

### Summary of Public Notice

1. The Office of Engineering and Technology is asking parties operating medical telemetry equipment in the 450–460 MHz band to assist the Commission by providing certain information on their operation. It is requested that users of wireless medical telemetry equipment operating in this band provide information on the numbers, types, locations, and frequencies of equipment presently in use. Parties are asked to submit this information to the Chief, Office of Engineering and Technology by January 31, 2000. The requested information will aid the Commission in determining whether it is feasible to lift the currently effective freeze on the filing of part 90 applications for high-power operation in the 450–460 MHz band on the 12.5 kHz offset channels without adversely affecting existing medical telemetry operations.

2. Medical telemetry equipment is used in hospitals and health care facilities to transmit patient measurement data, such as pulse and respiration rates, to a nearby receiver. Part 90 of the Commission's rules permits medical telemetry equipment to operate on a secondary basis to land mobile users in the 450–470 MHz band. Hospitals and health care facilities holding a valid license to operate a radio station under part 90 may operate medical telemetry equipment without any specific authorization from the Commission (see 47 CFR 90.267). As a consequence, the Commission does not have any records concerning the locations of medical telemetry operations in the 450–470 MHz band.

3. In 1995, the Commission adopted changes to part 90 of the rules to allow more efficient use of the spectrum for land mobile services. The *Report and Order and Further Notice of Proposed Rule Making* in PR Docket 92–235, 60 FR 37152, July 9, 1995 established a new channeling plan for private land mobile radio services (PLMRS). This *Order* adopted a channel spacing plan for PLMRS in the 450–470 MHz band based on 6.25 kHz.

4. Medical telemetry equipment operates in the 450–470 MHz band on channels offset 12.5 kHz from regularly assignable channels under the old channelization plan ("12.5 kHz offset channels"). The maximum operating power for this equipment is substantially less than that authorized for primary users of the band. The channel separation and low-power operation minimize the possibility of interference received from, or caused to, primary users of the band. However,

under the new channeling scheme, high-power primary users of the band would be able to operate on the same frequencies used for medical telemetry equipment. This could possibly result in interference to medical telemetry equipment. For this reason, on August 11, 1995, the Commission placed a freeze on the filing of applications for high power operation in the 450–470 MHz band on the 12.5 kHz offset channels. See the *Public Notice, "Freeze on the Filing of High Power Applications for 12.5 kHz Offset Channels in the 450–470 MHz Band,"* DA 95–1171, 60 FR 43720, August 23, 1995. The freeze remains in effect pending the development of a channel utilization plan that will protect low power operation on the 12.5 kHz offset channels.

5. The Commission expects medical telemetry equipment ultimately to migrate out of the PLMRS bands and into new bands allocated for medical telemetry. The Commission recently proposed rules to allocate frequencies where medical telemetry equipment can operate on a primary basis. See the *Notice of Proposed Rule Making* in ET Docket 99–255, FCC 99–182, 64 FR 41891, August 2, 1999. While this would be a long term solution to the problem of PLMRS interference to medical telemetry equipment, the Commission may be able take action in the near term to partially lift the freeze on high power applications on the offset channels.

6. The Commission's records of manufacturers' equipment authorizations show that the majority of medical telemetry equipment authorized for use under part 90 (47 CFR part 90) is authorized only for the 460–470 MHz portion of the 450–470 MHz band. Further, prior to the radio service consolidation in the *Second Report and Order* in PR Docket 92–235, 62 FR 18834, April 17, 1999, the only "Industrial Radio Services" spectrum available to hospitals and health care facilities were frequencies allocated to the old Business Radio Service. There were very few frequencies in the 450–460 MHz band allocated to that service. For these reasons, it may be possible to lift the freeze on applications for high power operation on the 12.5 kHz offset channels in the 450–460 MHz band. Before doing so, however, the Commission wants to ensure that interference will not be caused to medical telemetry equipment in that band. Accordingly, we are requesting that parties operating medical telemetry equipment in the 450–460 MHz band provide certain information on their operation to the Commission's Office of

Engineering and Technology. The filing of this information is strictly voluntary, but parties should note that providing it could help prevent serious interference problems in the future. Parties may want to check with the manufacturer of their equipment to determine the operating frequency.

7. We are asking for the following information:

(1) The name and address of the institution operating the equipment, along with the name, telephone number and e-mail address of a contact person there.

(2) The number and types of devices being operated in the 450–460 MHz band, including the make, model number, FCC identification number, age, and type of equipment (e.g., heart rate monitor), and total number of channels of medical telemetry used in the facility.

