet market demands? To what extent do existing restrictions impair (or not impair) the ability of M-LMS licensees to provide services that may be desired by the public? The Commission directs commenters to consider whether the interference environment in the M-LMS Band has changed since adoption of the M-LMS rules in 1995 and whether there are new technologies (such as innovations in frequency agility) that obviate the need for the M-LMS service or interconnection restrictions.

14. Alternatively, if commenters believe that it would not be in the public interest to completely eliminate the restrictions on the types of services that may be offered, the Commission asks them to comment on the degree to which the Commission could or should relax the restrictions on permissible communications and type of interconnection. Should the Commission permit any type of location or location-based service? Or, should the Commission continue to limit M-LMS to vehicle location as a primary service and non-vehicular location only on an ancillary basis? Should the Commission afford M-LMS licensees the additional flexibility to provide new non-location based services, but not permit unrestricted real time interconnection? Could limits on real time interconnection be modified, if not eliminated, such that licensees could provide additional PSTN-oriented services while not increasing the potential for interference to users of part 15 devices in the band? If parties believe that any alteration of the status quo

would create an unacceptable increase in the risk of interference, they should support their position with specific analysis demonstrating the degree to which other alternatives (presented here or by other parties) would impact their operations.

15. The Commission notes that the part 2 Table of Allocations for the 902-928 MHz Band does not contain a general non-federal allocation, but a footnote to the table specifically references LMS. Note US218 to the U.S. Table of Allocations provides that the 902-928 MHz band is available for LMS provided that LMS systems do not cause harmful interference to federal stations, and that they tolerate interference from ISM devices and federal stations in the band. In this context, the Commission seeks comment on whether affording M-LMS licensees additional flexibility would require it to clarify or redefine the range of permissible communications by M-LMS licensees in the Table of Allocations. The Commission stresses that if this is required, the Commission does not propose to change the fundamental relationship between ISM and federal users, on the one hand, and M-LMS licensees on the other. Rather, the Commission only considers modification of Commission rules to promote additional flexibility for M-LMS while maintaining its allocation on a secondary basis to ISM devices and federal operations.

16. The Commission also seeks comment regarding whether provisions of other rule parts should govern the provision of M-LMS services. For example, if the Commission decides to provide licensees the flexibility to provide a variety of services (e.g., fixed, mobile, etc.) under more than one regulatory status (i.e., common carrier, non-common carrier, private internal), should a M-LMS licensee then be subject to other regulatory requirements? The Commission seeks comment on any provisions in existing, part 90 M-LMS rules that may require specific recognition or adjustment to comport with the potential definition of an expanded scope of permitted M-LMS services. In addition, the Commission seeks comment on part 1 and any other wireless radio services rules that should be modified or updated to reflect a service-neutral approach to permissible M-LMS communications.

#### *B. Power and Other Technical Limitations*

17. The Commission seeks comment on whether, by adopting stricter power limits for M-LMS licensees, the Commission can better serve the goal of

providing these licensees more flexibility while minimizing interference to these unlicensed devices. The Commission also solicits comment on any other technical approaches that could be used independently, or with a reduced M-LMS power limit, including possible technical approaches that are similar to the Commission's frequency hopping and digital modulation rules set forth in 47 CFR 15.247.

18. The Commission believes any proposal to provide more flexibility to M-LMS licensees in terms of permissible services requires consideration of other rule revisions that may be necessary to minimize the potential for interference to part 15 devices in the M-LMS Band. The Commission seeks comment on whether revising existing power limits applicable to M-LMS licensees would achieve this goal. One factor in the potential for interference from M-LMS to part 15 operations results from the difference in power between the potentially competing uses. Currently, M-LMS licensees are permitted a maximum of 30 Watts effective radiated power (ERP), which equals 49.2 Watts equivalent isotropically radiated power (EIRP). Part 15 devices (utilizing spread-spectrum or wide digital emissions) may operate with parameters that result in a maximum permitted EIRP of 4 Watts in the 902-928 MHz band. Because existing M-LMS licensees may operate with 12.3 times as much power as part 15 devices, more flexible M-LMS operations could result in a significant increase in interference to nearby part 15 devices. Thus, reducing the maximum permitted M-LMS transmitter power across some minimum bandwidth could reduce the potential area around an individual M-LMS station where interference to part 15 devices is most likely.

