

**AMENDMENT 3 TO THE
FISHERY MANAGEMENT PLAN FOR THE
SUMMER FLOUNDER FISHERY**

February 1993

Mid-Atlantic Fishery Management Council
in cooperation with the
Atlantic States Marine Fisheries Commission,
the
National Marine Fisheries Service,
the
New England Fishery Management Council,
and the
South Atlantic Fishery Management Council

Draft adopted by MAFMC: 28 October 1992
Final adopted by MAFMC: 21 January 1993
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2. SUMMARY

This Amendment 3 to the Fishery Management Plan for the Summer Flounder Fishery (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council), is intended to manage the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act of 1976, as amended (MFCMA). The management unit remains unchanged and is summer flounder in US waters in the western Atlantic Ocean from the southern border of North Carolina northward to the US - Canadian border. The objectives of the FMP remain unchanged and are:

1. Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur.
2. Reduce fishing mortality on immature summer flounder to increase spawning stock biomass.
3. Improve the yield from the fishery.
4. Promote compatible management regulations between State and Federal jurisdictions.
5. Promote uniform and effective enforcement of regulations.
6. Minimize regulations to achieve the management objectives stated above.

The minimum net mesh provision for the summer flounder otter trawl fishery is revised to read as follows:

Vessels using otter trawls that land or possess more than 200 lbs of summer flounder from 1 November to 30 April or more than 100 lbs of summer flounder 1 May through 31 October may only fish with 5.5" minimum diamond mesh or 6" minimum square mesh, inside measure, applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net, or, if the net is not long enough for such a measurement, the terminal 1/3 of the net, measured from the terminus of the cod end to the head rope. If the fish are landed in a State that has a larger minimum net mesh size, the State limit would prevail.

Any combination of mesh or liners that effectively decreases the mesh below the minimum size is prohibited.

A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chaffing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3" in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net. "Top of the regulated portion of the net" means the 50% of the entire regulated portion of the net which (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

There are two exceptions to the minimum mesh rule:

1. Vessels fishing in the fly net fishery are exempt from the minimum mesh size requirement. A fly net is a two seam otter trawl with the following configuration:
 - a. The net has large mesh webbing in the wings with a stretch mesh measure of 8" to 64".
 - b. The first body (belly) section of the net consists of 35 meshes or more of 8" (stretch mesh) webbing or larger.

c. In the body section of the net the stretch mesh decreases in size relative to the wings and continues to decrease throughout the extensions to the cod end, which generally has a webbing of 2" (stretch mesh).

2. Vessels fishing for summer flounder in the EEZ (taking and retaining more than 200 lbs of summer flounder) east of the line described below from 1 November through 30 April and not using a 5.5" minimum mesh (diamond) or 6" minimum mesh (square) net, are required to obtain a special permit from NMFS. Application for this permit must be made 7 days prior to entering this exempted fishery and NMFS must be notified 7 days before the vessel exits the exempted fishery. The commercial minimum size limit (13") applies in the exempted area. Vessels with this special permit are exempted from the minimum net mesh regulations, but are prohibited from fishing west of the line. NMFS is authorized to establish procedural rules necessary to process applications for and cancellation of these special permits in order to facilitate enforcement.

The line follows 72° 30.0' W. until it intersects the EEZ.

Vessels fishing with an exempted fishery permit may transit the area south and west of the exempted fishery area to leave and return to port so long as all fishing gear is stowed in a manner such that it cannot be used outside the exempted fishery area.

If the Regional Director determines after a review of Sea Sampling data that vessels fishing seaward of the line described above are discarding more than 10% of their summer flounder catch, the Regional Director may rescind the exemption.

The Summer Flounder Monitoring Committee (see section 9.1.2.2) will meet on an annual basis to review the Northeast exempted fishery program beginning one year after approval of Amendment 3. Sea sampling data would be used in conjunction with the winter trawl survey data to determine if the demarcation line used to delineate the exemption area should be modified or the exempted area terminated to reduce discard rates below 10% in the exempted fishery for the upcoming fishing season. Possible modifications would include both a reduction or enlargement of the exempted area.

Specifically, discard rates by 30' square would be used to determine a demarcation line and exemption area that would not exceed the 10% discard threshold. In areas not sampled by the Sea Sampling Program, length frequency information from the winter trawl survey would be used with selectivity ogives for nets in use in the exempted fishery to estimate discard rates for specific trawl mesh sizes used in the exempted fishery. These specific mesh sizes would be obtained from Sea Sampler reports for other areas in the exempted fishery.

Seasonal adjustments, i.e., an increase or decrease in the exemption period, could also occur based on the results of the NMFS Sea Sampling Program and this monitoring process. The exempted fishery program could be terminated as a result of this process. The Monitoring Committee would review Sea Sampler reported discard data and the NMFS NEFSC winter trawl survey data to determine whether the exempted fishery could be adjusted in time to maintain discards below the 10% level. In other words, the exempted fishery could open before or after 1 November and close before or after 30 April, in biweekly increments, if the data indicated that this would maintain discards below 10% in the exempted area.

All adjustments to the exempted fishery area would be along latitude and longitude lines consistent with the 30' squares; that is a latitudinal or longitudinal bands of 30' squares would be added to or subtracted from the exempted fishery area through the annual review. If a majority of the 30' squares in a given row were found to be under the 10% discard rate for the previous year (based on Sea Sampler data if such data existed or on winter trawl survey data if Sea Sampler data did not exist) or if the combined average (the sum of the discards for the squares in the row divided by the sum of the catch of the squares in the row) of all of the squares was below 10% discards, the row could be added to the exempted fishery area. The westernmost longitudinal row of 30' squares and the southernmost

latitudinal row of 30' squares meeting this criterion would be the western and southern limits of the exempted fishery area for a particular season. Since there is no southern boundary except the point of intersection of 72° 30' with the limit of the EEZ, the southern limit for the purpose of this evaluation will be the row of 30' squares latitudinally containing the southernmost 30' square for which exempted fishery Sea Sampler data exist for the previous season.

Following the procedures set forth in 9.1.2.2, the Monitoring Committee would recommend any changes in the exempted fisheries program to the Demersal Species Committee and ASMFC ISFMP Policy Board. The Committee and Board would consider these recommendations and make their recommendations to the Council and ASMFC. The Council and ASMFC would then consider these recommendations and make their recommendations to the Regional Director. The Regional Director would consider the recommendations of the Council and ASMFC and publish proposed changes in the *Federal Register*.

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4. INTRODUCTION

4.1 DEVELOPMENT OF THE PLAN

The Council first considered the development of a fishery management plan for summer flounder in late 1977. During the early discussions, the fact that a significant portion of the catch was taken from State waters was considered. As a result, on 17 March 1978 a questionnaire was sent by the Council to east coast State fishery administrators seeking comment on whether the plan should be prepared by the Council or by the States acting through the Atlantic States Marine Fisheries Commission (ASMFC).

It was decided that the initial plan would be prepared by ASMFC. The Council arranged for NMFS to make some of the Council's programmatic grant funds available to finance preparation of the ASMFC plan. New Jersey was designated as the State with lead responsibility for the plan. The State/Federal draft was adopted by the Atlantic States Marine Fisheries Commission at its annual meeting in October 1982. The original Council FMP (MAFMC 1988) was based on the ASMFC management plan.

The Council adopted the original FMP for public hearings on 29 October 1987. The public hearings were held in January 1988 in Fairhaven, MA; Galilee, RI; Riverhead, NY; Rockville Center, NY; Wall, NJ; Cape May Court House, NJ; Lewes, DE; Annapolis, MD; Norfolk, VA; Morehead City, NC; and Manteo, NC.

Following public hearings, the original FMP was adopted by the Mid-Atlantic Council on 16 April 1988. The South Atlantic Fishery Management Council endorsed the FMP on 28 April 1988 (Joseph pers. comm.). The New England Council, also in April 1988, adopted a motion supporting a 13" minimum fish size and no mesh size initially, with an automatic minimum size limit increase to 14" at the end of three years, rather than the framework measure adopted by the Mid-Atlantic and South Atlantic Councils (Marshall pers. comm.).

NMFS approved the original FMP on 19 September 1988.

Amendment 1 to the FMP was developed in the summer of 1990 solely to protect the 1989 and 1990 year classes by imposing a minimum net mesh size comparable to the 13" minimum fish size included in the original FMP. Amendment 1 was adopted for hearings on 29 September 1990. Hearings were held in October 1990 in Fairhaven, MA, Galilee, RI, Riverhead and Rockville Center, NY, Wall and Cape May Court House, NJ, Dover, DE, Salisbury, MD, Hampton, VA, and Manteo and Morehead City, NC. It was revised based on comments received and the final was adopted by the Council 31 October 1990. The Council also requested that NMFS implement the minimum mesh size by emergency regulations to regulate the 1990-1991 winter fishery. This request was also made by the New England and South Atlantic Councils and by the Atlantic States Marine Fisheries Commission.

On 15 February 1991 the Council was notified that NMFS had approved the overfishing definition for summer flounder contained in Amendment 1, but had disapproved the minimum net mesh provision. On 28 February NMFS notified the Council it was not going to implement emergency regulations.

The Council adopted the hearing draft of Amendment 2 on 29 May 1991. The Amendment was also adopted for hearings at the May meeting of the ASMFC Interstate Fishery Management Program Policy Board. Hearings were held in Fairhaven, MA (31 July), Galilee, RI (1 August), East Lyme, CT (7 August), Riverhead, NY (30 July), Brooklyn, NY (29 July), Wall, NJ (6 August), Cape May Court House, NJ (6 August), Salisbury, MD (1 August), Norfolk, VA (29 July), Manteo, NC (30 July), and Morehead City, NC (31 July). Following close of the comment period the Council's Demersal Species Committee met (22 August) to review the summaries of the hearings and written comments received by the Council. At that meeting the Committee was notified by NMFS that Amendment 2 would need to address the capture of endangered sea turtles in the summer flounder fishery in the fall-winter off southern Virginia and North Carolina. The Council reviewed the basic provisions of Amendment 2 and the results of the hearings at its regular 4-5 September 1991 meeting. The Council made a number of changes as a result of the hearing and comment process as recommended by the Demersal Species Committee and submitted the revised management measures to the ASMFC for consideration at the Commission's annual meeting 7-11 October 1991.

At its September meeting the Council also authorized supplemental hearings to deal with the flounder/turtle interaction issue. A proposal was drafted by personnel from the State of North Carolina, NMFS Headquarters, NMFS Northeast Regional Office, NMFS Southeast Regional Office, and the Council. This proposal, and one subsequently advanced by NMFS, were taken to a set of supplemental public hearings in Morehead City, NC (30 September), Manteo, NC (1 October), and Norfolk, VA (2 October).