(3) The operating frequencies and RF output power of these devices.

(4) The geographic coordinates of the institution, if known.

(5) Whether the equipment could be re-tuned to operate in the 460–470 MHz band and, if so, the time period required for such re-tuning and the estimated expense of re-tuning that would be incurred by the institution operating the equipment.

Parties are asked to respond to the following address by January 31, 2000. Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

For further information about this notice, please contact Hugh L. Van Tuyl at: (202) 418–7506, email: hvantuyll@fcc.gov. Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 16

[1018–AE34]

#### Listing of the Brush-tailed Possum as Injurious

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

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**SUMMARY:** The Fish and Wildlife Service (Service or we) published a notice on January 24, 1996, soliciting information relative to the threat that *Trichosurus*

*spp.* poses to agriculture, human health, and fish and wildlife resources. Analysis of the available information warrants the listing of only one species, *T. vulpecula*, as injurious. We received little information about the other two species in the genus, *T. arnhemensis* and *T. caninus*. Consequently, we will not propose their listing at this time. Listing *T. vulpecula* would prohibit its importation into, or transportation between, the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States with limited exceptions.

**DATES:** Comments must be submitted on or before January 3, 2000.

**ADDRESSES:** Comments may be mailed or sent by fax to the Chief, Division of Fish and Wildlife Management Assistance, 1849 C Street, NW, Mail Stop 840 ARLSQ, Washington, DC 20240, or FAX (703) 358-2044.

**FOR FURTHER INFORMATION CONTACT:** Susan Mangin, Division of Fish and Wildlife Management Assistance at (703) 358-1718.

**SUPPLEMENTARY INFORMATION:** We received a letter from the Texas Animal Health Commission requesting that we prohibit the importation of *T. vulpecula* into the United States. Because other members of the genus *Trichosurus* could possibly pose a threat, the Service placed a notice in the **Federal Register** January 24, 1996, (61 FR 1893) requesting information about the injurious nature of the entire genus.

We received 11 responses to our request for information. Review of the information received through the request and additional information indicates the extreme injurious nature of *T. vulpecula*. For this reason, the Service is proposing to list it as injurious. Limited data were available relative to the injurious nature of *T. arnhemensis* and *T. caninus*. Review of these data did not support listing these two species at this time.

*T. vulpecula*, introduced to New Zealand from Australia between 1873 and 1930, is now found throughout much of New Zealand with a population of approximately 70 million (Department of Conservation National Possum Control Plan, 1993-2002, February 1994). They can adapt to a wide variety of habitats and elevations (P.E. Cowan, *The Ecological Effects of Possums on the New Zealand Environment*). They are vectors for the bovine tuberculosis pathogen (*M. bovis*) and have played a major role in keeping it in the environment. This pathogen is found in cattle, deer, pigs, cats, ferrets, rabbits, hedgehogs, and stoats (National

Tb Strategy, Animal Health Board, November 1995). The impact of exposure to *M. bovis* in the U.S. would probably be even more devastating due to the presence of a more diverse mammal population (Milton Friend, National Biological Service memorandum, March 12, 1996).

No evidence exists that *T. vulpecula* achieves an ecological balance once introduced into an area. They have altered native plant communities causing forests to degrade to scrub or even to bare ground. They damage erosion control plants like willows and poplars. They eat bark, leaves, buds, flowers, and fruit of trees. They threaten other animals by preying on them, competing for their food, or interfering with nesting sites (P.E. Cowan, *The Ecological Effects of Possums on the New Zealand Environment*). Management practices used to control them, such as trapping or poisoning, can negatively impact other species.

### 1. Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(1) This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and economic analysis is not required. This rule adds additional restrictions over and above the regulations issued by the Department of Agriculture, which has banned the importation of brush-tailed possums from New Zealand. As a result, discussion is limited to the effect that these additional importation restrictions will have on the American economy.

The brush-tailed possum is abundant in south eastern Australia and Tasmania. Possums have been hunted in Tasmania since the 1920's for the fur trade. However, the fur market has declined in recent years, and the possum industry has been selling skins and meat to Taiwan and China. In 1996, about 3,000 possum skins and meat were exported to Taiwan and 1,000 to China from Australia. The number of permit holders and royalties paid in Australia for brush-tailed possums has been declining steadily. In 1990, there were 493 permit holders receiving \$18,800 in royalties for brush-tailed possums. In 1995, there were 40 permit holders receiving \$1,996 in royalties. Since 1995, royalties have been paid for skins and carcasses. No live brush-tailed possums have been imported in the U.S.

since 1995. World trade in brush-tailed possums has focused primarily on meat and most of it is going to Asian markets. Consequently, this rule should have little, if any, measurable economic effect on the U.S. economy and will not have an annual effect of \$100 million or more for a significant rule making action.