19. The Commission therefore seeks comment on the consequences of reducing the maximum permitted transmitter power in the three primary M-LMS band segments: 904.000-909.750 MHz, 919.750-921.750 MHz, and 921.750-927.250 MHz. The Commission seeks specific comment on whether reducing the maximum permitted transmitter power of M-LMS in these segments, from the current limit of 30 Watts ERP to a new lower limit of 6.1 Watts ERP (which equals 10 Watts EIRP), would result in an environment where M-LMS stations operate on far more comparable power levels with part 15 devices, provided an appropriate minimum bandwidth or methodology is specified on how power would be measured for new flexible M-LMS operations. In this regard, the

Commission notes the possibility of imposing a power spectral density requirement. In commenting on reduced M-LMS power limits, commenters should raise and discuss minimum bandwidths or other appropriate methodologies underlying the degree of power differentials. Under such a rule change, M-LMS licensees would be allowed to operate their stations with only 2.5 times as much power as part 15 device users, rather than the 12.3 times now permitted under Commission rules. The Commission seeks comment on whether this would sufficiently minimize the potential for interference to part 15 users, if the M-LMS service-based restrictions were modified or eliminated. Would reducing the maximum power from 30 Watts ERP to 6.1 Watts ERP be sufficient by itself to mitigate the potential for interference? Is such a limitation more or less restrictive than the status quo, especially since M-LMS licensees may be permitted under current rules to provide packet-based, voice and other services that bypass the PSTN? If a commenting party believes that lowering the transmitter power limit to 6.1 Watts ERP is insufficient to address potential interference, or too great for M-LMS licensees to provide economically viable services to the public, it should specifically state what an appropriate power limit would be.

20. Each of the three M-LMS block licenses has an associated 0.25 megahertz channel (located in the 927.25 to 928 MHz portion of the band), which is subject to a current 300 Watts ERP (which equals 492 Watts EIRP) power limit per transmitter. The Commission seeks comment on reducing these limits to a maximum 10 Watts ERP power limit for each channel to mitigate the potential for unreasonable interference to existing part 15 devices. The Commission also seeks comment on whether more flexible M-LMS operations could be provided at a power level higher than 10 Watts ERP on these channels without impairing the viability of unlicensed operations. In addition, the Commission seeks comment on whether the current field strength limit of 47 dBuV/m at the M-LMS licensee's EA boundary would continue to be reasonable, if the Commission adopts changes to the technical rules as contemplated herein.

21. The Commission also seeks comment on other technical approaches that could be used independently or with these reduced M-LMS power limits. For example, the Commission seeks comment on whether to adopt technical rules for M-LMS operations that are similar to the frequency hopping and digital modulation rules

set forth in section 15.247 of the Commission's regulations. Section 15.247 generally permits a higher than normal transmitting power for part 15 devices that use frequency hopping or digital emissions which cause the transmitted energy to be spread out across the band rather than concentrated in a relatively narrow bandwidth. Spread spectrum emissions mitigate potential interference, particularly to narrowband operations in the same spectrum, because not only do they cause less interference by inducing less energy into the receivers of such operations, but also because spread spectrum receivers have a much greater immunity to interfering signals. Commenters should address whether the Commission could allow the greater M-LMS service flexibility if stations were required to use spread spectrum or broadband digital emissions.

22. If the Commission were to adopt rules similar to those set forth in section 15.247 and apply them to M-LMS, these licensees (with their 10.9 dB greater power than part 15 operations) could possibly use the same equipment (only with more power), be interoperable with part 15-based services, and have common subscribers. The Commission seeks comment on the advantages or disadvantages of permitting M-LMS stations to provide the same types of services using the same technologies that part 15 devices already are permitted to use in the M-LMS Band. To the extent that a subset or all of the spectrum in this band could be used to accelerate the deployment of broadband through new technical provisions, the Commission seeks comment generally whether the public interest would be served.

