FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–296; FCC 04–189]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document examines the Emergency Alert System (EAS), and seeks comment on whether EAS in its present form is the most effective mechanism for warning the American public of an emergency and, if not, on how EAS can be improved. *The Notice of Proposed Rule Making (NPRM)* is the most recent in a series of proceedings in which the Federal Communications Commission has sought to contribute to an efficient and technologically current public alert and warning system.

DATES: Comments are due on or before October 29, 2004 and reply comments are due on or before November 29, 2004.

Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted to the public, Office of Management and Budget (OMB), and other interested parties on or before October 29, 2004.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L.LaLonde@omb.eop.gov*, or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Jean Ann Collins, Enforcement Bureau, Office of Homeland Security, at (202) 418–1199, or via the Internet at *jeanann.collins@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* EB Docket No. 04–296, FCC 04–189, adopted August 4, 2004, and released August 12, 2004. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov*. Initial Paperwork Reduction Act of 1995 Analysis. This document contains proposed or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due October 29, 2004. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0207.

Title: Part 11—Emergency Alert System (EAS).

Form No.: Not applicable.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions; State, local or tribal governments.

Estimated Number of Respondents: 22,000.

Estimated Time Per Response: Range from 0.017–40 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Estimated Total Annual Burden: 38,585 hours.

Estimated Total Annual Costs: $8,250,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: As currently approved by OMB and reflected in the information above, Part 11 contains rules and regulations providing for an emergency alert system. The EAS provides the President with the capability to provide immediate communications and information to the general public during periods of national emergency. The EAS also provides state and local governments including the National Weather Service with the capability to provide immediate communications and information to the general public concerning emergency situations posing a threat to life and property. With the adoption of the *NPRM*, the Commission seeks comment on whether the EAS in its present form is the most efficient mechanism for warning the American public of an emergency and, if not, on how the EAS can be improved. Upon adoption of a final order, the Commission will submit to OMB for approval any revisions to the existing collection. The main objective of the *NPRM* is to seek comment on whether EAS as currently constituted is the most effective and efficient public warning system that best takes advantage of appropriate technological advances and best responds to the public's need to obtain timely emergency information. One of the main central issues on which the *NPRM* seeks comment is the current efficacy of EAS in an age when the communications landscape has evolved from what it was when EAS predecessors, and EAS itself, were originally conceived.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All filings should refer to EB Docket No. 04–296. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. 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 number, which in this instance is EB Docket No. 04–296. Parties may also submit an electronic comment by Internet e-mail. To get filing instruction for e-mail comments, commenters should send an e-mail to

ecfshelp@fcc.gov, and should include the following words in the regarding line of the message: ''get form<your e-mail address>.'' A sample form and directions will be sent in reply. A copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

Parties who choose to file by paper must file an original and four copies of each filing. 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 the Commission continues to experience delays in receiving U.S. Postal Service mail).

For hand deliveries, the Commission contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission Secretary, Office of the Secretary, Federal Communications Commission.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. The Commission also strongly encourages that parties track the organization set forth in this *NPRM* in order to facilitate the Commission's internal review process.

To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice) or (202) 418–7365 (TTY). This Public Notice can also be downloaded in Word and Portable Document Format at *http://www.fcc.gov/cgb.dro*.

Synopsis of the Notice of Proposed Rulemaking

1. Since the tragic events of September 11, 2001, an expanding circle of interested parties, including individual citizens, public/private groups, and our federal, state, and local partners, have raised issues about the efficacy of EAS as a public warning mechanism. Some of these issues are rooted in the fact that EAS mandates only delivery of a ''Presidential message.'' The Commission's EAS rules primarily are concerned with the implementation of EAS in this national role. The Commission seeks comment on the threshold question of whether the current EAS infrastructure is the best mechanism for delivering a national level message.

2. Along with its primary role as a national public warning system, EAS and other emergency notification mechanisms are part of an overall public alert and warning system, over which the Federal Emergency Management Agency (FEMA) exercises jurisdiction. EAS use as part of such a public warning system at the state and local levels, while encouraged, is merely voluntary. Thus, although Federal, state, and local governments, and the consumer electronics industry have taken steps to ensure that alert and warning messages are delivered by a responsive, robust and redundant system, the permissive nature of EAS at the state and local level has resulted in an inconsistent application of EAS as an effective component of overall public alert and warning system. Accordingly, the Commission believes that it should now consider whether permissive state and local EAS participation is appropriate in today's world.

3. There are similar questions about the technical capabilities of EAS. For example, should the Commission extend its EAS requirement to include other digital broadcast media, such as IBOC DAB, DBS, DTV, and satellite DARS. Also, the Commission seeks comment on the extent to which EAS can be coordinated with other public alert and warning systems, such as those based on wireless technologies.

4. It is the Commission's intention in this proceeding to seek comment on these and an array of other questions and potential rule changes. The Commission has already begun—and will continue throughout this proceeding—to coordinate carefully with the Department of Homeland Security (DHS), its component, FEMA, and the Department of Commerce and its component, the National Oceanic and Atmospheric Administration's (NOAA's) National Weather Service (NWS). The Commission anticipates these federal partners will be active participants in the proceeding. In addition to seeking comments from all interested individuals and federal entities on the issues raised in this NPRM, we also specifically seek the participation of state and local emergency planning organizations and solicit their views. Finally, the Commission seeks input from all telecommunications industries concerned about developing a more effective EAS.

Initial Regulatory Flexibility Analysis

5. With respect to this *NPRM*, an Initial Regulatory Flexibility Analysis (IRFA) is contained in Appendix A. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments as described above. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the Proposed Rules

6. In this *NPRM*, the Commission solicits comment on whether EAS in its present form is the most effective mechanism for warning the American public of an emergency and, if not, on how EAS can be improved.

