FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 95–31; FCC 01–64]

Reexamination of Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission affirmed its April 2000 decision to use a point system to select among mutually exclusive noncommercial educational (NCE) broadcast applicants on reserved channels. In response to requests for additional information, the Commission clarified various aspects of the new system and revised several rules to reflect the clarifications. Appendix D to the decision identifies approximately 1,500 pending applications that are members of closed mutually exclusive groups on reserved channels. The Commission will issue a public notice announcing a date by which those applicants must file either a supplement to claim points or a settlement agreement. The Commission will waive its rules to permit timely filed settlements to exceed the amount of the applicants' reasonable and prudent expenses.

DATES: Effective April 18, 2001.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Internet address: *http://www.fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Federal Communications Commission, Mass Media Bureau, Audio Services Division, 445 12th Street, SW., Washington, DC 20554, (202) 418–2700. Internet address: ibleiwei@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* adopted February 15, 2001, and released February 28, 2001, which affirms and clarifies earlier action in this proceeding (See 65 FR 36375, June 8, 2000; 66 FR 3884, January 17, 2001). The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036. The text and list of applicants in Appendix D can also be obtained over the internet, in the headlines section of the FCC's home page *http://www.fec.gov.*

Synopsis of Order

1. On February 28, 2001, the Commission released a decision responding to seventeen Petitions for Reconsideration and/or Clarification of noncommercial educational (NCE) broadcast selection procedures adopted in April 2000. The decision clarifies filing procedures and selection methods for mutually exclusive applicants seeking to construct new or to make major changes to existing reserved channel NCE broadcast stations including FM, FM translator, and television stations. While providing additional guidance to applicants, the decision leaves the point system that will be used to select among applicants basically unchanged from that adopted in April 2000.

2. Future applicants seeking to build new reserved channel NCE stations or to make major changes to such existing stations will file applications during a ''filing window.'' They will claim points as part of their original application, based on their qualifications at the time of filing. If mutually exclusive applications are received during the filing window the Commission will use a point system and tie breakers to select among them. Each applicant's characteristics at the time of filing will determine that applicant's maximum points and its maximum position in a tie breaker. If an applicant makes changes after filing that detract from the original proposal, it will lose points.

3. Procedures will differ somewhat for pending applications, because those applications did not contain any point information at the time of filing. Procedures will depend on whether the applicant is in a group that is considered ''closed'' or ''open'' in terms of whether it is subject to future competition from additional parties.

4. Appendix D to the Commission's decision lists the applicants in ''closed'' groups. With respect to these applicants the Commission will issue a public notice announcing a supplement date, approximately 30 days thereafter. By that date, applicants in ''closed'' groups must file either a settlement agreement or a supplement to claim points. Applicants filing neither will be dismissed. The Commission will waive its rules to permit closed group applicants that file settlements on or before the supplement date to receive consideration that exceeds reasonable and prudent expenses.

5. Two types of settlements are acceptable: Universal settlements and technical solutions, each of which allows immediate grant of an authorization. Universal settlements resolve the claims of all applicants in the mutually exclusive group. Technical solutions make it possible, by means of a minor engineering change, for one applicant to remove itself from the group on the four corners of its application without affecting the viability of any other applicants.

6. Non-settling applicants in closed groups must file point supplements to remain viable. They may claim non-technical points based on their qualifications as of the future ''supplement date'' to be announced by public notice. To some degree this may enable existing applicants to enhance their positions. For example, an applicant that unconditionally withdraws pending applications prior to the supplement date would not count those stations for purposes of the tie breaker which favors applicants with fewer pending applications. Not all point factors can be enhanced in that manner, however. For example, only those applicants that have been local for a full two years by the supplement date can claim points as an ''established'' local applicant. An organization cannot be considered established through its later actions, such as by changing in its board of directors after our adoption of the point system. Applicants also will not be permitted to claim additional points based on recent technical changes, because applications have already been studied for technical matters and changes now would cause undue delay. The applicant's technical points will be examined as of the date on which we issued a ''B'' cut-off public notice establishing the closed group or, if no such notice has been issued, as of April 21, 2000, the release date of our Report and Order in this proceeding. These dates establish maximum points, which will be reduced if the applicant makes detracting changes thereafter.