23. Under such an adaptation to the M-LMS rules, the Commission seeks comment on whether the spectral power density limit of section 15.247, adjusted for the power levels for M-LMS stations (*i.e.*, a 10 Watt EIRP limit for M-LMS stations, which represents a 4 dB increase over the existing 4 Watt EIRP limit for part 15 devices), would satisfactorily eliminate unreasonable interference to part 15 operations. Specifically, would a spectral power density limit of 12 dBm per 3 kHz be technically reasonable and appropriate? The Commission also seeks comment on a minimum bandwidth for digital modulation (including direct sequence spread spectrum). Would the 6 dB emission bandwidth of 500 kHz used in section 15.247 also be technically reasonable and appropriate for M-LMS and permit part 15 devices to continue to use the M-LMS Band without unreasonable interference? Section

15.247 of the Commission's rules, 47 CFR 15.247, also includes provisions regarding occupancy time, and separate power limits based on the number of hopping channels used for frequency hopping spread spectrum devices. If the Commission were to adopt spread spectrum rules for M-LMS that are similar to those in section 15.247 should M-LMS licensees be permitted to use frequency hopping spread spectrum modulation? If so, what power and other technical limits would be appropriate and enable users of part 15 devices to continue to operate in the band without unreasonable interference?

24. In order to ensure that existing part 15 devices do not suffer any significant increase in interference from a flexible M-LMS service, the Commission asks parties to come forward with any other technical solutions that they would support in this context. The Commission notes ideas such as limiting the number of simultaneous M-LMS spread spectrum users to reduce the potential for interference to unlicensed users of the M-LMS Band, as well as limiting the duty cycle of non-spread spectrum emissions to reduce the potential for interference to unlicensed users. Would such limits protect primary band users (e.g., ISM devices and federal radiolocation service) while limiting adverse effects on users/services allocated on a secondary basis? The Commission invites comment on these and any other proposals. Besides power-related limits and measures, the Commission will consider any other proposals that would provide more flexibility to M-LMS than current rules. The Commission also seeks comment on whether allowing these stations to operate using such technologies at higher power levels than permitted generally under section 15.247 would raise any questions related to human exposure to electromagnetic radiation and whether they therefore should be subject to sections 2.1091 and 2.1093 of the Commission rules, 47 CFR 2.1091, 2.1093.

#### C. M-LMS Spectrum Aggregation Limit

25. The Commission's part 90 M-LMS rules provide that within an EA, a licensee may aggregate M-LMS spectrum in Blocks B (2.25 megahertz) and C (5.75 megahertz), for a total of 8 megahertz, but spectrum Block A (6 megahertz) may not be aggregated with these other blocks. The Commission notes that when adopting this aggregation restriction in 1995, the Commission reasoned that the restriction would foster multiple M-LMS location service providers and

technologies. Today, numerous types of location services exist using a variety of bands and technologies. The Commission therefore seeks comment on whether the original rationale for restricting aggregation of M-LMS licenses remains valid in the current communications marketplace.

26. The Commission also seeks comment on whether eliminating the M-LMS aggregation limits has the potential to reduce interference to other users of the M-LMS Band and facilitate the provision of new M-LMS services. For example, would eliminating this restriction increase the potential for unlicensed use and reduce the potential for interference by giving M-LMS licensees greater flexibility to choose among a greater pool of available frequencies? Or would permitting one provider to control all 14 megahertz of M-LMS spectrum in an EA make access for unlicensed devices in the 902-928 MHz band more difficult? For example, would it be more difficult for unlicensed users to frequency-hop, especially if PSTN interconnection by the M-LMS licensee were permitted? Finally, in considering whether to allow M-LMS aggregation, to what degree should the continued availability to part 15 operations of the 12 megahertz of non-multilateration LMS spectrum be a factor in the Commission's analysis?

