

Dated: February 2, 2009.

**Raynard S. Kington,**

*Acting Director, National Institutes of Health.*

Approved: April 9, 2009.

**Charles E. Johnson,**

*Acting Secretary.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[DA 09-904; WT Docket No. 08-61, WT Docket No. 03-187]

#### Petition for Expedited Rulemaking and Other Relief on Behalf of American Bird Conservancy, Defenders of Wildlife and National Audubon Society

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, comment is sought on a petition for Expedited Rulemaking and Other Relief on Behalf of American Bird Conservancy, Defenders of Wildlife and National Audubon Society (Petitioners). Petitioners request that the Commission adopt new rules on an expedited basis to comply with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Migratory Bird Treaty Act (MBTA), and their implementing regulations, and to carry out the mandate of the U.S. Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027 (DC Cir. 2008).

**DATES:** Interested parties may file comments on or before May 29, 2009, and reply comments on or before June 15, 2009.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 08-61 and WT Docket 03-187, 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.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of

the Secretary, Federal Communications Commission.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail:* [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or *phone:* 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Aaron Goldschmidt, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau at (202) 418-7146 or [Aaron.Goldschmidt@fcc.gov](mailto:Aaron.Goldschmidt@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's public notice released on April 29, 2009. The full text of the public notice is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; the contractor's Web site, <http://www.bcpweb.com>; or by calling (800) 378-3160, facsimile (202) 488-5563, or e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com). Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08-61 or WT Docket No. 03-187. Additionally, the complete item is available on the Federal Communications Commission's Web site at <http://www.fcc.gov>.

On April 14, 2009, American Bird Conservancy, Defenders of Wildlife and National Audubon Society (Petitioners) filed a petition requesting that the Federal Communications Commission (Commission) adopt new rules on an expedited basis to comply with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Migratory Bird Treaty Act (MBTA), and their implementing regulations, and to carry out the mandate of the U.S. Court of Appeals for the District of Columbia Circuit in *American Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027 (DC Cir. 2008).<sup>1</sup>

Specifically, Petitioners request that the FCC undertake the following

actions: Amend the Commission's regulations that implement NEPA, "consistent with Council on Environmental Quality regulations and guidance," to "cure deficiencies" and to ensure that only Commission actions that have no significant environmental effects individually or cumulatively are categorically excluded; Prepare a programmatic environmental impact statement addressing the environmental consequences of its Antenna Structure Registration (ASR) program on migratory birds, their habitats, and the environment; Promulgate rules to clarify the roles, responsibilities and obligations of the Commission, applicants, and non-federal representatives in complying with the ESA; Consult with the U.S. Fish and Wildlife Service on the ASR program regarding all effects of towers and antenna structures on endangered and threatened species; and complete the proposed rulemaking in WT Docket No. 03-187 to adopt measures to reduce migratory bird deaths in compliance with the MBTA.<sup>2</sup>

*Procedural Matters:* This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.<sup>3</sup> Parties making oral ex parte presentations in this proceeding are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.<sup>4</sup> More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>5</sup>

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 29, 2009 and reply comments on or before June 15, 2009. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

*Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions

<sup>2</sup> Petition at iv-v.

<sup>3</sup> See 47 CFR 1.1200(a), 1.1206.

<sup>4</sup> See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, Public Notice, 15 FCC Rcd 19945 (2000).

<sup>5</sup> See 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are also set forth in 1.1206(b). See 47 CFR 1.1206(b).

<sup>1</sup> In the Matter of Amendment of Part 1 of the Commission's Rules Regarding Environmental Compliance Procedures for Processing Antenna Structure Registration Applications, WT Docket No. 08-61, filed April 14, 2009 (Petition).

provided on the Web site for submitting comments.

For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [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.

**Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Parties shall send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445

12th Street, SW., Room CY-B402, Washington, DC 20554, (800) 378-3160, e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com). Comments filed in response to this document will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08-165. The comments may also be purchased from Best Copy and Printing, Inc., telephone (800) 378-3160, facsimile (202) 488-5563, or e-mail [FCC@BCPIWEB.com](mailto:FCC@BCPIWEB.com).

Federal Communications Commission.

**James D. Schlichting,**

*Acting Chief, Wireless Telecommunications Bureau.*

[FR Doc. E9-10815 Filed 5-7-09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R7-ES-2008-0105; 92210-1117-0000-B4]

RIN 1018-AV92

#### **Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Southwest Alaska Distinct Population Segment of the Northern Sea Otter (*Enhydra lutris kenyoni*)**

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

**ACTION:** Proposed rule; reopening of public comment period; notice of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our proposal to designate critical habitat for the southwest Alaska Distinct Population Segment (DPS) of the northern sea otter (*Enhydra lutris kenyoni*) under the Endangered Species Act of 1973, as amended (Act). This action will provide all interested parties with an additional opportunity to submit written comments on our December 16, 2008, proposed rule to designate approximately 15,225 square kilometers (km<sup>2</sup>) (5,879 square miles (mi<sup>2</sup>)) as critical habitat.

**DATES:** We are reopening the comment period until July 1, 2009. For more information, see Public Comments Solicited section below.

#### **ADDRESSES:**

**Public Comments:** You may submit information by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: FWS-R7-ES-2008-0105; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

**Public Hearing:** We will hold one public hearing on June 18, 2009, at the Z.J. Loussac Library in Anchorage, Alaska. There will be an informational meeting with a questions and answer session from 7 p.m. to 7:30 p.m. and we will accept public comments verbally from 7:30 p.m. to 9:30 p.m. In addition to having the opportunity to provide oral comments in person, telephone access will be provided for this hearing. Contact the Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**) for more information about this public hearing.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments Solicited section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Douglas M. Burn, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907/786-3800; facsimile 907/786-3816. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On December 16, 2008, we published a proposed rule to designate approximately 15,225 square kilometers (km<sup>2</sup>) (5,879 square miles (mi<sup>2</sup>)) as critical habitat for the southwest Alaska DPS of the northern sea otter (73 FR 76454). We accepted public comments on this proposed rule for 60 days, ending on February 17, 2009. During that period, we received 15 submissions from various individuals, communities, and organizations. Recognizing that the original public comment period partially overlapped with the holiday season, we are reopening the public comment period to provide additional time for concerned individuals to provide input on the proposed designation.

We intend that any final action resulting from this proposal will be as