7. With respect to the final type of applicants (those with pending applicants that are still ''open'' to future competition because they were never placed on an ''A'' cut-off notice) such applicants will be considered along with any additional applications filed within the first filing window. Pending applicants in open proceedings have two options for claiming points. If an applicant chooses to keep its application pending, it may amend that application during the first filing window to enhance its proposal and claim the points for which it would qualify as of the close of the filing window. Alternatively, an applicant may withdraw its pending application

prior to the first filing window and file a new application that includes point information within that window. In either case, existing applicants that are subject to competition will have the same opportunity as new applicants to submit their best proposals during the first filing window.

8. The Commission's decision makes several other clarifications. The rules are amended to clarify that, to the extent that attribution is relevant to an NCE station, the attribution standards contained in the notes to 47 CFR 73.3555 (the commercial ownership rule) will apply. The rules are amended to incorporate the provision that government entities are considered local throughout their areas of jurisdiction. It is clarified that the NCE standards for fair distribution pursuant to 47 U.S.C. 307(b) are based on whether a station is the first or second reserved channel FM station *received* by a substantial population within the station's 60dBu contour. For NCE 307(b) purposes, it is immaterial whether there are also stations operating on non-reserved channels with noncommercial formats and whether there are other NCE stations *licensed to* a particular community. It is clarified that consortia of schools can qualify for the state-wide network credit. It is clarified that for purposes the point system and its tie breakers, radio applicants (whether full service or translator) will count as their existing stations and applications, AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations. To ensure efficient processing the Commission will waive the requirement that applications for new NCE FM stations and major changes to existing mutually exclusive NCE FM stations be amended pursuant to Docket No. 98–93 to provide city grade coverage.

Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (''RFA''),[1] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Further Notice of Proposed Rulemaking and a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the Report and Order. *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants,* MM Docket No. 95–31, *Further Notice of Proposed Rule Making,* 63 FR 58358 (October 30, 1998), 13 FCC Rcd 21167 (1998) *(Further Notice); Report and Order,* 65 FR 36375 (June 8, 2000), 15 FCC Rcd 7386 (2000). This present Supplemental Final Regulatory Flexibility Analysis (''Supplemental FRFA'') conforms to the RFA as amended by the Contract with America Advancement Act of 1966, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Subtitle II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''). *See* 5 U.S.C. 604.

Need For and Objectives of the Memorandum Opinion and Order

In the Report and Order, the Commission established a point system, a type of simplified paper hearing, to select among applicants competing to construct new noncommercial educational (NCE) broadcast stations on channels reserved for NCE use. The Commission received petitions requesting reconsideration and clarification of a variety of issues. This Memorandum Opinion and Order affirms the use of a point system and the elements therein, but makes the following clarifications: (1) Attribution standards applicable to NCE stations are clarified; (2) the stated policy that government entities are considered local throughout their areas of jurisdiction is incorporated into the rules; (3) it is clarified that first and second NCE aural signals received, rather than those licensed to a community, will be considered for the threshold fair distribution analysis and that, if fair distribution is not decisive only equivalent mutually exclusive applications with respect to fair distribution will proceed to be considered under a point system; (4) the manner in which applicants will claim points is clarified; and (5) the manner in which to count translator stations is clarified. Additionally, the Memorandum Opinion and Order gives applicants in pending closed groups of mutually exclusive applications a limited opportunity to settle for more than reasonable and prudent expenses.

Summary of Significant Issues Raised by the Public Comments in Response to the FRFA

No comments were received in direct response to the FRFA in MM Docket No. 95–31. Two Petitioners for Reconsideration, while not addressing the FRFA, ask for clarification of whether small community colleges with fewer than five campuses can qualify for state-wide network points. The Memorandum Opinion and Order clarifies that small colleges that form consortiums with other colleges, so that at least five campuses are served, can so qualify. *See infra.*

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small organization,'' ''small business,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. *See* 5 U.S.C. 601(3); 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Small Business Act, 15 U.S.C. 632 (1996). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. 1992 Economic Census, U.S. Bureau of Census, Table 6 (special tabulation of data under contract to Office of Advocacy of U.S. Small Business Administration). ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' 5 U.S.C. 601(4). The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