The Council's action on the basic Amendment was submitted to a meeting of the ASMFC Summer Flounder Board on 23-24 September. The summary of the supplementary hearings, along with the Summer Flounder Board's recommendations were submitted to the ASMFC Interstate Fishery Management Program Board at the annual meeting on 8 October. The full membership of ASMFC unanimously adopted the Amendment on 10 October.

The outcome of the ASMFC deliberations were presented to a meeting of the Council's Demersal Species Committee on 16 October (a meeting at which all Council members were designated members of the Committee so they could be aware of the provisions of the Amendment and participate in the decision making). Following adoption by the Committee at that meeting, the Council officially adopted the Amendment by unanimous roll call vote (the Regional Director abstaining) on 17 October 1991. Amendment 2 was approved by NMFS on 6 August 1992.

4.2. PROBLEMS FOR RESOLUTION

4.2.1. The Demarcation Line for the Small Mesh Exempted Fishery is Difficult to Enforce and Bisects Hudson Canyon

The line delineating the boundary of the small mesh exempted fishery is as follows:

The line follows 71° 30' west longitude south to 40° 53.1' N, 71° 30' W; thence northeasterly 41° 00.0' N, 70° 49.5' W, thence easterly to 41° 00.0' N, 70° 30.0' W, thence southerly to 40° 50.0' N., 70° 30.0' W., thence easterly to 40° 50.0' N., 69° 40.0' W., thence southerly to 40° 33.5' N., 69° 40.0' W., thence southwesterly to 40° 26.5' N., 70° 40.0' W., thence northerly to 40° 40.5' N., 70° 40.0' W., then southwesterly to 40° 30.0' N., 72° 00.0' W., thence southerly to 40° 17.8' N., 72° 00.0' W., thence southwesterly to 40° 15.5' N., 72° 20.0' W., thence southerly along 72° 20.0' W. until it intersects the outer boundary of the EEZ.

Most of the coordinates listed above are the coordinates of the yellowtail closed area in the Northeast Multispecies FMP. Since large mesh net is required in the yellowtail closed area when the area is open, it originally seemed reasonable to include the area in the summer flounder large mesh area, in other words, draw the exempted fishery boundary east of the yellowtail closed area.

However, NMFS and the Coast Guard have concluded that the irregular line too difficult to enforce.

Additionally, the 72° 20.0' W. essentially bisects Hudson Canyon. Fishermen prefer to have the entire Canyon in the exempted fishery areas, thereby reducing navigational and trawling problems.

4.2.2. The 100 Pound Threshold for the Large Mesh Net May Lead to Excessive Discards of Legal Sized Summer Flounder

The FMP requires that fishermen must use a 5.5" diamond or 6" square mesh net if that catch and retain more than 100 lbs of summer flounder. There is some concern that this relatively low limit may lead to excessive discards of legal sized summer flounder in the prosecution of the small mesh fisheries. Sea sampling data (Table 9) show that the percentage of summer flounder in the fisheries for scup, *Loligo* squid, and silver hake decreases significantly as the catch per tow of the targeted species increases.

It seems appropriate to review various threshold levels to determine if there could be an increase above the 100 lb level while not setting such a high threshold that a summer flounder small mesh fishery is encouraged.

4.3. MANAGEMENT OBJECTIVES

The objectives of the FMP are to:

1. Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur.
2. Reduce fishing mortality on immature summer flounder to increase spawning stock biomass.
3. Improve the yield from the fishery.
4. Promote compatible management regulations between State and Federal jurisdictions.
5. Promote uniform and effective enforcement of regulations.
6. Minimize regulations to achieve the management objectives stated above.

4.4. MANAGEMENT UNIT

The management unit is summer flounder (*Paralichthys dentatus*) in US waters in the western Atlantic Ocean from the southern border of North Carolina northward to the US-Canadian border.

5. DESCRIPTION OF THE STOCK

5.1. SPECIES DISTRIBUTION

There is no need to change this section at this time.

5.2. ABUNDANCE AND PRESENT CONDITION

There is no need to change this section at this time.

5.3. STOCK CHARACTERISTICS AND ECOLOGICAL RELATIONSHIPS

There is no need to change this section at this time.

5.4. MAXIMUM SUSTAINABLE YIELD

There is no need to change this section at this time.

5.5. PROBABLE FUTURE CONDITION

There is no need to change this section at this time.

6. DESCRIPTION OF HABITAT

6.1. DISTRIBUTION OF THE SPECIES, HABITAT REQUIREMENTS, AND HABITAT OF SUMMER FLOUNDER

There is no need to change this section at this time.

6.2. HABITAT CONDITION

There is no need to change this section at this time.

6.3. GENERAL CAUSES OF POLLUTION AND HABITAT DEGRADATION

There is no need to change this section at this time.

6.4. PROGRAMS TO PROTECT, RESTORE, PRESERVE, AND ENHANCE THE HABITAT OF THE STOCKS FROM DESTRUCTION AND DEGRADATION

There is no need to change this section at this time.

6.5. HABITAT PRESERVATION, PROTECTION AND RESTORATION RECOMMENDATIONS

There is no need to change this section at this time.

6.6. HABITAT RESEARCH NEEDS

There is no need to change this section at this time.

7. DESCRIPTION OF FISHING ACTIVITIES

7.1. DOMESTIC COMMERCIAL FISHERY

There is no need to change this section at this time.

7.2. DOMESTIC RECREATIONAL FISHERY

There is no need to change this section at this time.

7.3. FOREIGN FISHING ACTIVITIES

There is no need to change this section at this time.

8. ECONOMIC CHARACTERISTICS OF THE FISHERY

8.1. COMMERCIAL FISHERY

There is no need to change this section at this time.

8.2. RECREATIONAL FISHERY

There is no need to change this section at this time.

8.3. INTERNATIONAL TRADE

There is no need to change this section at this time.

9. FISHERY MANAGEMENT PROGRAM

9.1. MEASURES TO ATTAIN MANAGEMENT OBJECTIVES

9.1.1. Specification of OY, DAH, DAP, JVP, TALFF, Overfishing Definition, and Fishing Mortality Rate Reduction Strategy (this section is unchanged from Amendment 2)

Section 303(a)(3) of the MFCMA requires that FMPs assess and specify the OY from the fishery and include a summary of the information utilized in making such specification. OY is to be based on MSY, or on MSY as it may be adjusted for social, economic, or ecological reasons. The most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing. MSY (section 5.4) has not been specified for summer flounder.

OY is all summer flounder harvested pursuant to this FMP. OY cannot be specified as a quantity because it will change as the fishing mortality rate target varies and is dependent on the level of recruitment .

The Council has concluded that US vessels have the capacity to, and will, harvest the OY on an annual basis, so DAH equals OY. The Council has also concluded that US fish processors, on an annual basis, will process that portion of the OY that will be harvested by US commercial fishing vessels, so DAP equals DAH and JVP equals zero. Since US fishing vessels have the capacity and intent to harvest the entire OY, there is no portion of the OY that can be made available for foreign fishing, so TALFF also equals zero.

Overfishing for the summer flounder is defined (MAFMC 1990) as fishing in excess of the F_{max} level. F_{max} is a biological reference point that corresponds to the level of fishing mortality (F) that produces the maximum yield per recruit. Based on current analysis, F_{max} is 0.23.

Recent stock assessment information indicates that summer flounder stocks are severely overfished. Current fishing mortality rates (F) are at least 1.4 and could be as high as 2.1. Thus, there is at least a six fold difference between the F_{max} and the current F. In order to achieve F_{max} , current exploitation rates would have to be reduced by 73%.

The Council and ASMFC Management Board considered a large number of strategies to reduce the fishing mortality rate to F_{max} , ranging from achieving F_{max} in the first year of FMP implementation to equal fishing mortality rate reductions over ten years. The Council and ASMFC Board adopted the following strategy: fishing mortality on summer flounder should be reduced to 0.53 in the first year of the management program and be maintained at that level through year 3. This requires a reduction in exploitation of approximately 47% in the first year. In year 4 and subsequent years, the target F would be F_{max} (0.23). The adopted strategy gives primary consideration to a high probability of reaching F_{max} , balanced against reasonable impacts on the fishermen.

9.1.2 Specification of Adopted Management Measures

9.1.2.1. Permits and fees (This section is unchanged from Amendment 2)

9.1.2.1.1. Vessel permits and fees

9.1.2.1.1.1. General

Any owner of a vessel desiring to fish for summer flounder within the US EEZ for sale, or transport or deliver for sale, any summer flounder taken within the EEZ, must obtain a moratorium permit from NMFS for that purpose. The vessel must meet the criteria set forth in 9.1.2.1.1.2 in order to qualify for the moratorium permit.

The owner of a party and charter boat (vessel for hire) must obtain a party or charter boat permit.

A recreational vessel, other than a party or charter boat (vessel for hire), is exempt from the permitting requirement if it catches no more than the recreational possession limit, multiplied by the number of persons on board, of summer flounder per trip.

A party or charter boat may have both a party or charter boat permit and a commercial moratorium permit to catch and sell if the vessel meets the commercial vessel qualification requirements set forth in 9.1.2.1.1.2. However, such a vessel may not fish under the commercial rules if it is carrying passengers for a fee. When a party or charter boat is operating as a commercial vessel, the crew size must not be more than 5 when it is operating as a party boat or and not more than 3 when it is operating as a charter boat.

9.1.2.1.1.2. Moratorium on entry to the commercial fishery

There will be a moratorium on entry of additional commercial vessels into the summer flounder fishery in the EEZ. Each State is encouraged to adopt complementary moratorium measures for those participating in the commercial fishery. Vessels with documented landings of summer flounder for sale between 26 January 1985 and 26 January 1990 qualify for a moratorium permit to land and sell summer flounder under this moratorium program. Under the moratorium, vessels and moratorium permits together may be bought and sold. Vessels

that involuntarily leave the fishery (for example, vessels that were sunk or burned) may be replaced with vessels of the same Gross Registered Tonnage (GRT) and overall registered length as the vessel being replaced. Commercial vessels that are judged unseaworthy by the Coast Guard for reasons other than lack of maintenance may be replaced by a vessel with the same GRT and vessel registered length. Permits may not be combined to create larger replacement vessels. The moratorium terminates at the end of the fifth year following implementation unless extended by FMP amendment. The moratorium may be terminated or replaced at any time by FMP amendment establishing an alternative limited entry system.

