

**DEPARTMENT OF TRANSPORTATION****Maritime Administration****46 CFR Part 387**

[Docket No. R-157]

RIN 2133-AB18

**Utilization and Disposal of Surplus Federal Real Property for Development or Operation of a Port Facility; Correction**

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule; correction.

**SUMMARY:** This document makes a technical correction to a final rule published on August 16, 1995 concerning the terms, reservations, restrictions, and conditions under which the Secretary of Transportation will convey surplus Federal real property and related personal property to public entities for use in the development or operation of a port facility.

EFFECTIVE DATE: August 16, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Carman (202) 366-4357.

**SUPPLEMENTARY INFORMATION:** Beginning on page 42466 in the issue of August 16, 1995, the Maritime Administration published a final rule adding a new part 387. However, in the table of contents for the part on page 42467, in the second column, and in the section headings of the sections on pages 42467 through 42469, the new sections were incorrectly designated as §§ 12.1 through §§ 12.6. These section numbers are corrected to read as §§ 387.1 through §§ 387.6. In addition, it should be noted that the new part 387 is added to Subchapter J—Miscellaneous, of Title 46 CFR chapter II.

By Order of the Maritime Administrator.

Dated: August 17, 1995.

**Joel Richard,**

Secretary, Maritime Administration.

[FR Doc. 95-20870 Filed 8-22-95; 8:45 am]

BILLING CODE 4910-81-P

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

[PR Docket No. 92-235, FCC 95-255]

**Private Land Mobile Radio Services**

AGENCY: Federal Communications Commission.

ACTION: Final rule; Clarification.

**SUMMARY:** On June 15, 1995, the Commission adopted a *Report and Order* which resolves many of the technical issues which have inhibited private land mobile radio (PLMR) users from employing the most spectrally-efficient technologies. This Public Notice clarifies the June 15, 1995, *Report and Order* so that license applications requesting power in excess of that now permitted on the offsets (e.g., 2 watts output power in all services except the Special Industrial Radio Service, where entities may be licensed for an effective radiated power of up to 100 watts) will not be accepted for filing until issues are resolved relative to the consolidation of radio services and/or the designation of dedicated channels in the 450-470 MHz band for low power use. Upon the resolution of these issues, the Commission will notify the public as to the lifting of the freeze.

EFFECTIVE DATE: August 11, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Rubin of the Wireless Telecommunications Bureau at (202) 418-0680.

**SUPPLEMENTARY INFORMATION:** On June 15, 1995, the Commission adopted a *Report and Order*, PR Docket No. 92-235, FCC 95-255 60 FR 37152, July 19, 1995 to promote more efficient use of the private land mobile radio (PLMR) spectrum below 800 MHz. The Commission formulated a narrowband channel plan in order to promote spectrum efficiency. Under the new plan, channels in the 450-470 MHz band available under former § 90.267 of the Commission's rules, 47 CFR 90.267, that are 12.5 kHz removed from regularly-assignable channels and reserved for low power operation ("12.5 kHz offset channels") can be assigned for high power operation. The Commission recognized, however, that there still is a need for low power channels. It stated that frequency coordinators, as part of the coordination transition plan, could designate specific channels for low power use. A key part of the frequency coordination plan is the consolidation of the twenty PLMR services. The Commission provided the PLMR community three months to negotiate and submit a consensus plan for consolidation.

Hewlett-Packard Company (HP) submitted a letter on July 25, 1995, to the Chief of the Private Wireless Division, requesting that, in light of the August 18, 1995, effective date of the new rules, the Commission protect current operations on these 12.5 kHz offset channels until the underlying issues regarding frequency coordination

and the establishment of dedicated channels in the 450-470 MHz band for low power use are addressed. HP stated that hospitals use tens of thousands of HP telemetry devices operating on the 12.5 kHz offsets to monitor electrocardiographs and other critical information on the status of cardiac patients. HP explained that these telemetry units play an important role in allowing cardiac patients to become ambulatory within limited proximity to the treating hospital, thereby facilitating recovery and reducing inpatient costs. HP suggested that medical telemetry and high-powered operations cannot co-exist on these 12.5 kHz offset channels.

The Bureau agrees with HP that a problem could develop if many applicants were to file for and obtain high powered operation on these offsets prior to coordinators identifying a new location for low power operations. Therefore, license applications requesting power in excess of that now permitted on the offsets (e.g., 2 watts output power in all services except the Special Industrial Radio Service, where entities may be licensed for an effective radiated power of up to 100 watts) will not be accepted for filing until issues are resolved relative to the consolidation of radio services and/or the designation of dedicated channels in the 450-470 MHz band for low power use. Upon the resolution of these issues, the Commission will notify the public as to the lifting of the freeze.

The imposition of the freeze is procedural in nature and, therefore, is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)). See *Neighborhood TV Co., Inc. v. FCC*, 742 F.2d 629 (D.C. Cir. 1984), *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948 (6th Cir. 1971), and *Kessler v. FCC*, 326 F.2d 673 (D.C. Cir. 1963). Furthermore, good cause exists for non-compliance with the APA's "notice and comment" and "effective date" requirements because it would be impractical, unnecessary, and contrary to the public interest if the Commission did not act to protect the critical operations on these 12.5 kHz offset channels. This action is effective immediately.

Federal Communications Commission.