The rules adopted in this Order will apply to television and radio stations licensed to operate on channels reserved as ''noncommercial educational.'' Specifically, the rules will affect reserved channel FM, FM translator, and TV stations that apply to make major changes to those existing stations and to applicants for permits to construct new reserved channel FM, FM translator, and TV stations. Stations that operate on non-reserved channels, such as TV translator stations and AM stations are not affected. Stations in low power services (LPTV and LPFM) also are not affected.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

With respect to television stations, the Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Television stations that the Federal Communications Commission (FCC) would consider commercial, as well as those that the FCC would consider noncommercial educational, are included in this industry. Also included are other establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

For 1992 the total number of television stations that produced less than $10.0 million in revenue was 1,155 of the 1,509 television stations then operating, both commercial and noncommercial, or 77 percent. As of February 1, 2001, of the 1,667 total television stations, 374 were noncommercial educational. Thus, we estimate that the proposed rules will potentially affect 288 (77 percent of 374) noncommercial educational television stations that are small businesses. These existing stations would only be affected if they file an application for major modification of their existing facilities, and if another applicant files a mutually exclusive application. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. On the other hand they may understate the number of small entities, because we believe that a larger percentage of noncommercial educational stations are small businesses than the percentage applicable to the television industry as a whole. We recognize that the proposed rules may also affect minority and women owned stations, some of which may be small entities. In 1997, minorities owned and controlled 38 (3.2%) of 1,193 commercial television stations in the United States. Comparable figures are not available for noncommercial stations. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and noncommercial television stations in the United States. The proposal would also affect pending and future mutually exclusive applications for noncommercial television stations. As of February 2001, there are currently 89 pending applications for 31 channels reserved for noncommercial educational television usage.

The rules would also affect noncommercial educational radio stations. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. 13 CFR 121.201, SIC code 4832. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. 1992 Census, Series UC92–S–1, at Appendix A–9. Radio stations that the Federal Communications Commission (FCC) would consider commercial, as well as those that the FCC would consider noncommercial educational, are included in this industry. Also included are entities which primarily are engaged in radio broadcasting and which produce radio program materials. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 Census indicates that 96 percent of radio station establishments produced less than $5 million in revenue in 1992. The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each colocated AM/FM combination counts as one establishment. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. FCC News Release, No. 31327 (January 13, 1993). As of February 1, 2001, Commission records indicate that 12,751 radio stations were operating. Of that radio station total, 2,170 stations were noncommercial educational FM radio stations. Thus, we estimate that 2,083 (96%) of these noncommercial educational stations are small businesses, possibly more because we believe that a greater percentage of noncommercial educational stations are small businesses than of the radio industry overall. These existing stations would only be affected by the proposal if they choose to file applications for major modification of facilities and if their applications are mutually exclusive with the application of another noncommercial entity. Applicants for new NCE radio stations would also potentially be affected. As of February 2001 there were 439 pending mutually exclusive groups of 1,356 applications, for new noncommercial FM radio stations. We also note that this proposal will affect future full service FM applications. It also will affect pending and future noncommercial FM translator applicants. As of February 1, 2001 there were 43 pending mutually exclusive groups of 97 applications for reserved channel FM translator stations.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

Most of the provisions of the Report and Order are unchanged by the Memorandum Opinion and Order. As noted in the Report and Order, the point system is expected to reduce the overall administrative burden of the Commission's application processes on applicants and the Commission. Use of a point system will eliminate the expense of preparing for and appearing at lengthy traditional hearings. Applicants should also receive decisions faster, because the Commission will make numerical calculations instead of preparing detailed hearing decisions. These savings should more than offset the time that would be required for applicants to gather and submit documentation supporting the points claimed. No additional professional services are required by applicants filing under these revised rules. Further, the cost of compliance will not vary between large and small entities.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

All significant alternatives presented in the petitions and responsive comments were considered. The alternatives considered generally would affect all reserved channel applicants, regardless of whether they are small or large entities, and whether they are seeking to construct small or large stations. For example, the Commission considered but did not adopt suggestions to use lotteries rather than a point system, to adjust the previously established qualifications needed to receive various points, and to adopt points for new factors such as radio reading services. While generally affirming the choices made previously in its Report and Order in this proceeding, MM Docket No. 95–31, 15 FCC Rcd 7386 (2000), the Commission clarified various matters. Only one clarification specifically affects small entities. In response to a concern raised by community colleges, the Commission clarified that existing rules permit applicants with fewer than 5 colleges/50 secondary schools of their own to qualify as state-wide networks if through a consortium or similar arrangement they are also able to count schools under the authority of other

educators to which they regularly provide curriculum programming. This option may benefit small entities. We expect that there is no significant economic impact on small entities as a result of this clarification. We will continue to consider small entities favorably in the point system, in that they are more likely than large entities to qualify for the points awarded for diversity of ownership, established local entity, and in a tie breaker for number of existing authorizations and applications.