A major, though not quantified, effect of this rule is the reduced risk of substantial environmental damage in the U.S. including the spread of *M. bovis*, that could be caused by having brush-tailed possums escape from captivity. The risk reduction is a benefit of this rule that cannot be quantified with existing data. However, the damage in New Zealand caused by the introduction of the brush-tailed possum in 1840 is well documented. There is no way of knowing where the brush-tailed possums would enter the natural environment in the U.S. and consequently, the economic effect avoided by not having the introduction cannot be estimated.

(2) This rule will not create inconsistencies with other agencies' actions. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture has developed and implemented regulations to prohibit the importation of brush-tailed possums from New Zealand because they carry bovine tuberculosis. This rule will further expand this prohibition to include all countries because of the potential of brush-tailed possums carrying *M. bovis* and the damage that they could inflict on native ecosystems.

(3) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not affect entitlement programs.

(4) This rule will not raise novel legal or policy issues. There is no indication that listing wildlife as injurious in the past has caused legal or policy problems. As no live brush-tailed possums have been imported since 1995, this rule should not raise legal, policy, or any other issues.

### 2. Regulatory Flexibility Act

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the reasons described in section 3 below, no individual small industry within the United States will be significantly affected if brush-tailed possum importation is prohibited.

### 3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. Live brush-tailed possums have not been imported into the United States since 1995. U.S. Fish and Wildlife Service records from 1994 and 1995 indicate that 1,030 brush-tailed possums have been imported for a total value of \$11,900. Since only four importers were involved and no additional trade has occurred, the Service believes that a market for live brush-tailed possums has not been established in the U.S. Consequently, there is no measurable economic effects on small businesses.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. U.S. Fish and Wildlife Service records indicate that only four importers brought in a total of 1,030 brush-tailed possums in 1994 and 1995. None have been imported since 1995.

c. Does not have significant adverse effects on competition, employment, investment productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The low number of brush-tailed possums imported into the U.S. indicates that listing the brush-tailed possum as injurious would not have significant adverse effects.

### 4. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

a. The rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Act that this rule making will not impose a cost of \$100 million or more in any given year on local or State governments or private entities.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The Service has determined and certifies pursuant to the Unfunded Mandates Act that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities.

### 5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Although once listed as injurious, all brush-tailed possum in this country would be exported or destroyed, the takings would not be significant.

### 6. Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

### 7. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The proposed rule has been reviewed to eliminate drafting errors and ambiguity, written to minimize litigation, and provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

### 8. Paperwork Reduction Act

This regulation does not contain any information collection requirements under the Paperwork Reduction Act.

### 9. National Environmental Policy Act

We have analyzed this policy in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The action is categorically excluded under Department NEPA procedures (516 DM 2, Appendix 1.10), which applies to policies, directives, regulations, and guidelines of an administrative, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.

### 10. Public Comment Solicitation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "S" and a numbered heading; for example § 16.11 Importation of live wild animals. (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, VA 22030. Finally, you may hand-deliver comments to the U.S. Fish and Wildlife Service, Division of Fish and Wildlife Management Assistance, 4401 North Fairfax Drive, Suite 840, Arlington, VA 22203. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or business, available for public inspection in their entirety.

The Service is issuing this proposed rule under the authority of the Lacey Act (18 U.S.C. 42). Accordingly, the Service proposes to amend 50 CFR part 16 as follows:

**List of Subjects in 50 CFR Part 16**

Fish, Import, Reporting and recordkeeping, Transportation, Wildlife.

**PART 16—INJURIOUS WILDLIFE**

1. The authority citation continues to read as follows:

**Authority:** 18 U.S.C. 42.

2. We amend § 16.11 by adding paragraph (a)(7) to read as follows:

**§ 16.11 Importation of live wild mammals.**

(a) \* \* \*

(7) Any rush-tailed possum (*Trichosurus vulpecula*).

