

support. If it is deemed necessary and appropriate, we will provide technical support to the committee in gathering and analyzing additional data or information.

#### D. Meetings

Meetings will be held in the Baltimore/Washington area (or in another location) at the convenience of the committee. We will announce committee meetings and agendas in the **Federal Register**. Unless announced otherwise, meetings are open to the public.

#### E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for committee meetings, which they consider most appropriate.

#### F. Defining Consensus

The goal of the negotiating process is consensus. Under the Negotiated Rulemaking Act, consensus generally means that each interest concurs in the result unless the committee defines the term otherwise. We expect the participants to fashion the committee's working definition of this term.

#### G. Failure of Advisory Committee to Reach Consensus

If the committee is unable to reach consensus, we will proceed to develop a proposed rule. Parties to the negotiation may withdraw at any time. If this happens, we and the remaining committee members will evaluate whether the committee should continue.

#### H. Record of Meetings

In accordance with FACA's requirements, minutes of all committee meetings will be kept. The minutes will be placed in the public rulemaking record.

#### I. Other Information

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 9, 2002.

**Thomas A. Scully,**

*Administrator, Center for Medicare and Medicaid Services.*

Dated: February 22, 2002.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 02–6952 Filed 3–21–02; 8:45 am]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

[IB Docket No. 02–10; FCC 02–18]

### Procedures To Govern the Use of Satellite Earth Stations on Board Vessels in Bands Shared With Terrestrial Fixed Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** This document solicits comments on the authorization of satellite earth stations on board vessels (ESVs). The item contemplates that authorizing ESVs on a more clearly-defined basis, through the adoption of specific rules governing their use, may benefit potential users and service providers by creating regulatory certainty. Some ESVs are already in operation: the International Bureau (Bureau) and the Office of Engineering Technology (OET) (jointly, the Bureaus) have granted two companies waivers to operate ESVs and have granted one company Special Temporary Authorities (STAs) with conditions. However, there are existing terrestrial fixed users in some of the bands identified for ESV operations. Consequently, the Commission solicits comment on potential methods for licensing of ESVs that would help ensure that ESV operations would not cause harmful interference to, nor limit the growth of, terrestrial fixed services operating in the same band.

**DATES:** Submit comments on or before April 19, 2002; reply comments due on or before May 3, 2002.

**ADDRESSES:** Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Breck Blalock, International Bureau, (202) 418–8191 or Trey Hanbury, International Bureau (202) 418–0766.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of*

*Inquiry*, IB Docket No. 02–10, adopted January 23, 2002 and released February 4, 2002. The full text of this *Notice of Inquiry* is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

### Synopsis

1. In this Notice of Inquiry (NOI) the Commission seeks comment on the appropriateness of and potential methods for authorizing ESVs within its existing regulatory scheme. Such an authorization would take the place of the current system of extending or creating *ad hoc* special temporary authorities (STAs)—and allow ESV operation while protecting existing fixed service (FS) operations. The Commission seeks comment on all aspects of potential licensing, including whether and how such licensing should go forward, and how interference to

terrestrial fixed licensees can be mitigated to the greatest extent possible.

2. The Bureaus have authorized two companies to operate ESVs on a waiver and STA basis since 1996: Crescomm (now known as MTN) and Qualcomm, Inc. Waivers and STAs are usually reserved for special circumstances and are not meant to circumvent normal licensing procedures. In examining the broad associated issues, the Commission seeks comment on the necessity of ESV licensing; do services exist that render ESV licensing superfluous? Do ESVs provide services that are unavailable through other means? Could MTN and other companies find other ways to offer similar service? Are there alternatives to ESV licensing, including continuing to grant waivers? The Commission seeks comment on any alternatives and whether/why the alternative is preferable to ESV licensing. As ESV service has now been operational in some form for five years, and as MTN seeks to expand the service, the Commission seeks general comment on whether the time is ripe for developing rules for licensing ESV service. Lastly, the Commission seeks comment on any other issues that commenters deem relevant as the Commission considers the wisdom of advancing ESV licensing.

*(a) Regulatory Issues*

3. The Commission seeks comment on all issues pertaining to the regulatory status of ESVs. An initial question to address is: in which bands could ESVs best be accommodated?