Report to Congress

The Commission will send a copy of the *Memorandum Opinion and Order*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this *Memorandum Opinion and Order*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Memorandum Opinion and Order* and Supplemental FRFA, (or summaries thereof) will also be published in the **Federal Register** pursuant to 5 U.S.C. 604(b).

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Regulatory Text

For the reasons discussed in the preamble, parts 73 and 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.3555 is amended by revising the last sentence of paragraph (f) to read as follows:

§ 73.3555 Multiple ownership.

(f) * * * However, the attribution standards set forth in the Notes to this section will be used to determine attribution for noncommercial educational FM and TV applicants, such as in evaluating mutually exclusive applications pursuant to subpart K.

* * * * *

3. Section 73.7000 is amended by revising the definition of ''Local applicant'' to read as follows:

§ 73.7000 Definition of terms (as used in subpart K only).

* * * * *

Local applicant: An applicant physically headquartered, having a campus, or having 75% of board members residing within 25 miles of the reference coordinates for the community to be served, or a governmental entity within its area of jurisdiction.

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4. Section 73.7002 is amended by revising paragraph (b) to read as follows:

§ 73.7002 Fair distribution of service on reserved band FM channels.

* * * * *

(b) In an analysis performed pursuant to paragraph (a) of this section, a full service FM applicant that will provide the first or second reserved channel noncommercial educational (NCE) aural signal received by at least 10% of the population within the station's 60dBu (1mV/m) service contours will be considered to substantially further fair distribution of service goals and to be superior to mutually exclusive applicants not proposing that level of service, provided that such service to fewer than 2,000 people will be considered insignificant. First service to 2,000 or more people will be considered superior to second service to a population of any size. If only one applicant will provide such first or second service, that applicant will be selected as a threshold matter. If more than one applicant will provide an equivalent level (first or second) of NCE aural service, the size of the population to receive such service from the mutually exclusive applicants will be compared. The applicant providing the most people with the highest level of service will be awarded a construction permit, if it will provide such service to 5,000 or more people than the next best applicant. If none of the applicants in a mutually exclusive group would substantially further fair distribution goals, all applicants will proceed to examination under a point system. If two or more applicants will provide the same level of service to an equivalent number of people (differing by less than 5,000), only those equivalent applicants will be considered together in a point system.

* * * * *

5. Section 73.7003 is amended by adding two new sentences to the end of paragraphs (b)(2) and (c)(1) and adding new paragraphs (e) and (f) to read as follows:

§ 73.7003 Point system selection procedures.

* * * * *

(b) * * *

(2) * * * Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

* * * * *

(c) * * *

(1) * * * Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

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(e) For applications filed after April 21, 2000, an applicant's maximum qualifications are established at the time of application and will be reduced for any post-application changes that negatively affect any evaluation criterion.

(f) For applications filed on or before April 21, 2000, an applicant's maximum qualifications are established as of the relevant date listed in paragraph (f)(1), (2), or (3) of this section. After the relevant date for determining an applicant's maximum points, points will be reduced for any changes that negatively affect any evaluation criterion. Applicants will establish their qualifications according to the following:

(1) If the applicant is in a group for which a ''B'' cut-off notice issued prior to April 21, 2000 its maximum non-technical qualifications are established as of the date by which applicants must supplement their applications to supply point information, and its maximum technical qualifications are established as of the date of the ''B'' cut-off notice;

(2) If the applicant is in a group for which an ''A'' cut-off notice issued prior to April 21, 2000 but for which no ''B'' cut-off notice issued, its maximum non-technical qualifications are established as of the date by which applicants must supplement their applications to supply point information, and its maximum technical qualifications are established as of April 21, 2000;

(3) If the applicant was neither placed on an ''A'' cut-off list prior to April 21, 2000 nor filed in response to such an ''A'' cut-off list, it is subject to competition from applications filed within the first filing window, and its maximum technical and non-technical qualifications will be determined as of the close of the first filing window.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read:

Authority: 47 U.S.C. 154, 303, 307, 336(f), and 554.