#### D. Part 90 Safe Harbor for Secondary Operations

27. As stated at the outset of the NPRM, the Commission tentatively concludes that the section 90.361 safe harbor provision should be retained. The Commission believes this rule effectively delineates rights and responsibilities such that the efficient sharing of the band can occur with limited potential for interference. The safe harbor provides a bright line for all parties, licensed and unlicensed, operating in this band. The Commission believes that defining the scope of unlicensed operations legally protected from claims of harmful interference by M-LMS licensees has served the public interest. In originally adopting this standard, the Commission explained that the safe harbor rule was the result of an extensive rulemaking record and careful consideration of all parties' interests. The Commission does not believe that there have been sufficient changes in the 902-928 MHz interference environment, or the Commission's policy objectives regarding use of the band by unlicensed part 15 devices and amateur radio licensees, to support a repeal of the safe harbor.

28. Moreover, to provide M-LMS licensees with the flexibility of use, the Commission does not believe it is necessary to eliminate a provision that adds certainty for the multitude of users of part 15 devices in this band. The Commission is cognizant of the competitive impact that elimination, or substantial modification, of the safe harbor standard could have on the large number of manufacturers and users of existing part 15 devices in the M-LMS Band. Elimination of the safe harbor provision could come at great cost to part 15 manufacturers and systems that have made investments in developing and deploying equipment within the safe harbor provision.

29. Thus, the Commission proposes to retain the section 90.361 safe harbor provision as an effective standard that precisely defines part 15 and amateur radio operators' rights relative to M-LMS licensees. The Commission seeks comment on this tentative conclusion. Parties who oppose this tentative conclusion should provide arguments that identify specific, alternative mechanisms that would provide the existing level of access for part 15 and amateur operations in this band, and they should provide specific economic and technological evidence supporting their proposals and views. In addition, parties supporting any modifications to the safe harbor that would be based on proximity to M-LMS sites or other factors should offer proposed rules and specifically explain how such provisions would ensure the same degree of access for part 15 devices that exists today.

#### E. M-LMS Testing Condition

30. Section 90.353(d) of the Commission's rules, 47 CFR 90.353(d), requires M-LMS licensees to "demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to 47 CFR 15 devices." The Commission seeks comment on modifying or eliminating this part 90 regulation.

31. Given the Commission's proposals discussed above to consider revisions to the M-LMS rules designed to facilitate shared use of the band, as well as the Commission's tentative conclusion to retain the part 15 safe harbor, the Commission seeks comment on whether the interference-testing requirement is necessary. Can reliance on well-defined technical limits, instead of the testing requirement, facilitate the introduction of new services by M-LMS licensees without jeopardizing the ability of users of part 15 devices to continue to operate in the M-LMS Band? To what extent can technologies such as dynamic

frequency selection, spread spectrum, and others be adequate to avoid interference instead of field tests? Given these considerations, what would be the impact to part 15 operations of repealing the testing requirement? If the Commission decided to repeal the testing requirement, are there other technical limits (other than those described above) that the Commission should consider to mitigate interference concerns?

32. The Commission also seeks comment on the costs and benefits of developing a more specific rule in place of the part 15 interference-testing requirement. The testing requirement requires M-LMS licensees to consider existing systems of part 15 devices when designing and constructing their systems to minimize interference. Is this burden warranted given that users of part 15 devices do not have priority over M-LMS operations, and there is no database identifying the actual unlicensed users and operators? What effect would a modified and more specific testing condition have on the development and deployment of more flexible M-LMS equipment and services? Parties who favor retention of the testing requirement should explain why it remains necessary, and how it could be defined so that M-LMS licensees could readily assess whether they would cause unacceptable levels of interference to part 15 devices.

#### F. Other Issues and Measures

33. The Commission seeks comment generally on any further proposals that could allow greater flexibility while avoiding any significant increase in interference to part 15 operations. The Commission notes that the technical limitations are specifically intended to reduce the potential for interference in the band. Nonetheless, the potential remains, and conflicts among competing uses could result, because no one technical rule can guard against all interference, whether or not it is classified as legally harmful.

34. Thus, the Commission seeks comment on how to maintain, and clarify or augment if necessary, the ability of M-LMS licensees and operators of part 15 devices to coexist in the M-LMS Band. Given the Commission's belief that the best course is to facilitate objective measurement of currently subjective assessments as to what may be "harmful," the Commission seeks comment generally on any other proposals that would be appropriate to reach an appropriate balance between multiple users. Would prior notification or other coordination measures be beneficial and appropriate

to reach a balancing of interests? What about industry-run solutions or additional safe harbors? For example, should the Commission adopt a reciprocal safe harbor for M-LMS whereby M-LMS licensees would have some assurances against objections from operators of part 15 devices, yet included in the safe harbor could be certain conditions that M-LMS licensees would have to meet to ensure that they considered existing part 15 devices before deploying new services?