4. Specifically, the Commission seeks comment on the use of compatible and available bands for operation of ESV systems. The Commission seeks comment on the ability of bands that are currently allocated for MSS to provide for ESV systems. If MSS bands will not adequately provide for this service, the Commission seeks comment on which FSS bands should be considered for ESV operation. If the Commission were to determine that ESVs may operate in FSS networks, would the Commission need to modify the Table of Frequency Allocations to accommodate such use (e.g., through a footnote addition)? Although the 1996 *Crescomm Order* described ESVs as providing mobile-satellite service earth stations, the ITU has recognized that ESVs may operate in FSS networks.

5. ESV operators have used the C-band to date, and are now beginning to use the Ku-band. Due to the multiple modes of ESV operation, should the Commission allow Ku-band operation of ESVs either as an adjunct to C-band operation or in some cases as a replacement for the C-band? The

Commission seeks comment on the continued use of C-band and any additional use of Ku-band.

6. ESV operations began in C-band because: (1) These satellite networks can provide broad coverage, which permits ships to communicate from anywhere at sea; and (2) the equipment was readily available. The problem with use of the C-band for ESV operations is that in many countries the band is heavily used by terrestrial microwave systems operating in the FS. As ESVs approach the coast, the potential for interference to FS operations increases, necessitating coordination of ESV use with FS operations so as not to cause interference. Use of the Ku-band in coastal areas is being considered in lieu of coordinating with C-band fixed-service operations. Most countries do not have terrestrial services operating in the satellite uplink portion of the Ku-band and thus coordination may be easier in those areas. The difficulty with using Ku-band is that space station antennas usually provide only spot beam coverage in coastal areas rather than the broader coverage provided in C-band. In this case, for ESVs operating well beyond the coast, communication would be impossible using only Ku-band. The Commission seeks comment on use of the Ku-band generally.

7. ESVs could use the Ku-band in a variety of ways. ESVs could operate in a dual-band mode, using both C-band and Ku-band. If dual-band operation were to be adopted and ESVs operate in C-band while operating at sea, then within some previously-defined minimum distance from shore ESVs could switch to the Ku-band. The Commission seeks comment on dual-band operation.

8. Additionally, where ESVs serve ships that travel only in an area near the coast, the Ku-band could be used exclusively. For example, if a cruise ship only travels around the Hawaiian islands, it is possible that the more limited footprint of the Ku-band would still cover that ship in all three modes: at port, at sea, and while entering or exiting port. In that case, by operating exclusively in the Ku-band, the ESV operation would not have to be coordinated with terrestrial services since such services do not operate in the Ku-band. The Commission seeks comment on whether an ESV on such a limited-range ship could be licensed in the Ku-band instead of the C-band.

*(b) Appropriate Licensing Approach and Restrictions*

9. The Commission seeks comment on the appropriate licensing approach and restrictions for potential ESV

operations. One method for such licensing could be a special restricted class of earth stations. While the Commission is considering the use of other bands (as discussed above), we seek comment on whether ESV licensing under part 25 of the Commission's rules within FSS networks, and with certain restrictions, would be the most appropriate. The bands currently being used, C-band and Ku-band, are allocated to the FSS both domestically and internationally. If the Commission does license ESVs as a special restricted class of earth station, it seeks comment on what those restrictions should be. Alternatively, if the Commission were to license ESVs as MSS earth stations, it seeks comment on what other regulatory changes would be required? Would it be necessary to change our domestic frequency allocations table to provide a maritime mobile-satellite service allocation at C-band and Ku-band, and would any other changes be required to allow these stations to communicate through existing FSS networks? The Commission further notes that the Bureau considered ESV dockside operations in January 2000 and June 2001 and concluded that because ESVs would be operating only intermittently, the service would be better classified as a temporary-fixed service. The Commission requests further comment on the appropriate licensing of dockside operations of ESVs.

10. Other regulatory issues include potential conditions on ESV licenses. One possible restriction might be continuing the condition contained in the current STA and waiver authorizations prohibiting ESV operations from causing harmful interference to any entity operating in conformance with the Table of Frequency Allocations. In other words, if licensed, all ESV operations would be required to cease immediately upon notification of unacceptable interference being caused to a fixed service station. The Commission seeks comment on this potential condition, and on whether all ESV operators should be required to forward any complaints of radio interference to the Commission immediately, in writing. Additionally, the Commission seeks comment on whether it would be appropriate for the Commission to impose additional obligations on the FSS earth stations that provide the gateway facilities for ESVs to ensure that ESV transmissions that cause unacceptable interference are immediately terminated, whether those ESV stations are U.S.-licensed or foreign-licensed. The Commission asks

if it should adopt any additional rules that would allow us to take punitive action against FSS gateway facilities that provide service to ESV stations (whether foreign or domestic) that repeatedly cause unacceptable interference to fixed service stations. If so, what standard of proof should the Commission meet if and when it seeks to impose such sanctions on FSS gateway facility operators? What standard of proof should be required of interested parties requesting that we impose such standards? How could the Commission coordinate with foreign-licensed vessels?

