

**FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Part 73**[DA 02-2151, MM Docket No. 02-00-76,  
RM-9809]**Digital Television Broadcast Service;  
Urbana, IL**AGENCY: Federal Communications  
Commission.

ACTION: Final rule.

**SUMMARY:** The Commission, by this document, denies a petition for reconsideration filed by WGN Continental Broadcasting of the Report and Order, which substituted DTV channel \*9 for station WILL-DT assigned DTV channel \*33 at Urbana, Illinois. See 65 FR 60378, October 11, 2000. With its action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 00-76, adopted September 4, 2002, and released September 10, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

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

Digital television broadcasting,  
television.

Federal Communications Commission.

**Barbara A. Kreisman,**

Chief, Video Division, Media Bureau.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric  
Administration****50 CFR Parts 222, 223 and 224**[Docket No. 011130288-2205-02; I.D.  
092101C]

RIN 0648-AP64

**Endangered and Threatened Species;  
Transfer of Certain Permits**AGENCY: National Marine Fisheries  
Service (NMFS), National Oceanic and  
Atmospheric Administration (NOAA),  
Commerce.

ACTION: Final rule.

**SUMMARY:** NMFS issues a final rule that allows the transfer of certain permits under the Endangered Species Act (ESA) of 1973, as amended. This final rule allows the transfer of incidental take permits and enhancement of survival permits associated with Safe Harbor Agreements with Assurances or Candidate Conservation Agreements with Assurances. Currently, if a permit holder wants to sell land or business operations covered by a permit to a new owner, the new owner would need to apply for a separate permit. Regulations pertaining to similar permits issued by the US Fish and Wildlife Service (USFWS) allow such transfers. This final rule will revise NMFS regulations to allow transfers, promoting efficiency and consistency with USFWS regulations.

**DATES:** Effective on October 15, 2002.

**ADDRESSES:** Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Margaret Lorenz or Lamont Jackson at (301) 713-1401.

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

NMFS is responsible for implementing the ESA, 16 U.S.C. 1531-1544, with respect to most threatened and endangered marine species. NMFS' regulation at 50 CFR 222.305 prohibits the transfer of all permits issued under 50 CFR parts 222, 223, and 224. This includes permits to "take" ESA-listed species issued under section 10(a) of the ESA. On December 21, 2001, NMFS published a proposed rule that would allow the transfer of section 10 permits associated with Habitat Conservation Plans, Safe Harbor Agreements with Assurances, and Candidate Conservation Agreements with

Assurances. This final rule revises the regulation to allow the transfer of these permits if certain requirements are met.

While the restrictions imposed on permit succession and transferability are justified in some situations (e.g., scientific research permits and permits for enhancement of propagation), they are unnecessary and inappropriate for incidental take permits and enhancement permits associated with Safe Harbor Agreements with Assurances or Candidate Conservation Agreements with Assurances. These three types of permits involve substantial long-term conservation commitments, and NMFS recognizes that there may be succession or transfer in ownership during the term of the permit. NMFS and USFWS often issue permits covering the species under their respective jurisdictions to the same landowner, based on the same conservation plan. In 1999 the USFWS revised its permit transfer regulation to allow the transfer of these enhancement and incidental take permits, provided certain conditions are met. (64 FR 32706, June 17, 1999). In 2001, USFWS reconfirmed its decision to allow the transfer of these permits. (66 FR 6483, Jan. 22, 2001).

NMFS believes that a blanket prohibition on transferability of incidental take permits under ESA section 10(a)(1)(B) and enhancement permits issued for Safe Harbor Agreements with Assurances and Candidate Conservation Agreements with Assurances under section 10(a)(1)(A) is unnecessarily restrictive, given the context and purpose of these plans and agreements. This final rule removes the prohibition on transferability of incidental take and enhancement permits with respect to these named agreements. This final rule requires, however, that prior to accepting a proposed transfer of a permit, NMFS determine that the proposed transferee has given adequate written assurance to NMFS that it can and will fulfill the obligations of the conservation plan or agreement.

**Description of Permits**

**Incidental Take Permit:** NMFS issues permits under section 10(a)(1)(B) of the ESA to take listed species incidental to the carrying out of an otherwise lawful activity, provided the requirements of that section are met. One of these requirements is the submission of a conservation plan, often referred to as a Habitat Conservation Plan or HCP, to minimize and mitigate for take that will occur during the term of the permit. HCP's often involve long-term conservation commitments that obligate