A vessel is eligible for a moratorium permit if it meets any of the following criteria:

1. The owner or operator of the vessel landed and sold summer flounder in the management unit for summer flounder between 26 January 1985 and 26 January 1990; or
2. The vessel was under construction for, or was being rerigged for, use in the directed fishery for summer flounder on 26 January 1990 and provided the vessel has landed summer flounder for sale prior to implementation of this Amendment. For the purpose of this paragraph, "under construction" means that the keel has been laid, and "being rerigged" means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for summer flounder; or
3. The vessel is replacing a vessel of substantially similar harvesting capacity which involuntarily left the summer flounder fishery during the moratorium, and both the entering and replaced vessels are owned by the same person. "Substantially similar harvesting capacity" means the same GRT and vessel registered length for commercial vessels.
4. Vessels that are judged unseaworthy by the Coast Guard for reasons other than lack of maintenance may be replaced by a vessel with the same GRT and vessel registered length for commercial vessels.

Eligibility must be established during the first year of the FMP. In other words, the moratorium permit may not be applied for more than twelve months following the effective date of the final regulations or if a vessel is retired from the fishery. This does not affect annual permit renewals.

Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

Applicants for moratorium permits shall provide information with the application sufficient for the Regional Director to determine if the vessel meets the eligibility requirements. Sales receipts or dealer weighout forms signed by the dealer and, for conditions 3, a notarized statements from marine architects or surveyors or shipyard officials will be considered acceptable forms of proof.

9.1.2.1.1.3. Permit application

The owner or operator of a US vessel may obtain the appropriate Federal permit by furnishing on the form provided by NMFS information specifying, at least, the names and addresses of the vessel owner, the name of the vessel, official Coast Guard number, directed fishery or fisheries, gear type or types utilized to take summer flounder, gross tonnage of vessel, the permit number of any current or previous fishery permit issued to the vessel, radio call sign, registered length of the vessel, engine horsepower, year the vessel was built, type of construction, type of propulsion, navigational aids (e.g., Loran C), type of echo sounder, type of computer, crew size including captain, fish hold capacity (to the nearest 100 lbs), quantity of summer flounder landed during the year prior to the one for which the permit is being applied (documented by sales records), principal State of landing, the home port of the vessel, and number of passengers the vessel may carry (for party and charter boats). Operators of commercial vessels must also supply information required to establish that the vessels qualify for a permit pursuant to the moratorium. The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

Applicants for a permit under this FMP must agree, as a condition of issuance of the permit, to fish in

accordance with Federal rules whether they are fishing in the EEZ or State waters. For vessels with moratorium permits, this includes agreeing to not land summer flounder in any State where the Regional Director has determined that the State's commercial quota has been landed.

Applicants for a permit under this FMP must agree, as a condition of issuance of the permit, to fish in accordance with Federal rules whether they are fishing in the EEZ or State waters. For vessels with moratorium permits, this includes agreeing to not land summer flounder in any State where the Regional Director has determined that the State's commercial quota has been landed.

Permits expire: (1) when the owner or operator retires the vessel from the fishery, or (2) when the vessel fails to land any summer flounder for 52 consecutive weeks, or (3) on 31 December of each year, or (4) when the ownership of the vessel changes; however, the Regional Director may authorize continuation of a vessel permit for the summer flounder fishery if the new owner so requests. Applications for continuation of a permit must be addressed to the Regional Director.

The permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit, the vessel, its gear and catch shall be subject to inspection upon request by any authorized official.

The Federal costs of implementing an annual permit system for the sale of summer flounder shall be charged to permit holders as authorized by section 303(b) (1) of the Magnuson Act. In establishing the annual fee, the Regional Director will ensure that the fee does not exceed the administrative costs incurred in issuing the permit, as required by section 304(d) of the Magnuson Act. Proper accounting for administrative costs may include labor costs (salary and benefits of permitting officers plus prorated share of secretarial support and supervision at both the NMFS regional and headquarters levels), computer costs for creating and maintaining permit files (prorated capital costs, time share and expendable supplies), cost of forms and mailers (purchase, preparation, printing and reproduction), and postage costs for application forms and permits.

9.1.2.1.2. Dealer permits and fees

Any dealer of summer flounder must have a permit. A dealer of summer flounder is defined as a person or firm that receives summer flounder for a commercial purpose from the owner or operator or a vessel issued a moratorium permit pursuant to this FMP for other than transport.

An applicant must apply for a dealer permit in writing to the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. Applications must contain the name, principal place of business, mailing address and telephone number of the applicant. The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned. Except as provided in Subpart D of 15 CFR Part 904, the Regional Director will issue a permit within 30 days of the receipt of a completed application.

A permit expires on 31 December of each year or if the ownership or the dealer changes. Any permit issued under this section remains valid until it expires, is suspended, is revoked, or ownership changes. Any permit which is altered, erased, or mutilated is invalid. The Regional Director may issue replacement permits. Any application for a replacement permit shall be considered a new permit.

A permit is not transferable or assignable. It is valid only for the dealer to whom it is issued.

The permit must be displayed for inspection upon request by an authorized officer or any employee of NMFS designated by the Regional Director.

The Regional Director may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing permit sanctions or denials are found at Subpart D of 15 CFR Part 904. The Regional Director may, after publication of a notice in the *Federal Register*, charge a permit fee. Within 15 days after the change in the information contained in an application submitted under this section, the dealer issued the

permit must report the change in writing to the Regional Director.

The Regional Director shall recognize State dealer permits in lieu of Federal dealer permits if the permits contain the necessary information and are forwarded to the Regional Director by the appropriate State.

9.1.2.2. Summer Flounder FMP Monitoring Committee

The Summer Flounder Monitoring Committee will be made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the Northeast Regional Office, the Northeast Fisheries Center, and the Southeast Fisheries Center, and ASMFC representatives. The MAFMC Executive Director or his designee will chair the Committee.

The Summer Flounder Monitoring Committee will annually review the best available data including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock status, the most recent estimates of recruitment, VPA results, target mortality levels, beneficial impacts of size/mesh regulations, as well as the level of noncompliance by fishermen or States and recommend to the Council Committee and ASMFC Interstate Fishery Management Program (ISFMP) Policy Board commercial (annual quota, minimum fish size, and minimum mesh size) and recreational (possession and size limits and seasonal closures) measures designed to assure that the target mortality level on summer flounder is not exceeded [0.53 in the first year of FMP implementation and maintaining it at that level through year three; in year four and subsequent years, the target fishing mortality rate will be F_{max} (0.23)]. The Committee will also review State regulatory programs for consistency with the FMP. The Committee will also review the Northeast Exempted Fisheries Program described in section 9.1.2.3.3. The Committee will also review the gear used to catch summer flounder to determine whether gear other than otter trawls needs to be regulated to help assure attainment of the fishing mortality rate target and propose such regulations as appropriate.

The Council and ASMFC will receive the report of the Committee and make its recommendations to the Regional Director. The Regional Director will receive the report of the Council and ASMFC and publish his report in the *Federal Register* for public comment by the date specified in the regulations which provide States sufficient time to implement quotas and other management measures. Following the review period, the Regional Director will set the final quota and other management measure adjustments for the year.

In summary, the steps from the Monitoring Committee to action by the Regional Director are:

1. The Monitoring Committee reviews the data and makes its recommendations to the Demersal Species Committee and ASMFC ISFMP Policy Board.
2. The Demersal Species Committee and ASMFC ISFMP Policy Board consider the recommendations of the Monitoring Committee and makes their recommendations to the Council and ASMFC.
3. The Council and ASMFC consider the recommendations of the Demersal Species Committee and ASMFC ISFMP Policy Board and make their recommendations to the Regional Director.
4. The Regional Director considers the recommendations of the Council and ASMFC and publishes proposed measures in the *Federal Register*.

The Monitoring Committee, Demersal Species Committee, ASMFC ISFMP Policy Board, and Council meetings will all be open to the public and provide an opportunity for public comment. The publication of the Regional Director's proposed action in the *Federal Register* provides an opportunity for public comment at that level.

9.1.2.3. Commercial management measures

9.1.2.3.1. Commercial quota

The quota setting process is specified in 9.1.2.2. Quotas would be distributed to the States based on their percentage share of commercial landings for the period 1980-1989 (Table 1) minus any landings in that State

in excess of the previous year's quota.

The annual commercial quota will be set at a range of between 0 and the maximum allowed by the adopted fishing mortality rate reduction strategy. The commercial quota includes all landings for sale by *any* gear.

All landings by any vessel that has a commercial moratorium permit (permit to sell) counts against the quota, whether the summer flounder are caught with an otter trawl, a scallop dredge, hook and line, or any other gear. If the vessel does not have a commercial moratorium permit, the fish may not be sold and the recreational rules on size, possession, and season apply.

The annual commercial quota would be based on the recommendations of the Summer Flounder FMP Monitoring Committee to the Council and ASMFC Board. The Council and ASMFC would consider those recommendations and submit their recommendations to the Regional Director. The Regional Director will set the commercial quota annually.

The commercial quota in 1992 would be a maximum of 11 million pounds assuming a minimum mesh size of 5.5" diamond mesh or 6" square mesh, a minimum commercial fish size of 13" TL, and a minimum recreational fish size of 14" TL. This quota is based on current information and assumes an average level of recruitment in 1989, 1990 and 1991. The quota will be calculated each year to reflect the most current information on recruitment, stock status, and level of compliance.

The 1992 quota may be revised prior to plan implementation to reflect additional information on stock status. If 1990 and 1991 recruitment is lower than expected then the quota will be lower than the maximum 11 million pounds. Several factors will be considered when determining the 1992 quota including: the highly overfished nature of the stock ($F > 1.4$), the low spawning stock size (currently 2-3% of maximum), the fact that an average or above average year class has not been produced recently (1989 and 1990 year classes were no better than average, while the 1988 year class was poor), recruitment estimates for 1989 and beyond are based on a barely significant correlation between the NEFC VPA estimates and the VIMS survey (which has a short time series), and finally, 1992 projections are based on 1989 numbers- at-age from the VPA.

The quota must apply throughout the management unit, that is, in both State and Federal waters. All commercial landings in a State would count toward that State's quota. When a State's quota has been caught, fishing for and/or landing summer flounder would be prohibited in that State.

Using data collected through this FMP (section 9.1.3), NMFS will monitor the fishery and inform each of the States of the State's landings relative to that State's quota. It is expected that the States will assist NMFS with data collection.