Legal Basis

7. Authority for the actions proposed in this *NPRM* may be found in sections 1, 4(i) and (o), 303(r), 403, 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and (o), 303(r), 403, 554(g) and 606.

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

8. 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 proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' 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. 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). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The arts, entertainment, and recreations sector had 96,497 small firms.

9. *Television Broadcasting*. The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having $12 million or less in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard.

10. *Radio Stations*. The SBA has developed a small business size standard for Radio Stations, which consists of all such firms having $6 million or less in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' According to Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States had revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and, that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations are included. Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action.

11. *Cable and Other Program Distribution*. The SBA has developed a small business size standard for Cable and Other Program Distribution, which consists of all such firms having $12.5 million or less in annual receipts. According to Census Bureau data for 1997, in this category there was a total of 1,311 firms that operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million to $24,999,999. Thus, under this size standard, the majority of firms can be considered small.

12. *Multipoint Distribution Systems*. The proposed rules would apply to Multipoint Distribution Systems (MDS) operated as part of a wireless cable system. The Commission has defined ''small entity'' for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

13. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, Cable and Other Subscription Programming, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of $11 million annually. Therefore, the Commission finds that there are approximately 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules proposed herein.

14. *Instructional Television Fixed Service*. The proposed rules would also apply to Instructional Television Fixed Service facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 ITFS are small businesses and may be affected by the proposed rules.

15. *Wireless Service Providers*. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission's most recent data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. This SBA size standard also applies to wireless telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 294 of these are small under the SBA small business size standard.

16. *Broadband Personal Communications Service*. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission

re-auctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

17. *Incumbent Local Exchange Carriers (Incumbent LECs).* The Commission has included small incumbent local exchange carriers in this present IRFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed rules.

18. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1.500 or fewer employees. In addition, 35 carriers have reported that they are ''Other Local Service Providers.'' Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed rules.

19. *Satellite Telecommunications and Other Telecommunications.* The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 or less in average annual receipts. For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year. Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

20. The second category—Other Telecommunications—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year. Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

21. There are potential reporting or recordkeeping requirements proposed in this *NPRM,* particularly with regard to state and local EAS participation and participation by digital broadcasters. The proposals set forth in the *NPRM* are intended to enhance the performance of the EAS while reducing regulatory burdens wherever possible.

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

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

23. In setting forth the proposals contained in the *NPRM*, the Commission has attempted to minimize the burdens on all entities. The Commission seeks comment on the impact of our proposals on small entities and on any possible alternatives that would minimize the impact on small entities.

Federal Rules That Duplicate, Overlap, or Conflict With the Proposed Rules

24. None.

Ex Parte Rules

25. These matters shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

Ordering Clauses

26. Accordingly, pursuant to the authority contained in sections 1, 4(i) and (o), 303®, 403, 624(g) and 706 of the

Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 303(r), 403, 554(g), and 606, *Notice is Hereby Given* of the proposals described in the *Notice of Proposed Rulemaking*.

27. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the *Notice of Proposed Rulemaking*, including the Initial Regulatory Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19743 Filed 8–27–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040804226–4226–01; I.D. 071904C]

RIN 0648–AR50

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 5

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 5 (Framework 5) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow for specification of the annual Total Allowable Landings (TAL) for multiple years. The intent is to provide flexibility and efficiency to the management of the species.

DATES: Comments must be received on or before September 14, 2004.

ADDRESSES: Copies of Framework 5, the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*. Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Framework 5.'' Comments may also be submitted via facsimile (fax) to 978–281–9135, or via e-mail to the following address: *FSBFW5@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on Framework 5.'' Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http//www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The current regulations outline an annual process for specifying the catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as a fishing mortality (F) rate or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP.

The Council developed Framework 5, pursuant to §§ 648.108, 648.127, and 648.147, in order to streamline the administrative and regulatory processes involved in specifying the TALs for the summer flounder, scup, and black sea bass fisheries, while, at the same time, maintaining consistency with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In particular, Framework 5 would allow for specification of TALs for the summer flounder, scup, and/or black sea bass fisheries in any given year for the following 1 to 3 years. Under the current management system, specification of commercial quotas and recreational harvest limits for these fisheries is done on an annual basis. Under the proposed process, all of the environmental and regulatory review procedures currently required under the Magnuson-Stevens Act, National Environmental Policy Act, and other applicable law would be conducted and documented during the year in which the multi-year specifications are set. The analyses would consider impacts throughout the time span for which specifications are set (i.e., 1 to 3 years). TALs would not have to be constant from year to year within the multi-year specifications, but would instead be based upon expectations of future stock conditions as indicated by the best scientific information available at the time the multi-year specifications are set.

Annual review of updated information on the fisheries by the Council's Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and Council would not be required during the period of multi-year specifications. As such, adjustments to the TALs for years 2 and/or 3 would not occur once the multi-year specifications are set. Given the absence of an annual review TAL adjustment process, environmental impact evaluation in the specification setting year would have to consider thoroughly the uncertainty associated with projected estimates of stock size in the 2- to 3–year time horizon. Accordingly, Council recommendations for multi-year TALs would be expected to be appropriately conservative in order to reflect this uncertainty. Under Framework 5, the Council would not be obligated to specify multi-year TALs, but would be able, depending on the information available and the status of the fisheries, to specify TALs for the following 1, 2, or 3 years, as appropriate.

Although the Council's process for setting multi-year TALs would occur prior to the first year that the specifications would be in place, with no requirement to review the specifications prior to the second and/