11. In February 1997, MTN was granted an STA to operate its ESVs on a non-harmful interference basis when the ships it served were in or near one of four U.S. seaports. More recently, MTN was authorized to provide ESV service in motion to or from one of 17 U.S. seaports. The Commission seeks comment on whether the Commission should continue to allow in-motion operations in the future. Alternatively, would the potential for interference be significantly reduced by limiting ESV operations only to "in or near" U.S. seaports as initially authorized. If so, how would this affect the services currently provided by ESVs.

12. Other possible restrictions that could be placed on ESV licensees include: specifying a minimum antenna elevation angle (e.g. coordination to a specific satellite), specifying a minimum antenna diameter and maximum half-power antenna beamwidth, and also specifying the antenna tracking accuracy required for the ESV operation. The Commission could also require that ESV applicants specify the minimum amount of spectrum needed to perform the necessary service and that they limit the maximum ESV transmitter power. This would result in greater spectrum efficiency and a decreased potential for interference in bands where coordination with terrestrial services would be necessary. Additionally, the ESV licenses could be limited to a term of 1 to 3 years so that ESV operation could be closely monitored and, in bands where coordination was necessary, fixed service operational changes could be implemented efficiently. Finally, the Commission seeks comment on a requirement that ESV services be limited to receive-only. While the Commission recognizes that such a restriction may limit somewhat the commercial appeal of the ESV service, a receive-only restriction would virtually eliminate the interference issues that are of such concern, particularly in the C-band. The Commission would like to develop a

record on the pros and cons of a receive-only restriction. The Commission seeks comment on these or other potential special restrictions.

13. The Commission also seek comment on coordination issues. Ultimately, the Commission's preference is to prevent interference before it occurs. Under usual coordination procedures for FSS, the entire C-band is coordinated. Similarly, the entire visible geostationary satellite orbital arc is generally coordinated. ESVs, however, use considerably less than a full band. Therefore, ESVs could be coordinated to specific satellites, which would limit their azimuth and commensurately limit the portion of the visible arc they would use. The Commission seeks comment on use of this special method of coordination and on any other regulatory issues that the Commission should consider going forward.

#### (c) Interference Issues

##### (1) Determining the Distance From Shore Beyond Which Unacceptable Interference Should Not Be Possible

14. If ESV licensing goes forward, determining the distance from shore outside of which interference from ESVs to FS operations will not occur (Distance From Shore) would be critical to successful ESV/FS coordination. The Commission seeks comment on the appropriate Distance From Shore. A Distance From Shore of 200 km may be suggested for two reasons. The current practice of the frequency coordinators requires a search of up to 125 statute miles radius (approx. 200 km) around the proposed location of a new FSS earth station to ascertain if there is potential for interference. This method has been effective for more than twenty years, preventing interference to FS from FSS. The U.S. has presented to ITU-R Working Party 4-9S a series of calculations that suggest that a distance as low as 165 km might be adequate as a coordination distance. Increasing the Distance From Shore from 165 km to 200 km would provide an added degree of protection to FS stations operating in the same band with ESVs, and would be consistent with current domestic procedures for FS-FSS coordination. The Commission seeks comment on this rationale, and on other factors, if any, that should be considered in calculating the appropriate Distance From Shore.

##### (2) Coordination of Operation Within a Distance Where Unacceptable Interference Might Occur

15. Once the Distance From Shore is determined, the question remains: how

would operations be coordinated inside the Distance From Shore to eliminate unacceptable ESV interference to FS operations but still allow ESV operation inside the Distance From Shore? This determination, in the international context, is being addressed within the ITU-R through the calculation of a Composite Area within which interference to fixed stations from ESVs operating in motion near a coastline need to be evaluated. The Commission seeks comment on whether the use of the Composite Area calculations could also serve as the basis to determine this area in a domestic context. Commenters should address whether this method examines all of the factors relevant to determining the potential for interference to fixed stations by ESVs. The Commission seeks comment on whether the use of the Composite Area to address concerns about interference within the Distance From Shore is sufficient, or whether other factors must be considered.

16. The Commission seeks comment on the process for calculating the Composite Area. The Commission also seeks comment on, in general, the Composite Area method for evaluating the potential for interference to fixed stations from ESVs, as well as any other factors that should be considered. Finally, the Commission seeks comment on any alternatives to the Composite Area method for evaluating the potential for interference.