**LaVera F. Marshall,**

Acting Secretary.

[FR Doc. 95-20732 Filed 8-22-95; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF DEFENSE

## 48 CFR Part 215

[DFARS Case 95-D701]

Defense Federal Acquisition  
Regulation Supplement; Contract  
Award (Interim)

AGENCY: Department of Defense (DoD).

ACTION: Correction to interim regulation.

**SUMMARY:** The interim rule published at 60 FR 40106 on August 7, 1995, is corrected to reflect removal of the subsections within the removed section on production special tooling and production special test equipment.

EFFECTIVE DATE: August 7, 1995.

## FOR FURTHER INFORMATION CONTACT:

Ms. Melissa D. Rider, DFARS FASTA Implementation Secretariat, at (703) 614-1634. Please cite DFARS Case 95-D701.

**SUPPLEMENTARY INFORMATION:** The Department of Defense published an interim rule amending 48 CFR Parts 206, 207, 215, 219, and 252 on August 7, 1995, at 60 FR 40106. The amendment to Part 215 removed and reserved section 215.871, but inadvertently did not indicate that subsections 215.871-1 through 215.871-5 are also removed. This correction removes the appropriate subsections.

## List of Subjects in 48 CFR Part 215

Government procurement.

## Michele P. Peterson,

Executive Editor, Defense Acquisition  
Regulations Council.

Therefore, 48 CFR Part 215 is amended as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY  
NEGOTIATION

215.871-1, 215.871-2, 215.871-3, 215.871-4, 215.871-5 [Removed]

2. Sections 215.871-1, 215.871-2, 215.871-3, 215.871-4, and 215.871-5 are removed.

[FR Doc. 95-20751 Filed 8-22-95; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric  
Administration

## 50 CFR Part 222

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

Endangered and Threatened Wildlife  
and Plants: Decision on Designation of  
Critical Habitat for the Gulf Sturgeon

**AGENCIES:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; and Fish and Wildlife Service, Interior.

**ACTION:** Notice of decision on critical habitat designation.

**SUMMARY:** The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS), collectively the Services, announce a decision on designation of critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*), a federally listed threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). Based on lack of benefit to the species, the Services have determined that critical habitat designation is not prudent.

**DATES:** The finding announced in this notice was made on August 18, 1995.

**ADDRESSES:** Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. The administrative record supporting this decision is available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael M. Bentzien at the above address or telephone 904/232-2580.

## SUPPLEMENTARY INFORMATION:

## Background

The Gulf sturgeon (*Acipenser oxyrinchus* (= *oxyrhynchus desotoi*), also known as the Gulf of Mexico sturgeon, is a nearly cylindrical fish with an extended snout, ventral mouth, chin barbels, and with the upper lobe of the tail longer than the lower. Adults range from 1.8-2.4 meters (6-8 feet) in length, with adult females larger than males. It is a subspecies of Atlantic sturgeon, *Acipenser oxyrinchus* (= *oxyrhynchus*), and is distinguished from *Acipenser oxyrinchus oxyrinchus*, the East Coast

subspecies, by its longer head, pectoral fins, and spleen. The Gulf sturgeon is restricted to the Gulf of Mexico and its drainages, primarily from the Mississippi River to the Suwannee River, including the States of Louisiana, Mississippi, Alabama, and Florida. Sporadic occurrences are known as far west as Texas (Rio Grande), and marine waters in Florida south to Florida Bay (Wooley and Crateau 1985, Reynolds 1993). As an anadromous species, the Gulf sturgeon migrates between fresh and salt water. For discussion of the ecology, life history, and threats to this subspecies, see the Services' September 30, 1991, final rule listing the Gulf sturgeon as a threatened species (56 FR 49653).

Gilbert (1992) discovered that the specific scientific name of the Atlantic sturgeon had been ". . . misspelled for over 100 years . . ." and pointed out that it should be *oxyrinchus*, not the previously used *oxyrhynchus*. Both spellings are conjuncted in this proposed rule to acknowledge the correct zoological nomenclature and avoid confusion with previous Federal documents and literature references.

Services' involvement with the Gulf sturgeon began with monitoring and other studies of the Apalachicola River population by the FWS Panama City, Florida, Fisheries Assistance Office in 1979. The fish was included as a category 2 species in the FWS December 30, 1982 (47 FR 58454) and September 18, 1985 (50 FR 37958) vertebrate review notices and in the January 6, 1989 (54 FR 554) animal notice of review. Category 2 designation was given to those species for which listing as threatened or endangered is possibly appropriate, but for which additional biological information is needed to support a proposed rule. In 1980, the FWS Jacksonville, Florida Office contracted a status survey report on the Gulf sturgeon (Hollowell 1980). The report concluded that the fish had been reduced to a small population due to overfishing and habitat loss. In 1988, the Panama City, Florida Office completed a report (Barkuloo 1988) on the conservation status of the Gulf sturgeon, recommending that the subspecies be listed as a threatened species pursuant to the Act.

The FWS and NMFS jointly proposed the Gulf sturgeon for listing as a threatened species on May 2, 1990 (55 FR 18357). In that proposed rule, the Services maintained that designation of critical habitat was "not prudent" due to the sturgeon's broad range and the lack of knowledge of specific areas utilized by the subspecies. The final rule for the Gulf sturgeon was published