It is the responsibility of each State to assure that its quota is not exceeded. Each State shall close their State's waters to commercial fishing for summer flounder when their quota is reached and prohibit landing by commercial vessels. Each State must submit to the Council and Regional Director a plan setting forth the means by which the State will manage the quota, size limit, and mesh regulation. Each State's plan will be reviewed by the Monitoring Committee. Until the Monitoring Committee determines that a State's plan is adequate to implement the FMP, the State will be considered not in compliance with the FMP. This provision is considered extremely important, particularly in the first year or two that the FMP is implemented, since few, if any, States will have measures in effect to rapidly implement the FMP (particularly the quota provision). This provision will allow the Regional Director to close the EEZ summer flounder fishery to vessels of a particular State early enough in the year to assure that there is quota remaining for the fishery in the State's territorial sea and internal waters and for vessels taking advantage of the 100 or 200 pound bycatch rule, depending on season, for small mesh. Without this provision, States would exceed their quotas the first year, have the overage deducted from the second year's quota, and likely never be able to receive a full quota in subsequent years.

A State is allowed to submit a plan for each year or to submit a framework plan setting forth criteria and schedules for actions to assure compliance with the FMP.

The Regional Director shall close the EEZ to fishing for summer flounder by commercial vessels if he determines that the inaction of one or more States will cause the target fishing mortality levels to be exceeded.

The Regional Director shall close the EEZ to fishing for summer flounder by commercial vessels if the commercial fisheries in all States have been closed.

9.1.2.3.2. Commercial fish size limitations (this section is unchanged from Amendment 2)

It is illegal for owners or operators of vessels issued moratorium permits, except party and charter boats carrying passengers for hire, to possess summer flounder less than 13" total length (TL). It is also illegal to possess parts of summer flounder less than 13" to the point of landing.

Vessels with commercial moratorium permits issued pursuant to this FMP are required to fish and land pursuant to the provisions of this FMP unless the vessels land in States with larger minimum fish sizes than those provided in the FMP, in which case the minimum fish size would be required to meet the State limits. States with minimum size larger than those in the FMP are encouraged to maintain them.

The minimum fish size may be changed annually, if appropriate, following the Summer Flounder FMP Monitoring Committee process set forth in 9.1.2.2.

9.1.2.3.3. Minimum mesh requirement.

Vessels using otter trawls and possessing more than 100 lbs of summer flounder between 1 May and 31 October or more than 200 lbs of summer flounder between 1 November and 30 April may only fish with 5.5" minimum diamond mesh or 6" minimum square mesh, inside measure, applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net, or, if the net is not long enough for such a measurement, the terminal 1/3 of the net, measured from the terminus of the cod end to the head rope. Mesh would be allowed to be larger than the minimum size, but it could be no smaller than the minimum size. If the fish are landed in a State that has a larger minimum net mesh size, the State limit would prevail. States with minimum mesh regulations larger than those established in this FMP are encouraged to maintain them.

Only nets of at least the legal size would be allowed on otter trawl vessels fishing for summer flounder. Any combination of mesh or liners that effectively decreases the mesh below the minimum size is prohibited. Otter trawl vessels retaining more than 100 lbs of summer flounder between 1 May and 31 October or more than 200 lbs of summer flounder between 1 November and 30 April may not have any net, or any piece of net not meeting the mesh size requirements, on board. It must be recognized that at least a portion of the body of the net (ahead of the 75 meshes) may be smaller than the minimum legal mesh size, and that net may be legally on board, as may pieces of net to repair it.

The owner or operator of a fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chaffing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3" in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net. "Top of the regulated portion of the net" means the 50% of the entire regulated portion of the net which (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

Since it will be difficult to detect a violation of the minimum mesh net regulation, the penalty for individuals detected of such a violation must be sufficient to provide an adequate deterrent. Nets can be double bagged or used as liners. Therefore, it is recommended that the penalty for the first offense be a six month loss of moratorium permit and the penalty for a second offense be a one year loss of permit. After imposition and expiration of such a penalty, if the individual fishes without penalty for three consecutive years, the earlier offenses would be expunged from the record.

The minimum net mesh size could be changed annually, if appropriate, following the Summer Flounder FMP

Monitoring Committee process set forth in 9.1.2.2. Based on the recommendations of the Summer Flounder Monitoring Committee and Council, the Regional Director, by regulatory amendment, shall implement regulations on gear other than otter trawls to achieve discards of summer flounder equivalent to the discards with otter trawls given the minimum net mesh requirements. This provision is intended to address the problem that could develop if gear currently not in significant use in the summer flounder fishery are developed as a way of avoiding the minimum otter trawl mesh rule.

There are two exceptions to the minimum mesh rule:

1. Vessels fishing in the fly net fishery are exempt from the minimum mesh size requirement. A fly net is a two seam otter trawl with the following configuration:

- a. The net has large mesh webbing in the wings with a stretch mesh measure of 8" to 64".
- b. The first body (belly) section of the net consists of 35 meshes or more of 8" (stretch mesh) webbing or larger.
- c. In the body section of the net the stretch mesh decreases in size relative to the wings and continues to decrease throughout the extensions to the cod end, which generally has a webbing of 2" (stretch mesh).

If the Regional Director determines after a review of Sea Sampling, landing, or other data that the summer flounder catch in the fly net fishery exceeds 1% of the total catch in the fly net fishery, he may rescind the exemption.

2. Vessels fishing for summer flounder in the EEZ (taking and retaining more than 200 lbs of summer flounder) east of the line described below from 1 November through 30 April and not using a 5.5" minimum mesh (diamond) or 6" minimum mesh (square) net, are required to obtain a special permit from NMFS. Application for this permit must be made 7 days prior to entering this exempted fishery and NMFS must be notified 7 days before the vessel exits the exempted fishery. The commercial minimum size limit (13") applies in the exempted area. Vessels with this special permit are exempted from the minimum net mesh regulations, but are prohibited from fishing west of the line. NMFS is authorized to establish procedural rules necessary to process applications for and cancellation of these special permits in order to facilitate enforcement.

The line follows 72° 30.0' W. until it intersects the EEZ.

Vessels fishing with an exempted fishery permit may transit the area south and west of the exempted fishery area to leave and return to port so long as all fishing gear is stowed in a manner such that it cannot be used outside the exempted fishery area.

If the Regional Director determines after a review of Sea Sampling data that vessels fishing seaward of the line described above are discarding more than 10% of their summer flounder catch, the Regional Director may rescind the exemption.

The Summer Flounder Monitoring Committee (see section 9.1.2.2) will meet on an annual basis to review the Northeast exempted fishery program beginning one year after approval of Amendment 3. Sea sampling data would be used in conjunction with the winter trawl survey data to determine if the demarcation line used to delineate the exemption area should be modified or the exempted area terminated to reduce discard rates below 10% in the exempted fishery for the upcoming fishing season. Possible modifications would include both a reduction or enlargement of the exempted area.

Specifically, discard rates by 30' square would be used to determine a demarcation line and exemption area that would not exceed the 10% discard threshold. In areas not sampled by the Sea Sampling Program, length frequency information from the winter trawl survey would be used with selectivity ogives for nets in use in the exempted fishery to estimate discard rates for specific trawl mesh sizes used in the exempted fishery. These specific mesh sizes would be obtained from Sea Sampler reports for other areas in the exempted fishery.

Seasonal adjustments, i.e., an increase or decrease in the exemption period, could also occur based on the results of the NMFS Sea Sampling Program and this monitoring process. The exempted fishery program could be terminated as a result of this process. The Monitoring Committee would review Sea Sampler reported discard data and the NMFS NEFSC winter trawl survey data to determine whether the exempted fishery could be adjusted in time to maintain discards below the 10% level. In other words, the exempted fishery could open before or after 1 November and close before or after 30 April, in biweekly increments, if the data indicated that this would maintain discards below 10% in the exempted area.

All adjustments to the exempted fishery area would be along latitude and longitude lines consistent with the 30' squares; that is a latitudinal or longitudinal bands of 30' squares would be added to or subtracted from the exempted fishery area through the annual review. If a majority of the 30' squares in a given row were found to be under the 10% discard rate for the previous year (based on Sea Sampler data if such data existed or on winter trawl survey data if Sea Sampler data did not exist) or if the combined average (the sum of the discards for the squares in the row divided by the sum of the catch of the squares in the row) of all of the squares was below 10% discards, the row could be added to the exempted fishery area. The westernmost longitudinal row of 30' squares and the southernmost latitudinal row of 30' squares meeting this criterion would be the western and southern limits of the exempted fishery area for a particular season. Since there is no southern boundary except the point of intersection of 72°30' with the limit of the EEZ, the southern limit for the purpose of this evaluation will be the row of 30' squares latitudinally containing the southernmost 30' square for which exempted fishery Sea Sampler data exist for the previous season.

Following the procedures set forth in 9.1.2.2, the Monitoring Committee would recommend any changes in the Northeast exempted fisheries program to the Demersal Species Committee and ASMFC ISFMP Policy Board. The Committee and Board would consider these recommendations and make their recommendations to the Council and ASMFC. The Council and ASMFC would then consider these recommendations and make their recommendations to the Regional Director. The Regional Director would consider the recommendations of the Council and ASMFC and publish proposed changes in the *Federal Register*.

9.1.2.4. Recreational Fishery Measures (this section remains unchanged from Amendment 2)

The recreational fishery throughout the management unit would be managed through an annual evaluation of a framework system (section 9.1.2.2) of possession limits, size limits, and seasonal closures. Recreational landings would be compared to annual target harvest levels established through the FMP Monitoring Committee process to determine if modifications to the recreational possession limit and size limit are required for the following year or if the fishery needed to be closed for certain periods.

The annual recreational possession limit, size limit, and season will be set at a range of between 0 and the maximum allowed by the adopted fishing mortality rate reduction strategy. It will be illegal to possess parts of summer flounder less than the minimum size to the point of landing.

Clearly, within limits, there are various combinations of possession limits and seasons for a given size limit that will attain the fishing mortality rate target for a particular year. The length and timing of a seasonal closure are primary determinants in this consideration. Obviously, a closure during months when the fishery is not prosecuted at a significant level will not be particularly useful. Also, a very short closure may not be useful since it will allow fishermen the opportunity to expend greater effort in the months immediately before and after the closure.

During the first year of FMP operation there will be a 14" TL minimum fish size, 6 fish possession limit, and a fishing season from 15 May through 30 September.

On vessels with several passengers, where catches are pooled in one or more containers, the number of summer flounder contained on the vessel may not exceed the possession limit multiplied by the number of people aboard the vessel.