2. Section 74.1233 is amended by revising paragraphs (e)(3)(i) and (ii) to read as follows.

§ 74.1233 Processing FM translator and booster station applications.

* * * * *

(e) * * *

(3) * * *

(i) *Existing authorizations.* Each applicant's number of existing radio authorizations (licenses and construction permits for AM, FM, and FM-translators but excluding fill-in translators) as of the time of application shall be compared, and the applicant with the fewest authorizations will be chosen as tentative selectee. If each applicant is applying for a fill-in translator only, and consideration of its other radio stations is not dispositive, its number of existing fill-in translator authorizations will also be considered, and the fill-in applicant with the fewest fill-in authorizations will be chosen as tentative selectee.

(ii) *Existing applications.* If a tie remains, after the tie breaker in paragraph (e)(3)(i) of this section, the remaining applicant with the fewest pending radio new and major change applications (AM, FM, and non fill-in FM translators) will be chosen as tentative selectee. If each applicant is applying for a fill-in translator only, and consideration of its other radio stations is not dispositive, its number of existing fill-in translator applications will also be considered, and the fill-in applicant with the fewest fill-in authorizations will be chosen as tentative selectee.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 031201C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery off the Southern Atlantic States; Closure of the Penaeid Shrimp Fisheries off South Carolina and Georgia

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

ACTION: Closure of the penaeid shrimp fisheries in the exclusive economic zone (EEZ) off South Carolina and Georgia.

SUMMARY: NMFS closes the trawl fishery for penaeid shrimp, i.e., brown, pink, and white shrimp, in the EEZ off South Carolina and Georgia. This closure action is taken in accordance with the procedures and criteria specified in the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) and its implementing regulations and is intended to protect the spawning stock of white shrimp that has been severely depleted by unusually cold weather conditions.

DATES: The closure is effective March 13, 2001 until the effective date of a notification of opening which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–570–5305; fax: 727–570–5583; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The commercial penaeid shrimp fishery in the South Atlantic Region is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The FMP and implementing regulations at 50 CFR 622.35(d) provide the procedures, criteria, and authority for a concurrent closure of the EEZ adjacent to South Atlantic states that have closed their waters to harvest of brown, pink, and white shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather. Consistent with those procedures and criteria, the states of Georgia and South Carolina have determined, based on standardized assessments, that unusually cold temperatures have resulted in at least an 80-percent reduction of the white shrimp populations in their respective state's waters. Both states have closed their waters to the harvest of brown, pink, and white shrimp and have requested that the Council recommend that NMFS implement a concurrent closure of the EEZ off Georgia and South Carolina. The Council convened a review panel to evaluate the data supporting the states' requests. Based on the review panel's recommendation, the Council approved the states' requests and requested that NMFS concurrently close the EEZ off Georgia and South Carolina to the harvest of brown, pink, and white shrimp. NMFS has determined that the recommended closure conforms with the procedures and criteria specified in the FMP and implementing regulations, the Magnuson-Stevens Act, and other applicable law and, therefore, implements the closure effective March 13, 2001. The closure will be effective until the ending dates of the closures in the respective states' waters, but may be ended earlier based on the states' request. In no case will the closure remain effective after June 15, 2001. NMFS will terminate the closure of the EEZ by filing a notification to that effect with the Office of the Federal Register.

During the closure, no person may: (1) trawl for brown, pink, or white shrimp in the EEZ off Georgia or South Carolina; (2) possess on board a fishing vessel brown, pink, or white shrimp in or from the EEZ off Georgia or South Carolina unless the vessel is in transit through the area and all nets with a mesh size of less than 4 inches (10.2 cm) are stowed below deck; or (3) use or have on board a vessel trawling in that part of the EEZ off Georgia or South Carolina that is within 25 nautical miles of the baseline from which the territorial sea is measured a trawl net with a mesh size less than 4 inches (10.2 cm).

Classification

This action responds to the best available information recently obtained from the fishery. The closure must be implemented immediately to protect the severely depleted spawning stock of white shrimp off Georgia and South Carolina and avoid overfishing. This action complements closures already imposed by the respective states. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause, that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C.