##### (3) Prevention and Resolution of Interference

17. The Commission also seeks general comment on how to handle anticipated interference issues. It is particularly interested in comments on whether the operation of existing MTN systems has in fact caused interference to other operations. The *Crescomm Order* states that "[t]he mobile nature of the MSS stations makes it extremely difficult to prevent interference and to identify the interference source." Further, the fixed community has stated in an *ex parte* statement that interference from a moving ship is all but impossible to trace and that in-motion operations have not been adequately coordinated as required. The Commission believes that if it licenses ESVs, flexible, efficient and continuous coordination would be the key component to ensuring that ESVs do not cause unacceptable interference to FS stations. In order to ensure this coordination truly is successful, it would be necessary for all parties to be able to identify the ESVs that may be coming into a given port in order to effectuate such coordination, including

the precise routes and schedules used by these vessels. One approach to facilitating information exchange could be a requirement for both the ESV operators and coastal administrations to keep a publicly available list of all ESVs that have been licensed or otherwise granted authority to operate in their area. It also may facilitate communication if the harbormaster is provided this information. The Commission seeks comment on requiring real-time location tracking and that more timely information be made available (e.g., on the Internet). For example, the Commission notes that there are many tracking devices commercially available that provide very precise location based on GPS tracking. The Commission seeks comment on the feasibility and adequacy of these possible measures to ensure proper coordination.

18. Other approaches to providing the information necessary to ensure that ESVs do not cause unacceptable interference to the FS include: First, that ESV licenses indicate the name of the ESV operator and a point of contact, as well as the name of the vessel and a method by which to contact the ship directly (for instance, the ship's Inmarsat number); second, the license could list the frequencies that have been cleared for use by that ESV; and third, a website with all information on licensed ESVs could be created for the purpose of such coordination. Thus, if there were any interference reported, all parties would have information to quickly identify its source by contacting the coastal administration, the harbormaster, a website, or the ESV operator. If the ESV were a non-primary licensee, the ESV station would be required to cease operation immediately if it causes interference. The Commission seeks comment on these ideas for information exchange. In this regard, the Commission seeks comment on whether we should require an ESV system to include a means of identification and automatic mechanisms to terminate transmissions whenever the ESV operates outside its operational limits or is identified as the source of interference. How can the Commission enforce the requirements for preventing and resolving unacceptable interference? The Commission seeks comment on these and other ideas to exchange information, to prevent unacceptable interference, and to resolve interference issues should they arise.

19. Shorter license terms might also be an incentive for ESV operators to assist with the resolution of interference complaints, in that if an ESV station was

reported to be interfering on a regular basis and was being in any way uncooperative with the FS station licensee, the ESV license may not be renewed. The Commission seeks comment on the appropriateness of a 1–3 year license term. The shorter terms might provide incentive for ESV operators to carefully coordinate their arrival and at-port use with FS stations. The Commission seeks comment on the concept of shorter licensing terms and other issues related to coordination.

#### Deadlines and Instructions for Filing Comments

Under §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *Notice of Inquiry* on or before April 19, 2002. Reply comments are due May 3, 2002. Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC. 20554. Parties not filing via ECFS are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

#### Ordering Clause

Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), and 308 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 303(y), 308, this *Notice of Inquiry* is adopted.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 02–6917 Filed 3–21–02; 8:45 am]

**BILLING CODE 6712–02–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 020313058–2058–01; I.D. 030402A]

RIN 0648–AP07

#### Fisheries of the Northeastern United States; Proposed 2002 Specifications for the Spiny Dogfish Fishery; Regulatory Amendment

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes specifications for the spiny dogfish fishery for the 2002 fishing year, which is May 1, 2002, through April 30, 2003. The implementing regulations for the Spiny Dogfish Fishery Management Plan (FMP) require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent is to specify the commercial quota and other management measures, such as trip limits, to address overfishing of the spiny dogfish resource. This proposed rule would make a correction to the Spiny Dogfish regulations to indicate that the target fishing mortality rate (F) specified for the period May 1, 2003 – April 30, 2004 should be  $F=0.03$ .

**DATES:** Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on April 8, 2002.

**ADDRESSES:** Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, “Comments—2002 Spiny Dogfish Specifications.” Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of supporting documents used by the Joint Spiny Dogfish Committee and the Spiny Dogfish Monitoring Committee; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment (EFHA) are available from Daniel Furlong, Executive Director, Mid-Atlantic