It is the responsibility of each State to assure that it implements measures equivalent with the Federal FMP. The Regional Director may prohibit landing summer flounder from the EEZ by recreational vessels (party,

charter, and private boats) of any State not in compliance with this FMP (possession limit, size limit, and season). If the inaction of one or more States leads the Regional Director to conclude that the FMP will be adversely affected, he may close the entire EEZ to summer flounder fishing. To be equivalent with the FMP, the States' measures must have the same length and possession limits as the FMP, but may incorporate a different equivalent open season provided such open season remains within the same MRFSS waves (bimonthly sampling periods) used in the coastwide season.

9.1.2.5. Other measures

Only persons with a dealer permit may buy summer flounder at the point of first sale landed by a vessel that has a commercial moratorium permit issued pursuant to this FMP.

Owners or operators of vessels with moratorium permits may sell summer flounder at the point of first sale only to a dealer that has a dealer permit issued pursuant to this FMP.

The amount of summer flounder on board a vessel using small mesh trawl gear other than exempted gear may not exceed 100 lbs between 1 May and 31 October or more than 200 lbs between 1 November and 30 April.

Owners or operators of vessels with moratorium permits may not land summer flounder in a State when the Regional Director has determined that the State's commercial quota has been landed.

All summer flounder on vessels fishing with a mesh smaller than the legal minimum size must have any summer flounder on board boxed in a manner that will facilitate enforcement personnel knowing whether the vessel has more than 100 lbs between 1 May and 31 October or more than 200 lbs between 1 November and 30 April of summer flounder on board to meet the minimum mesh size criterion. Any unboxed summer flounder on board a vessel fishing with a net smaller than the legal minimum is considered a violation of this FMP. A box holds 100 pounds of summer flounder and is approximately 36" long, 15" wide, and 12" high (approximately 3.75 cubic feet).

The Regional Director may place sea samplers aboard vessels if he determines a voluntary sea sampling system is not giving a representative sample from the summer flounder fishery.

The Regional Director, Northeast Region, NMFS is authorized to monitor sea turtles in the Exclusive Economic Zone from the mouth of the Chesapeake Bay to the southern border of North Carolina, through aerial surveys and sea sampling, in concert with similar efforts by the State of North Carolina, and to institute measures in this area within 10 miles (16.1 kilometers) of the shore to minimize the take of sea turtles in the summer flounder fishery between 15 October and 15 January, compatible with such measures instituted by North Carolina. If measures are considered necessary and North Carolina has not acted appropriately, the Regional Director may limit tow times to 60 minutes or close the area to trawlers that do not use nets equipped with turtle excluder devices with bars spaced no greater than 6" (15.2 centimeters) apart, or other devices that may be authorized by the Regional Director.

No foreign fishing vessel shall conduct a fishery for or retain any summer flounder. Foreign nations catching summer flounder shall be subject to the incidental catch regulations set forth in 50 CFR 611.13, 611.14, and 611.50.

9.1.3. Specification and Sources of Pertinent Fishery Data (this section is unchanged from Amendment 2)

9.1.3.1. Domestic and foreign fishermen

Section 303(a)(5) of the MFCMA requires at least information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, and number of hauls must be submitted to the Secretary. In order to achieve the objectives of this FMP and to manage the fishery for the maximum benefit of the US, it is necessary that, at a minimum, the Secretary collect on a continuing basis and make available to the Councils: (1) summer flounder catch, effort, and ex-vessel value and the catch and ex-vessel value of those species caught in conjunction with summer

flounder for the commercial fishery provided in a form that analysis can be performed at the trip, water area, gear, month, year, principal (normal) landing port, landing port for trip, and State levels of aggregation; (2) catch and effort for the recreational fishery; (3) biological (e.g., length, weight, age, and sex) samples from both the commercial and recreational fisheries; and (4) annual and fully comparable NMFS bottom trawl surveys for analyses of both CPUE and age/size frequency. The Secretary may implement necessary data collection procedures through amendments to the regulations. It is mandatory that these data be collected for the entire management unit, including North Carolina, on a compatible and comparable basis.

Commercial logbooks must be submitted on a monthly basis by Federal moratorium permit holders in order to monitor the fishery.

Operators of party and charter boat with Federal permits issued pursuant to this FMP must submit logbooks monthly showing at least name and permit number of the vessel; total amount in pounds and numbers of each species taken; date(s) fished; number of trips; duration of trip; locality fished; crew size; landing port; number of anglers carried on each trip; and discard rate.

States are encouraged to implement equivalent fishery data collection systems for the development of a coordinated statistics gathering effort.

Foreign fishermen are subject to the reporting and recordkeeping requirements in 50 CFR 611.

9.1.3.2. Dealers. In order to monitor the fishery and enable the Regional Director and the States to forecast when a closure will be needed, dealers with permits issued pursuant to this FMP must submit weekly reports showing at least the quantity of summer flounder purchased (in pounds), and the name and permit number of the vessels from whom the summer flounder was purchased.

Buyers that do not purchase directly from vessels are not required to submit reports under this provision. Dealers should report only those purchases from vessels (fishermen with commercial moratorium permits).

9.1.3.3. Processors. Section 303(a)(5) of the MFCMA requires at least estimated processing capacity of, and the actual processing capacity utilized by US fish processors must be submitted to the Secretary. The Secretary may implement necessary data collection procedures through amendments to the regulations.

9.2. ANALYSIS OF BENEFICIAL AND ADVERSE IMPACTS OF ADOPTED MANAGEMENT MEASURES

9.2.1. The FMP Relative to the National Standards (this section is unchanged from Amendment 2)

Section 301(a) of the MFCMA states: "Any fishery management plan prepared, and any regulation promulgated to implement such plan pursuant to this title shall be consistent with the following national standards for fishery conservation and management." The following is a discussion of the standards and how this FMP meets them:

9.2.1.1. Conservation and management measures shall prevent overfishing while achieving, on a continuous basis, the optimum yield from each fishery.

MSY (section 5.4) has not been specified for summer flounder. OY is all summer flounder harvested pursuant to this FMP.

Overfishing in the Summer Flounder FMP is defined as fishing in excess of the F_{max} level. F_{max} is a biological reference point that corresponds to the level of fishing mortality (F) that produces the maximum yield per recruit. Based on current resource condition, F_{max} is 0.23. That overfishing definition was approved by NMFS in Amendment 1 to the FMP. The Council's schedule to reduce overfishing is presented in section 9.2.2.1. Recent stock assessment information indicates that summer flounder stocks are severely overfished. Current fishing mortality rates (F) are at least 1.4 and could be as high as 2.1. Thus, there is at least a six fold difference between the F_{max} and the current F. In order to achieve F_{max} , current exploitation rates would have to be reduced by 73%.

Long term trends in abundance and recruitment of summer flounder, derived from several local and coastwide surveys, indicate that the summer flounder stock has been so reduced that current levels of abundance are less than 20% of the stock size measured in the late 1970's. Based on current levels of exploitation, spawning stock biomass (SSB) levels are 2-3% of the virgin or unfished biomass level. SSB levels should be at least 20% of the unfished level, based on analysis conducted on other species, to allow the stock to sustain itself over an extended period of time. Survey indices also indicate that the 1988 year class was almost a complete failure and the 1989 and 1990 year classes "no better than average." In addition, age composition of the summer flounder stock is severely compressed. In fact, the coastwide NEFC survey did not collect any summer flounder older than age 3 in the 1990 survey although a decade ago summer flounder as old as age 10 were collected.

State and Federal cooperation increases the chances of reducing overfishing.

9.2.1.2. Conservation and management measures shall be based upon the best scientific information available.

This FMP is based on the best and most recent scientific information available. Future summer flounder research should be devoted toward both data collection and analysis in order to evaluate the effectiveness of this FMP. This species should be periodically reviewed by the NEFC Stock Assessment Workshop process.

9.2.1.3. To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The FMP's management unit is summer flounder throughout their range on the Atlantic coast from Maine through North Carolina, including the EEZ, territorial sea, and internal waters. This specification is considered to be consistent with National Standard 3.

9.2.1.4. Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The FMP does not discriminate among residents of different States. It does not differentiate among US citizens, nationals, resident aliens, or corporations on the basis of their State of residence. It does not incorporate or rely on a State statute or regulation that discriminates against residents of another State.

Summer flounder migrate inshore in the spring and offshore in the fall (section 5.1). These seasonal migrations lead to seasonal fisheries. Once the decision was made to use an annual quota as one of the tools to manage the commercial fishery, it became important to adopt measures to insure that fishermen from one State could not take the entire quota (which, at least in the short run, must be much smaller than historical catches in order to stop overfishing) before fishermen from other States had an opportunity to participate in the fishery. Early in the planning process it became apparent that it would be extremely difficult, if not impossible, to prevent overfishing without the use of an overall quota. The States quickly realized that overall or regional quotas could work to the detriment of a particular State and/or region, and, therefore, requested the Council to consider State by State quotas. In developing State quotas, the Council reviewed the history of the fishery and recommended a ten year time frame as the appropriate historical data upon which quotas would be based. This was discussed thoroughly by the States and while efforts were made to shorten the period to as little as three years, it was quickly realized that short term variations in landings did occur and quotas based on a short term series would penalize one segment of the fishery while granting others what was considered an excessive share. The States, through ASMFC, approved the ten year time period and the method of allocating the quota.

However, the solution to allocate the quota by State created the problem of how to assure against overfishing in the FMP if a State did not take appropriate action to insure that its quota was not exceeded. The only action readily available was to close the EEZ to taking summer flounder, which was provided for in the Amendment. While the inaction of one State could result in such gross overfishing that a closure of the entire EEZ would be warranted, it was felt that prohibiting retention of summer flounder in the entire EEZ if only one State presented a problem generally would impose a hardship on fishermen from other States. Hence, the provision

to prohibit fishermen resident (the State that is shown as the principal landing State in the annual permit application) in the problem State from taking summer flounder anywhere in the EEZ (section 9.1.2.3.1).

Preemption was not considered a serious alternative to this procedure. There is not a great deal of precedent to determine if preemption could work rapidly enough to prevent overfishing. The existing procedures are complicated. Additionally, there is the question of whether summer flounder landings are primarily from the EEZ or primarily from State waters. If the commercial fishery is the basis, landings from the EEZ have averaged 77% during the period 1980-89 (Table 2). It was 92% in 1989 (Table 3). In the recreational fishery, EEZ catch in pounds was 7% of the total recreational landings for the 1980-89 period and 4% of the total in 1989. For the total fishery in 1980-89, the EEZ share of the total was 49% . The total fishery EEZ share in 1989 was 74%.