\* \* \* \* \*

Dated: November 3, 1999.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 990621165-9165-01; I.D. 022599A]

RIN 0648-AL43

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Essential Fish Habitat (EFH) for Species in the South Atlantic; Amendment 4 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP)**

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

**ACTION:** Supplement to the proposed rule; request for comments.

**SUMMARY:** NMFS issues this supplement to the proposed rule for Amendment 4 to the Coral FMP, which is contained in the Comprehensive Amendment Addressing Essential Fish Habitat in Fishery Management Plans of the South Atlantic Region (EFH Amendment). The supplement is intended to provide information inadvertently omitted from the summary of the initial regulatory flexibility analysis (IRFA) published in the proposed rule to implement Amendment 4 to the Coral FMP. Specifically, this supplement summarizes IRFA information regarding the economic impact the proposed rule would have on the shark, grouper, and tilefish fisheries.

**DATES:** Written public comments on this supplement to the proposed rule for Amendment 4, the IRFA, and the original proposed rule for Amendment 4 will be accepted until December 2, 1999.

**ADDRESSES:** Written comments should be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St Petersburg, FL 33702. Copies of the IRFA are available from the Southeast Regional Office.

**FOR FURTHER INFORMATION CONTACT:** Michael Barnette, 727-570-5305.

**SUPPLEMENTARY INFORMATION:** This supplement to the proposed rule for Amendment 4 to the Coral FMP republishes, for the convenience of the public, the portion of the classification section of the proposed rule for Amendment 4 (64 FR 37082; July 9, 1999) that addressed the Regulatory Flexibility Act and adds information inadvertently omitted from the classification section relevant to the economic impact the proposed rule would have on the shark, grouper, and tilefish fisheries.

**Classification**

The EFH Amendment contains Amendment 4 to the Coral FMP (Actions 3A and 3B in the EFH Amendment). Except for Actions 3A and 3B, the EFH Amendment does not contain measures that would result in immediate economic effects. These actions would enlarge the existing Oculina Bank HAPC, add two "satellite" HAPC areas, and prohibit bottom longline, bottom trawl, dredge, pot or trap fishing in these areas. The Council originally determined that these regulations would affect trawling for calico scallops, but suggested that there would not be a significant impact on a substantial number of small entities. NMFS reviewed the Council's suggestion and made an independent determination that certain criteria for significance, in particular the NMFS criterion of a 5 percent negative impact on revenues, may be met. NMFS also noted that information relative to the impacts on calico scallop homeported outside the east coast of Florida was not available. In an effort to supply some of the missing information, NMFS subsequently interviewed 9 vessel owners who represented 11 vessels not homeported on the east coast of Florida. The combined response was that owners of 4 of the vessels, or 36 percent of the sample, reported 5 percent or more of their calico scallop harvests as coming from the areas where trawling would be prohibited. Accordingly, NMFS determined there would be a significant impact on a

substantial number of small calico scallop entities and prepared an IRFA.

In addition to the new information gathered by NMFS, 178 fishermen have recently indicated that the expanded Oculina HAPC will have a significant impact on their historical shark and snapper/grouper species landings. These fishermen have provided NMFS with maps showing their fishing areas and have also provided information regarding the potential revenue impacts of the area to be closed to their fishing operations. NMFS subsequently contacted the Florida Department of Environmental Protection's Marine Fisheries Information System (DEP) and reviewed information from the NMFS Accumulative Landings System to obtain catch data for the offshore area encompassing the expanded Oculina HAPC. The data obtained indicate that these fishermen may be impacted by the regulations. There are two statistical areas, specifically 732.9 and 736.9, that include the expanded Oculina HAPC. In the case of sharks taken by bottom longline gear in 1997, the DEP data show a catch of 289,316 pounds (131,234 kg) while similar NMFS data indicate a catch of 295,529 pounds (134,052 kg) for areas 732.9 and 736.9 combined. These landings are from large areas that encompass the expanded Oculina HAPC, so a smaller, but an unknown portion of the landings may have been taken from the expanded Oculina HAPC. Due to a continuing lack of definitive information regarding the significance of the proposed actions on small business entities, including firms that engage in trawling for calico scallops and firms that engage in bottom longline fishing for sharks and snapper-grouper species, NMFS is soliciting additional information during the public comment period on this supplement to the proposed rule. Any new information which becomes available during the public comment period will be carefully reviewed by NMFS and will be used in developing the Final Regulatory Flexibility Analysis for the final rule. A summary of the IRFA follows.

The proposed action responds to the Magnuson-Stevens Act requirements to identify essential fish habitats and to minimize any fishing related damage to these habitats. The overall objective of the proposed rule is to identify and maintain essential fish habitats. The Magnuson-Stevens Act provides the legal basis for the rule. Most of the provisions of the proposed rule would result in regulations that would not have cost or revenue effects on small entities. However, a proposal to enlarge