35. In addressing the possible rule changes in the *NPRM*, the Commission asks parties to comment on the degree to which the part 15 devices of interest here are operating in the 14 megahertz of spectrum in the M-LMS Band compared to operations in other portions of the band. The Commission intended to assign the 12 megahertz of non-multilateration spectrum to portions of the band where amateur, federal, and part 15 use of the band is the greatest. Accordingly, the Commission requests information (e.g., including data points and relevant percentages of use where available) from interested parties using or manufacturing part 15 devices for operation in the M-LMS Band. For example, what percentage of a party's part 15 devices used to read meters, support WISP operations, etc. are designed or programmed to operate on the 904-909.75 and 919.75-928 MHz portions of the 902-928 MHz band? If such data is available, it would also be helpful if parties, including those parties using authorized frequency-hopping devices, could provide information regarding the intensity, duration, etc. of actual operations on the 904-909.75 and 919.75-928 MHz as compared to other portions of the 902-928 MHz band.

#### IV. Procedural Matters

##### A. Regulatory Flexibility

36. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the *NPRM*. The IRFA is set forth in the Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to the *NPRM*, and must have a separate and distinct heading designating them as responses to the IRFA.

##### B. Paperwork Reduction Act of 1995

37. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It does not, therefore, contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198. See 44 U.S.C. 3506(c)(4).

##### C. Ex Parte Presentations

38. The rulemaking the *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

#### V. Initial Regulatory Flexibility Analysis

39. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in the *NPRM*, WT Docket No. 06-49. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided on page one of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

##### A. Need for, and Objective of, the Proposed Rules

40. This rulemaking proceeding considers possible measures that could introduce greater flexibility for licensees in the multilateration Location and Monitoring Service (M-LMS) for the purpose of enabling greater responsiveness to changing market conditions, more efficient and effective use of the M-LMS Band, and more robust secondary markets in radio spectrum usage rights. M-LMS licensees

provide service in the 904–909.75 and 919.75–928 MHz portions of the 902–928 MHz band. This 14 megahertz of spectrum has been shared by a variety of part 15 devices and, since 1995, has been licensed for specified uses by M–LMS defined in part 90 of the Commission's rules. Multilateration systems track and locate objects over a wide geographic area (e.g., tracking a bus fleet) by measuring the difference in time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points, or from a number of fixed points to the unit to be located.

41. In the decade since M–LMS was established there has been very limited development of M–LMS under the existing rules. Specifically, when the Commission adopted its LMS rules in 1995, it expected that both M–LMS and non-multilateration LMS systems would play an integral role in the development and implementation of advanced radio transportation-related services. However, only two M–LMS licensees, Teletrac and Ituran, operate M–LMS systems, and these exist in only a small number of markets. Given these present circumstances, the Commission initiates this proceeding to determine whether new approaches could produce more efficient and effective use of the 904–909.75 and 919.75–928 MHz spectrum band by LMS licensees.

42. Through the NPRM, the Commission seeks to determine whether current M–LMS rules are limiting licensees from providing services that are desired in the market and that could be profitably deployed without causing harmful interference to other users. Specifically, the part 90 rules circumscribe the scope of permissible M–LMS service offerings such that licensees may only use non-voice radio techniques to determine the location and status of mobile radio units and may transmit status and instructional messages, either voice or non-voice, only so long as they relate to the location or monitoring functions of the system. In addition, M–LMS licensees are prohibited from using real-time interconnection with the public switched telephone network (PSTN), except for emergency communications sent to or received from a system dispatch point or public safety answering points.

43. The Commission seeks comment on whether it can promote more efficient use of the M–LMS Band by modifying or eliminating M–LMS restrictions on types of communication and interconnection, while avoiding any significant increase in interference to unlicensed users. The Commission also

seeks comment on whether interference that might result from expanded service M–LMS offerings could be mitigated by adopting stricter power limits for M–LMS licensees, introducing frequency hopping, or altering digital modulation rules.