In choosing historical catch as a basis of allocation, and by virtue of acceptance by the States of the time frame and the resulting percent of allocations, National Standard 4A, the "fair and equitable to all such fishermen" test, has been met. Since the quota is based on stock size and will be determined annually to assure that the target mortality rate is not exceeded, National Standard 4B "reasonably calculated to promote conservation" is met.

Section 4C requires that the allocation be carried out in such a manner that "no particular individual, corporation, or other entity, acquires an excessive share of such privilege." It was therefore necessary for the Council and ASMFC to develop a method to assure that Section C was carried out.

In order to assure that 4C is fully met, any State or States not in compliance with the quota, that is, those States which have exceeded the allocated amount, must be prevented from taking additional summer flounder or an excessive share will be realized by the residents of that State, unfairly penalizing the other participants in the fishery. The Council and ASMFC have proposed that this obligation be met by requiring the Regional Director, upon advice from the Monitoring Committee through the Council and ASMFC, and upon his concurrence that the allocation has been exceeded by a particular State, to close the EEZ to fishermen from that State.

Another remedy which was considered to be available to the Regional Director was to close the entire EEZ when quotas are exceeded. While this still may be necessary if enough States exceed the quotas, it is certainly not a remedy to prevent one State from acquiring an excessive share. The provision proposed by the Council, as stated above, will prevent excessive share gains and comply with the charge of National Standard 4C. It should be noted that this clause would not prohibit continued fishing in State waters as would "preemption", which is included in the Magnuson Act, and may or may not be applicable to the summer flounder fishery.

The Council and ASMFC considered the argument that this measure discriminates among fishermen of different States, and may therefore run afoul of National Standard #4. The Council and the ASMFC have considered this argument and believe that it results in too narrow a construction of the National Standard, particularly in the context of this fishery. The National Standard must be read as a whole, and any interpretation that focuses too narrowly on distinctions based on residence may face problems in providing fair allocations. In this FMP, all fishermen are given an equal opportunity to harvest a fair share of the overall quota. The distinction drawn in the management measures is not for the purpose of harming the fishermen of any State, but rather to ensure that all of the requirements of National Standard #4 are met. This kind of differentiation, which is implemented not to adversely affect anyone, but to ensure attainment of equitable allocations, cannot be considered discriminatory within the meaning of National Standard #4. The allocation system will be administered by the States under this cooperative interjurisdictional management program. The effect of this measure is simply to provide the Secretary with the opportunity to support the collective States' efforts in administering quotas.

The recreational measures are applied coastwide, although the States are allowed to make minor changes to the open season to allow for regional differences caused by the summer flounder migration. In the commercial fishery, the minimum fish size and minimum net mesh size are applied coastwide. The commercial quota is allocated on a State by State basis using the distribution of the commercial catch of summer flounder for the period 1980-1989. These provisions are, therefore, "fair and equitable to all fishermen."

The recreational size limit, possession limit, and season are all specified so they may be adjusted annually following procedures set forth in the FMP to assure that the fishing mortality reduction strategy is followed. The commercial quota, minimum fish size, and minimum net mesh are all specified so they may be adjusted annually following procedures set forth in the FMP to assure that the fishing mortality reduction strategy is followed. These provisions are, therefore, "reasonably calculated to promote conservation."

It is clear that while the best solution to this problem may be a change either in the Magnuson Act, or through an interjurisdictional fisheries act, or similar legislation, the Council and ASMFC have acted responsibly in the required measures and fully expect these measures to be successful in carrying out a fair and equitable summer flounder plan.

The Council believes that there is an intrinsic tension within the National Standards with respect to management of interjurisdictional fisheries such as the fishery for summer flounder, which is severely overfished. Strong and effective measures are needed to reverse the overfished nature of this valuable fishery resource. Each State must play a meaningful part in this cooperative effort to reverse the trend in this fishery. Allowing vessels from any recalcitrant State full reign to fish in the EEZ uncontrolled will have serious negative repercussions for the stock. It is paramount that overfishing be prevented rather than access be preserved for vessels from a State that is not playing its part to rebuild the resource. The Council believes that the mandate of National Standard 1 far overshadows the introductory statement to National Standard 4. All of the State members of the ASMFC have voted in favor of an identical ASMFC version of Amendment 2. The States do not believe the measure preventing access to the EEZ to vessels from States not in compliance with the management measures in the Amendment is discriminatory with respect to their residents. The Secretary should adopt a similar interpretation.

The moratorium is fair and equitable. The Council voted to establish 26 January 1990 as a cut off date for limiting entry into the fishery at its February 1990 meeting. The *Federal Register* notice of this date was published 7 June 1990. The moratorium was part of the preferred alternative in the public hearing draft of Amendment 2. Additionally, the long time period for establishing eligibility (26 January 1985 through 26 January 1990) assures that the largest possible number of fishermen can qualify under the moratorium.

9.2.1.5. Conservation and management measures shall, where practicable, promote efficiency in the utilization of the fishery resources; except that no such measure shall have economic allocation as its sole purpose.

The management regime is intended to allow the fishery to operate at the lowest possible cost (e.g., fishing effort, administration, and enforcement) given the FMP's objectives. The objectives focus on the issue of administrative and enforcement costs by encouraging compatibility between Federal and State regulations since a substantial portion of the fishery occurs in State waters. The FMP places no restrictions on processing, or marketing and no unnecessary restrictions on the use of efficient techniques of harvesting.

The minimum net mesh provision improves efficiency by reducing waste through discards.

9.2.1.6. Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

The management regime was developed to be compatible with and reinforce the management efforts of the States and ASMFC. The FMP allows the States to manage their commercial quotas, the only constraint being a review to assure that the State's management system will not allow the quota to be exceeded. While the recreational size and possession limits apply coastwide, the open season may be adjusted slightly by the States to account for seasonal differences.

9.2.1.7. Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The management regime was developed to be compatible with and reinforce the management efforts of the States and ASMFC. The minimum size limits, quotas, possession limits, and, to some extent, closed seasons, can be enforced on shore, thus eliminating the need for high cost at sea enforcement. The provisions of this

Amendment have already been adopted by the ASMFC.

9.2.2. Cost/Benefit Analysis

9.2.2.1. Implications of revising the exempted fishery demarcation line

Replacing the irregular demarcation line in Amendment 2 with the straight line in Amendment 3 will make compliance easier for the fishermen and enforcement easier for NMFS and the Coast Guard (Figure 1). In addition, the inclusion of Hudson Canyon in the exempted fishery will make it easier for the fishermen to choose whether to fish in the exempted program or not.

Since the area of the exempted fishery is increased by including the yellowtail closed area and moving the line westward, there is a possibility that the discard of summer flounder smaller than 13" would increase. The FMP requires that the Regional Director monitor discards through the sea sampling program and terminate the exempted fishery if discards exceed 10% of the catch.

Analyses were conducted to determine if significant discards of summer flounder had occurred by small-mesh vessels fishing east of 71°30' and 72°30'. Analyses were based on several data sets including the NMFS Sea Sampling Data from 1990 and 1991 and the NEFSC Winter Flatfish Survey. The NEFSC trawl survey targeted flounders during the winter of 1992 (February and early March). In this survey, sampling was conducted at 138 stations using a Yankee No. 36 bottom trawl modified with a "tickler" chain attached to the ground sweep. The body and cod end of the trawl had a 5.5 inch stretched mesh and was fitted with a 0.5 inch liner. The survey area extended from Cape Hatteras northward through the Mid-Atlantic Bight to the eastern end of Georges Bank.

Sea sampling data have been collected each year since 1989. Because of the poor year class produced in 1988, discard rates were relatively low in 1989 (only 2% for all areas combined). Thus, we confined our analyses to 1990 and 1991 data. Because of the irregular nature of the line, analysis was conducted by NMFS Statistical Area. The demarcation line in Amendment 2, which began at 71°30' and then went around the yellowtail closed area to 72°30' would have allowed an exempted fishery to operate in most of areas 537 and 539. From November through April, 1990 and 1991, the NMFS Sea Sampling program collected data on a number of otter trawl vessels fishing in areas east of the 71°30' line (including areas 537 and 539). A combined total of 9,390 pounds of summer flounder was caught by these vessels with approximately 11% discarded (Table 4). The discard rate for otter trawl vessels fishing in other areas was approximately 21%. East of 72°30' and between 71°30' and 72°30' (areas 613 and 616), the discard rates were approximately 13%.

The NEFSC Winter Flatfish Survey collected 1221 summer flounder in 138 tows over a wide geographic area (Figure 2). Length frequency distributions of summer flounder taken at stations east of 71°30' indicated that 33.5% were less than 14" TL (Table 5). West of this longitude, 72% were less than 14" TL. East and west of 72°30', 35% and 72% of the fluke sampled were less than 14" TL, respectively. Twenty-one summer flounder were collected at the nine stations sampled between 71°30' and 72°30'. About 50% of these fish were less than 14" TL.

Sea sampling and winter survey data indicate that small fish are present in areas east of both 71°30' and 72°30' and thus subject to discard mortality. Because fish do not occur in discrete groups of identical lengths, i.e., there is a continuum of different sizes as you move up and down the coast or from inshore to offshore, the movement of the line to the west would increase the proportion of small fish caught and potentially discarded. However, the difference in discard rates and proportion of small fish between 71°30' and 72°30' is small.

The Northeast exempted fishery program framework measure added through Amendment 3 would allow for flexibility in the exemption program such that termination in one year due to high discard rates in a specific area(s) or month(s) would not preclude the use of a revised exemption program the following year. This measure recognizes that summer flounder population structure, abundance, and location can change over seasons and between years. Changes in the exemption program would accommodate these stock changes by allowing fishermen to continue to fish for traditional small mesh species, such as squid, whiting, and

butterfish during months and in areas where discard rates would be less than 10%.

The adjustment criteria used to modify the exemption area and period reflect the limitations of the available data. The units, 30' squares and the biweekly period, are the smallest units for which catch and discard data can be adequately summarized for evaluation of the exemption program. Modifications to the exemption area are limited to entire rows of 30' squares because of the desire by commercial fishermen for a straight line as well as ease of enforcement (see paragraph above).

In order to monitor discards, all available sea sampling data and winter trawl survey data would be used to determine discard rates of vessels fishing in the exempted fishery program. Adequate resources would have to be devoted to monitoring the exempted fisheries through the sea sampling program to ensure summer flounder catch and discard data are statistically reliable. In addition, there must be enough sampling outside the boundaries of the northeast exempted fishery to determine whether the area can be expanded while not exceeding the 10% discard rate.

9.2.2.2. Implications of increasing the large mesh threshold

Amendment 3 would establish seasonal threshold limits. During the winter fishery, from 1 November to 30 April, vessels could retain up to 200 lbs of summer flounder before using a large mesh net. The higher threshold would accommodate larger vessels fishing for squid, whiting, and other species and having a bycatch of valuable summer flounder in non exempted areas. In addition, the threshold would be low enough such that a directed small mesh fishery for summer flounder by these vessels would not be encouraged.

Otter trawl vessels fishing from 1 March through 31 October could only retain up to 100 lbs of summer flounder before using the large mesh net. Based on comments received from fishermen, 200 lbs would equal the daily landings of many of the smaller vessels which typically fish closer to shore, for shorter periods, during the summer. The 100 lb threshold would prevent these smaller vessels from using small mesh nets to catch and discard large amounts of sublegal summer flounder to land 200 lbs of 13" TL and larger fish.

As an indicator of past landings patterns, two data sets were available for analysis; NMFS Sea Sampling and NEFC Weighout Data. Based on 1989 to 1991 Sea Sampling data, a threshold of 100 lbs per trip would have affected 45% of the 202 trips landing summer flounder (i.e., 55% of all trips landing summer flounder landed less than 100 lbs) (Table 3). These trips accounted for about 98% of the summer flounder landed (in the sea sampling program) during these years. A threshold of 200 lbs per trip would have affected approximately 36% of the trips and accounted for almost 97% of the landings.

A threshold of 100 lbs per trip would have affected approximately 88% of the vessels and 60% of the trips landing summer flounder from 1983 to 1991 based on NMFS weighout data (Table 4). These trips accounted for about 99% of the total summer flounder landed during these years. In comparison, a threshold of 200 lbs per trip would have affected approximately 85% of the vessels and 46% of the trips landing summer flounder. These trips would still account for almost 98% of the total summer flounder landed from 1983 to 1991.

As an indicator of the potential discard rates for vessels using small mesh to target summer flounder, we applied selectivity ogives from several summer flounder studies to the size frequencies of flounder sampled in the NEFSC Winter Flatfish Survey. Discard rates by number and weight increased as mesh size decreased. For example, the discard rate for vessels fishing with 5.5" mesh and a 3.0" mesh would be 18% and 51% by number, respectively (Table 5).

An analysis of NMFS Sea Sampling data, for trips landing both *Loligo* squid and summer flounder, indicated that for statistical areas distinctly east of 72°30' (the proposed exempted area), for the period November through April 1989-91, 24 trips landed 500 lbs or more of *Loligo*. A total of 18 (75%) of these trips landed

200 lbs or less of summer flounder. During that same period, for all other areas, a total of 56 trips landed 500 lbs or more of *Loligo*, and of these a total of 33 trips (59%) landed 200 lbs or less of summer flounder. From May through October, the period when the threshold would be 100 lbs, 48 trips landed 500 lbs or more of *Loligo*. Most of these, 42 trips (88%), also landed 100 lbs or less of summer flounder.

Because some vessels use multiple nets per trip, landings data would include vessels targeting multiple species. Thus, an analysis was done on a tow-by-tow basis to determine the amount of summer flounder caught by vessels targeting *Loligo* squid, silver hake, and scup for a particular tow. Bycatch of summer flounder by vessels using small mesh for scup, *Loligo* squid, and silver hake is small. Based on 1989 to 1991 sea sampling data, approximately 2% of the catch was summer flounder for tows catching 100 lbs or more of scup, *Loligo*, and silver hake (Table 6). As the threshold increased to 500 lbs, the proportion of summer flounder in the catch dropped to about 1%. Based on these percentages, an increase in the large mesh threshold to 200 pounds of summer flounder would more than allow for small mesh fisheries directed for these species to retain their catch of legal sized summer flounder. Furthermore, this threshold would reduce waste without encouraging a directed small mesh fishery for fluke.

9.2.2.3. Prices to consumers

Amendment 3 should have no effect on prices to consumers.

9.2.2.4. Redistribution of costs

The FMP is designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities consistent with the objectives. It is not anticipated that the proposed management measures will redistribute costs between users or from one level of government to another.

9.2.2.5. Fishery impact statement.

The revision to the demarcation line in Amendment 3 will have no effect on fishermen that do not participate in the exempted fishery program.

Fishermen that participate in the exempted fishery program will find it easier to comply since, if they are east of 72° 30' and want to retain more than 200 pounds of summer flounder while fishing with a small mesh net, they must have an exempted fishery permit. With all of the irregularities eliminated, it will be difficult to claim noncompliance because of a navigational error.

There is a possibility that the exempted fishery may be closed because of discards exceeding 10% of the catch, but that impact on the fishermen cannot be determined with available data.

Increasing the quantity of summer flounder that may be retained from 100 lbs to 200 lbs between 1 November and 30 April before changing to a large mesh net will allow fishermen in small mesh fisheries (for example, *Loligo* squid and silver hake) to retain summer flounder that otherwise would be discarded.

9.3. RELATION OF RECOMMENDED MEASURES TO EXISTING APPLICABLE LAWS AND POLICIES (this section is unchanged from Amendment 2)

9.3.1. FMPs

This FMP is related to other plans to the extent that all fisheries of the northwest Atlantic are part of the same general geophysical, biological, social, and economic setting. US fishermen often are active in more than a single fishery. Thus regulations implemented to govern harvesting of one species or a group of related species may impact on other fisheries by causing transfers of fishing effort.

Many fisheries of the northwest Atlantic result in significant nontargeted species fishing mortality. Therefore, each FMP must consider the impact of nontargeted species fishing mortality on other stocks and as a result of other fisheries.

9.3.2. Treaties or international agreements.

No treaties or international agreements, other than GIFAs entered into pursuant to the MFCMA, relate to this fishery.

9.3.3. Federal law and policies.

9.3.3.1. Marine Mammals and Endangered Species.

Numerous species of marine mammals and sea turtles occur in the northwest Atlantic Ocean. The most recent comprehensive survey in this region was done from 1979-1982 by the Cetacean and Turtle Assessment Program (CETAP), at the University of Rhode Island (University of Rhode Island 1982), under contract to the Minerals Management Service (MMS), Department of the Interior. The following is a summary of the information gathered in that study, which covered the area from Cape Sable, Nova Scotia, to Cape Hatteras, North Carolina, from the coastline to 5 nautical miles seaward of the 1000 fathom isobath.

Four hundred and seventy one large whale sightings, 1547 small whale sightings and 1172 sea turtles were encountered in the surveys (Table 10). The "estimated minimum population number" for each mammal and turtle in the area, as well as those species currently included under the Endangered Species Act, were also tabulated.

CETAP concluded that both large and small cetaceans were widely distributed throughout the study area in all four seasons, and grouped the 13 most commonly seen species into three categories, based on geographical distribution. The first group contained only the harbor porpoise, which is distributed only over the shelf and throughout the Gulf of Maine, Cape Cod, and Georges Bank, but probably not southwest of Nantucket. The second group contained the most frequently encountered baleen whales (fin, humpback, minke, and right whales) and the white-sided dolphin. These were found in the same areas as the harbor porpoise, and also occasionally over the shelf at least to Cape Hatteras or out to the shelf edge. The third group indicated a "strong tendency for association with the shelf edge" and included the grampus, striped, spotted, saddleback, and bottlenose dolphins, and the sperm and pilot whales. While it is unlikely that incidental take of marine mammals would occur in the summer flounder fishery, the Marine Mammal Exemption Program requires that any lethal takes of marine mammals in this fishery be reported to the National Marine Fisheries Service (508-281-9254) within 10 days of the vessel's return to dock. Unreported takes are subject to the prohibitions of the Marine Mammal Protection Act.

Loggerhead turtles were found throughout the study area, but appeared to migrate north to about Massachusetts in summer and south in winter. Leatherbacks appeared to have had a more northerly distribution. CETAP hypothesized a northward migration of both species in the Gulf Stream with a southward return in continental shelf waters nearer to shore. Both species usually were found over the shoreward half of the slope and in depths less than 200 feet. The northwest Atlantic may be important for sea turtle feeding or migrations, but the nesting areas for these species generally are in the South Atlantic and Gulf of Mexico.

Pound nets in Maryland, Virginia, and North Carolina take between 2 and 13% of the commercial summer flounder landings of these States (Table 11). An investigation of the causes of sea turtle (loggerhead and some Ridley) mortality in Chesapeake Bay indicated pound nets accounted for about 19% of the deaths (Musick *et al.* 1985). Other identifiable causes accounted for 11% of the mortalities with the cause of death undetermined for the remaining 70%.

The winter trawl fishery for summer flounder, which takes place principally off the coast of North Carolina may contribute to the mortality of loggerhead sea turtles (classified as "threatened") and Kemp's Ridley sea turtles (classified as "endangered"). Studies at the Virginia Institute of Marine Science (VIMS) (Musick *et al.* 1985, Bellmund *et al.* 1987, Lutcavage and Musick 1985) have shown that large juveniles of these two sea turtles use Chesapeake Bay as a foraging area during the summer. Both species emigrate from the Bay with the onset of northeast storms and falling water temperatures, usually in October. These turtles then migrate south along the coast to the vicinity of Cape Hatteras, North Carolina. Migration south of the Cape usually occurs in early December. The winter trawl fishery usually operates from early October to April in North Carolina waters. Thus, there is a potential for incidental capture of sea turtles in the fishery during some years when the flounder and turtle migrations overlap. This is confirmed by sea turtle stranding data, which shows distinct peaks in strandings of turtles in northern North Carolina in the fall and early winter of some years.

This problem may become acute when climatic conditions result in concentration of turtles and fish in the same area at the same time. These conditions apparently are met when temperatures are cool in October but then remain moderate into mid-December and result in a concentration of turtles between Oregon Inlet and Cape Hatteras, North Carolina. In most years sea turtles leave Chesapeake Bay and filter through the area a few weeks before the summer flounder fishermen becomes concentrated. Efforts are currently under way (by VIMS and the US Fish and Wildlife Service refuges at Back Bay, Virginia, and Pea Island, North Carolina) to more closely monitor these mortalities due to trawls. Fishermen are encouraged to carefully release turtles captured incidentally and to attempt resuscitation of unconscious turtles as recommended in the 1981 *Federal Register* (pages 43976 and 43977).