44. In addition, the Commission seeks comment on whether eliminating the M–LMS aggregation limits has the potential to reduce interference to other users of the M–LMS Band and facilitate the provision of new M–LMS services. The Commission also seeks comment on its tentative conclusion that it should retain the part 90 safe harbor provision. Furthermore, the Commission seeks comment on whether reliance on well-defined technical limits, instead of the testing requirement, can facilitate the introduction of new services by M–LMS licensees without jeopardizing the ability of users of part 15 devices to continue to operate in the M–LMS Band.

45. The Commission makes clear at the outset of this proceeding that it does not seek to alter the rules that govern the relationship among the various federal and non-federal licensed services in this band. It also recognizes the importance of maintaining the existing accessibility of the band for unlicensed devices and for amateur operators. The Commission's goal in this proceeding is to consider whether greater opportunity can be afforded M–LMS licensees to provide services while ensuring continued access for other licensed and unlicensed uses that share this band. In the following paragraphs, the Commission discusses the potential impact on small entities of proposals made in the NPRM to accomplish this goal.

#### *B. Legal Basis*

46. The potential actions about which comment is sought in the NPRM would be authorized pursuant to the authority contained in sections 1, 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 303(r).

#### *C. Description and Estimate of the Number of Small Entities Subject to the Rules*

47. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning

as the term “small business concern” under the Small Business Act. 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 SBA.

48. The NPRM could result in rule changes that, if adopted, would create new opportunities and obligations for M–LMS licensees as well as operators and manufacturers of part 15 devices for unlicensed uses on the fourteen megahertz of spectrum that is shared with M–LMS in the 902–928 MHz band.

49. Multilateration Location and Monitoring Service (M–LMS). For purposes of auctioning LMS licenses, the Commission has defined a “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million. A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$3 million. These definitions have been approved by the SBA. The Commission auctioned M–LMS licenses in 1999 (Auction 21) and 2001 (Auction 39). As a result of the two auctions, six entities currently hold a total of 452 M–LMS licenses. Each one of these entities qualified as either a small business or a very small business.

50. *Part 15 Device Operators.* The SBA has developed a small business size standard for “Cellular and Other Wireless Telecommunications” (CWT), which consists of firms having 1,500 or fewer employees. According to the latest Census Bureau data for this category, there are a total of 1,378 firms that have 999 or fewer employees. The Census does not provide data for the number of firms with 1,500 or fewer employees, but does indicate that nineteen firms have 1,000 or more employees. Consequently, even if all nineteen of these firms are part 15 device operators and have more than 1,500 employees, the Commission estimates that the majority of businesses in the CWT category are small businesses that may be affected by rules and policies that could be adopted in this rulemaking.

51. *Part 15 Device Manufacturers.* The SBA has developed small business size standards for two pertinent Economic Census categories, “Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing” (RTB) and “Other Communications Equipment Manufacturing,” (OCE) (NAICS code 334290), both of which consist of all such companies having 750 or fewer



employees. According to the latest Census Bureau data, there are a total of 1,041 establishments in the RTB category. Of this total, 1,010 establishments have 499 or fewer employees, thirteen establishments have between 500 and 999 employees, and eighteen establishments have 1000 or more employees. Consequently, even if all thirteen establishments with between 500 to 999 employees have more than 750 employees, the Commission estimates that the majority of businesses in the RTB category are small businesses that may be affected by the rules and policies that could be adopted in this rulemaking. Concerning the OCE category, the latest Census Data show that there are a total of 503 establishments. Of this total, 493 establishments have 499 or fewer employees, seven establishments have between 500 and 999 employees, and three establishments have from 500 to 2,499 employees. Consequently, even if all seven establishments with 500–999 employees have more than 750 employees, the Commission estimates that the majority of businesses in the OCE category are small businesses that may be affected by rules and policies that could be adopted in this rulemaking.

#### 52. *Amateur Radio Operators.*

Amateur radio operators are not small businesses or small entities as defined by the RFA and the Commission's rules.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

53. The Commission seeks comment on reducing or eliminating certain recordkeeping obligations for M–LMS operators. Section 90.353(d)–(g) of the Commission's rules, 47 CFR 90.353(d)–(g), requires that M–LMS licensees operating in the 902–928 MHz band “maintain whatever records are necessary” and make such records “available to the Commission upon request” that demonstrate compliance with specified operating parameters designed to limit interference with part 15 devices. In particular, section 90.353(d) of the Commission's rules, 47 CFR 90.353(d), requires M–LMS licensees to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to 47 CFR 15 devices. The Commission seeks comment on whether such testing and associated recordkeeping and reporting requirements are necessary if well-defined technical limits are put in place and the part 15 safe harbor provision is retained. The Commission does not seek comment on specific reporting or

recordkeeping requirements, but, it seeks comment on whether M–LMS licensees should adhere to stricter power limits as a condition for relaxing the restrictions on the scope of services that M–LMS providers are permitted to offer.

#### *E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

54. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

55. The Commission invites comment on a number of alternatives to the current LMS rules that could modify or eliminate certain restrictions on the M–LMS service in order to provide M–LMS licensees greater flexibility to respond to changing market conditions. The Commission addresses alternative approaches to flexibility. These alternatives have been grouped according to five aspects of the current M–LMS service rules that affect flexible use for M–LMS licensees: (1) Restrictions on the scope of permissible communications and interconnection; (2) power and other technical limitations; (3) the M–LMS spectrum aggregation limit; (4) the part 90 safe harbor for operations under parts 15 and 97; and (5) the M–LMS testing requirement and associated recordkeeping obligations.

56. With respect to the limits on the scope of M–LMS services, the Commission seeks comment on whether there are any public interest benefits associated with relaxing or eliminating M–LMS restrictions on permissible communications (e.g., vehicle location as primary operation) and interconnection. The Commission seeks comment on alternatives ranging from partial to complete replacement of M–LMS service restrictions that prevent the provision of additional services. In particular, the Commission seeks comment on the benefit that each alternative could provide to M–LMS licensees (all of which qualify as small

businesses), and how each alternative might impact small businesses that use or manufacture part 15 devices.

57. The Commission seeks comment on alternative approaches to satisfying an expanded range of M–LMS service offerings while avoiding any significant increases in interference. For example, the Commission seeks comment on whether any such interference could be mitigated by reducing the allowable power levels at which M–LMS services could be offered. Another alternative to increase M–LMS licensee flexibility while reducing the likelihood of accompanying interference might be a relaxation or elimination of the M–LMS aggregation limit. The Commission seeks comment on the likely effect of this alternative on M–LMS licensees (all of which qualify as small businesses), and any impact to small businesses that use or manufacture part 15 devices.

58. Regarding the part 90 safe harbor provision, within which authorized operations under parts 15 and 97 of the Commission's rules will not be considered to be causing interference to an M–LMS operator, the Commission seeks comment on its tentative decision to retain this provision. The Commission states in the NPRM that it tentatively concludes that the safe harbor fosters efficient sharing of the band with limited interference, and it asks all parties that disagree to provide arguments that identify specific, alternative mechanisms that would provide the existing level of certainty in this band, and to provide specific economic and technological evidence supporting their proposals.

59. Another alternative approach to increasing flexibility for M–LMS licensees is to eliminate the testing and recordkeeping obligations associated with demonstrating that there is no unacceptable interference to part 15 devices. While these obligations previously have been deemed essential, the Commission seeks comment on whether they would be necessary if the testing rules were replaced by well-defined technical limits while retaining the safe harbor provision.

60. In addition to specific alternative approaches for expanding flexibility to M–LMS licensees while avoiding any significant increases in interference to part 15 devices, the Commission seeks comment on any additional approaches to accomplishing these dual goals. These include any other techniques and approaches that would better optimize the goals of this proceeding.



*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

61. None.

**VI. Ordering Clauses**

62. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 303(r), the notice of proposed rulemaking is hereby adopted.

63. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the notice of proposed rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06-2926 Filed 3-28-06; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 223**

[Docket No. 060313064-6064-01; I.D.031006D]

RIN 0648-AU43

**Listing Endangered and Threatened Species and Designating Critical Habitat: 12-Month Finding on Petition to List Puget Sound Steelhead as an Endangered or Threatened Species under the Endangered Species Act**

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

**ACTION:** Proposed rule; petition finding.

**SUMMARY:** We (NMFS) have completed an updated Endangered Species Act (ESA) status review of steelhead (*Oncorhynchus mykiss*) populations in the Puget Sound area (Washington). We initiated this review in response to a petition received from Mr. Sam Wright on September 13, 2004, to list Puget Sound steelhead as a threatened or endangered species. We have determined that naturally spawned winter- and summer-run steelhead populations and two hatchery steelhead stocks, below natural and manmade impassable barriers, in the river basins

of the Strait of Juan de Fuca, Puget Sound, and Hood Canal (Washington) constitute a Distinct Population Segment (DPS) and hence a "species" for listing consideration under the ESA. After reviewing the best available scientific and commercial information, evaluating threats facing the species, and taking into account those efforts being made to protect the species, we conclude that the Puget Sound steelhead DPS is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, we are proposing that the Puget Sound steelhead DPS be listed under the ESA as a threatened species. We will announce the timing and location of a public hearing to be held in the Puget Sound area, and propose 4(d) protective regulations and critical habitat for the Puget Sound steelhead DPS in subsequent **Federal Register** notices. We are soliciting public comment on this proposed listing determination, as well as any other information relevant to the designation of critical habitat and the promulgation of 4(d) protective regulations for the Puget Sound steelhead DPS.

**DATES:** Information and comments on the proposed action must be received by June 27, 2006.

**ADDRESSES:** You may submit comments and information by any of the following methods. Please identify submittals as pertaining to the "Puget Sound Steelhead Proposed Listing"

- E-mail:

*PS.Steelhead.nwr@noaa.gov*. Include "Puget Sound Steelhead Proposed Listing" in the subject line of the message.

- Internet: Comments may also be submitted electronically through the Federal e-Rulemaking portal at: <http://www.regulations.gov>.

- Mail: Submit written comments and information to Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

- Hand Delivery/Courier: NMFS, Protected Resources 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

- Fax: 503-230-5441

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this notice contact Dr. Scott Rumsey, NMFS, Northwest Region, (503) 872-2791, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 13, 2004, we received a petition from Mr. Sam Wright of Olympia, Washington, to list Puget Sound steelhead as an endangered or threatened species under the ESA, and to designate critical habitat. On April 5, 2005, we issued our finding that the petition presents substantial information indicating that the petitioned action may be warranted (70 FR 17223), and we announced that we would initiate an updated review of the species' status. This **Federal Register** notice summarizes the information gathered and the analyses conducted as part of this review, and announces our finding regarding the ESA listing status of steelhead in Puget Sound.

For a more detailed summary of the specific information presented in the petition, the reader is referred to the **Federal Register** notice which describes our analysis of the petition (70 FR 17223; April 5, 2005). Most significantly, the petitioner provided 10 years of new harvest, spawning escapement, and total-run-size data for nine natural-origin Puget Sound steelhead stocks. The petitioner concluded that the new information describes significant short- and long-term declining trends in nearly all river systems where data are available, despite significant reductions by the State of Washington in recreational and tribal harvest rates on wild steelhead. The petitioner argued that the populations of Puget Sound steelhead are at such low levels of abundance that risks posed by catastrophic events, environmental and demographic variability, and depensation confer a high level of extinction risk for the foreseeable future. The petitioner also underscored concerns regarding the widespread propagation of domesticated and non-indigenous stocks of hatchery steelhead, a lack of adequate monitoring of steelhead stocks, and habitat loss and degradation in the Puget Sound area.

*Policies for Delineating Species under the ESA*

Section 3 of the ESA defines "species" as including "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." The term "distinct population segment" is not recognized in the scientific literature. In 1991 we issued a policy for delineating distinct population segments (DPSs) of Pacific salmon (56 FR 58612; November 20, 1991). Under this policy a group of Pacific salmonid populations is considered an