Information regarding the level of turtle mortalities in Virginia and North Carolina comes from stranding data. This circumstantial evidence suggested that flounder trawls were the cause of the mortalities, thus requiring a formal consultation under Section 7 of the Endangered Species Act of 1973 (ESA), as amended. This consultation was conducted by the National Marine Fisheries Service in 1988. The resultant 1988 Biological Opinion indicated that the observed levels and infrequent nature of these events would not jeopardize any sea turtle populations. An Incidental Take Statement was given that allowed the capture of up to 1 dead and 10 live Kemp's Ridleys with certain handling and reporting requirements.

Between 26 November and 7 December 1990, 54 sea turtles, including at least 8 endangered Kemp's Ridleys, stranded on North Carolina beaches (North Carolina officials estimate that 53 loggerhead, 1 Kemp's Ridley, and 1 hawksbille were killed in the fall/winter 1991 fishery through 18 December). The North Carolina Division of Marine Fisheries closed State waters to summer flounder bottom trawling from Cape Hatteras Light to Ocracoke Inlet on 7 December 1990. Twenty one additional sea turtles stranded before the end of December. The total mortality included 56 loggerheads, 9 Kemp's Ridleys, 6 green turtles, and 4 unidentified sea turtles. During the closure period, in conjunction with the NMFS Pascagoula Laboratory, a Turtle Excluder Device (TED) was developed for use on summer flounder bottom trawlers. Experimental tows conducted during this time indicated that about 0.12 sea turtles were taken per hour for each net towed off Ocracoke in December, 1990 (Table 12). On 26 December 1990, waters were opened to trawlers pulling TEDs until early January, at which time turtles were no longer encountered in North Carolina waters and fishing without TEDs was allowed.

Because of the above new information, consultation under Section 7 of the Endangered Species Act was reinitiated. Evaluation of the sea turtle and fishery distribution data (Figures 2 and 3), trawl data collected off North Carolina in December, 1990, and January, 1991, (Table 12) and stranding data (Figure 4), indicated that the conflict between sea turtles and the fishery occurs annually in the late fall/winter summer flounder fishery in North Carolina. The Draft Biological Opinion resulting from the reinitiated consultation concluded that continued unrestricted operation of this fishery would be likely to jeopardize the continued existence of the endangered Kemp's ridley sea turtle population. Implementation of the reasonable and prudent alternatives discussed above is necessary to allow activities conducted under the Summer Flounder FMP to continue in compliance with the Endangered Species Act.

To be consistent with the Biological Opinion issued for this FMP, fishermen conducting activities regulated under this management plan must comply with any regulations published by NMFS implementing sea turtle conservation measures including mandatory limited tow times, observer coverage, and the use of Turtle Excluder Devices in bottom trawls participating in the winter fishery for summer flounder in waters from Cape Charles, Virginia, to the southern border of North Carolina. This issue is also addressed directly in section 9.1.2.5 of this FMP.

Shortnose sturgeon (*Acipenser brevirostrum*) is an additional endangered species that may be caught incidentally in the summer flounder fishery. Sturgeon will be included in the Incidental Take Statement of the pending Biological Opinion.

The range of summer flounder and the above mentioned marine mammals and endangered species overlap and there always exists a potential for an incidental kill. Except in unique situations, such accidental catches should have a negligible impact on marine mammal or abundances of endangered species, and the Councils do not believe that implementation of this FMP will have any adverse impact upon these populations.

Commercial and recreational fisheries lose thousands of pounds of fishing gear annually. Incidences of entanglement in and ingestion of this gear is common among sea turtles and marine mammals, and may result directly or indirectly in some deaths.

9.3.3.2. Marine Sanctuaries.

There is one national marine sanctuary in the area covered by the FMP: the USS *Monitor* National Marine Sanctuary off North Carolina. The Sanctuary was officially established on 30 January 1975 under the Marine Protection, Research, and Sanctuaries Act of 1972. Rules and regulations have been issued (15 CFR 924) that prohibit deploying any equipment in the Sanctuary, fishing activities which involve "anchoring in any manner, stopping, remaining, or drifting without power at any time" (924.3 (a)), and "trawling" (924.3(h)). The Sanctuary is clearly designated on all National Ocean Survey charts by the caption "protected area". This minimizes the potential for damage to the Sanctuary by fishing operations. Details on sanctuary regulations may be obtained from the Director, Sanctuary Programs Office, Office of Coastal Zone Management, NOAA, 1825 Connecticut Ave., NW, Washington, DC 20007.

9.3.3.3. Indian treaty fishing rights

No Indian treaty fishing rights are known to exist in the fishery.

9.3.3.4. Oil, Gas, Mineral, and Deep Water Port Development

While Outer Continental Shelf (OCS) development plans may involve areas overlapping those contemplated for offshore fishery management, no major conflicts have been identified to date. The Councils, through involvement in the Intergovernmental Planning Program of the MMS, monitor OCS activities and have opportunity to comment and to advise MMS of the Councils' activities. Certainly, the potential for conflict exists if communication between interests is not maintained or appreciation of each other's efforts is lacking. Potential conflicts include, from a fishery management position: (1) exclusion areas, (2) adverse impacts to sensitive biologically important areas, (3) oil contamination, (4) substrate hazards to conventional fishing gear, and (5) competition for crews and harbor space. The Councils are unaware of pending deep water port plans which would directly impact offshore fishery management goals in the areas under consideration, and are unaware of potential effects of offshore FMPs upon future development of deep water port facilities.

Approximately 70% of the commercial fishery occurs in the EEZ (Table 5). While the fishery varies among the States and targets on the concentrations of fish as they move inshore in the spring and offshore in the fall, the offshore winter fishery targets on large concentrations of fish that are overwintering along the shelf edge.

Offshore (depths up to 500 ft.) areas (section 5.1), where overwintering occurs, and where spawning occurs in the spring, are areas where significant potential conflicts between this resource and offshore energy resources may occur.

Certain types of deep water port development (for example, in Delaware Bay) would impact summer flounder nursery areas.

9.3.3.5. Vessel Safety

Section 303(a)(6) of the MFCMA requires that FMPs consider access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of vessels. The proposed management measures of this FMP do not limit the times or places when or where vessels may fish. Therefore, the Council has concluded that the proposed FMP will not impact or effect the safety of vessels fishing in this fishery.

9.3.4. State, Local, and Other Applicable Law and Policies. (this section was updated prior to submission of Amendment 2 and will be updated prior to the submission of Amendment 3 for Secretarial approval)

9.3.4.1. State management activities.

Maine, New Hampshire, New Jersey, Delaware, Maryland, Virginia, and North Carolina have 13" minimum possession size limits for summer flounder. Massachusetts, Rhode Island, Connecticut, and New York have 14" minimum possession size limits. Maryland has a tolerance of 5% by number and Virginia has a tolerance of 10% or 2 fish, whichever is greater, for trawl landings (Table 12).

Most of the States regulate fishing gear. Maine has a 5.5" minimum mesh size for trawls, scottish seines, bottom tending gill nets and bottom tending seines. Mobile fishing gear may not be used in New Hampshire state waters between April 16 and Dec 14. In Massachusetts, minimum mesh sizes for mobile trawl gear are: - north of Cape Cod: - 5.5" required year round [permitted small mesh exemptions are allowed for underutilized species (e.g., dogfish and ocean pout) with no bycatch of regulated species]; south of Cape Cod: - 5.5" required Nov. 1 - April 14; 3.5" required June 16 - Oct. 31, and no minimum required April 15 - June 15 (squid season); and east of Cape Cod: - 5.5" required Nov. 1 - April 30. In Rhode Island, trawling is prohibited in the upper portion of Narragansett Bay from Nov 1 - July 1; 5" codend minimum mesh size in a portion of central Narragansett Bay from Nov 1 - Feb 28. Connecticut has a codend minimum mesh size of 4.5" in trawls from Nov 15 - May 14, and 3" from Aug 1 - Nov 14. New York has no minimum mesh size for trawls at the present time. In New Jersey, trawls taking summer flounder must have a 4.5" minimum mesh size in the codend. (A summer flounder trip is defined as one in which 20% of the weight of the catch is comprised of summer flounder). In Delaware, trawls, purse seines, power operated seines, and runaround gill nets are prohibited and there is a moratorium on issuance of new commercial (> 200 ft) gill net permits until the number of fishermen falls below 30. In Maryland, trawls are prohibited within one mile of the coastline, and in Chesapeake Bay. Use of monofilament gill nets prohibited, except in coastal bays and the Atlantic Ocean; several specific gill net restrictions exist for Chesapeake Bay; minimum mesh sizes for pound nets, haul seines, and fyke nets are 1.5"; purse seines prohibited. Trawls and encircling gill nets are prohibited in Virginia waters. In North Carolina, trawl nets may not be used in internal, coastal fishing waters for finfish, however an unlimited quantity of legal size flounder may be retained as a bycatch in the trawl fisheries for crab and shrimp (non-flounder bycatch is limited to 1,000 pounds per trip).

Many of the states have areas closed at certain times or for certain gear, but only Maine has a spawning area closure for groundfish, which includes summer flounder (in Booth Bay and Sheepscot Bay from May 1 to June 30)

Except for the spawning closure in Maine noted above, none of the States have seasonal restrictions on the

fisheries for summer flounder (Table 13).

All of the States have some type of license requirement (Table 13). Maine requires a commercial license for the harvest, transport, and sale of fish that are not for personal use; no license is required for fish taken with hook and line for personal use. In New Hampshire there is a resident commercial saltwater fishing license; no sport fishing license; residents are not required to have a license to sell fish caught by hook and line, but a \$200 minimum license fee is required for nonresidents. Massachusetts requires commercial fishing licenses; there is no sport license for fish caught for personal use; there is a license to sell fish caught with hook and line is, except for those who sell less than 100 lbs "plus one fish" per day. Rhode Island requires multipurpose commercial licenses allow for harvest and sale of fish; there is no sport license to fish for personal use. In Connecticut, there are a variety of commercial resident and nonresident licenses available allowing for the harvest and sale of fish; marine angling with hook and line does not require a license if fish are for personal use only; personal use fishing with trawls and other specific gear will require a commercial license. A commercial license is required in New York for the harvest and sale of fish; a nonresident license allows landing only; there is no sport license for fish caught for personal use. In New Jersey, commercial gears are licensed; there is no sport fishing license for hook and line gear, and no license is required to sell hook and line caught fish. Commercial food fishing license is required in Delaware for the harvest and sale of fish; there is no sport license for fish caught for personal use. A Maryland tidal fish license is required to catch, buy, or sell fish from tidal waters for commercial purposes; there is a Chesapeake sport fishing license. Commercial licenses are required in Virginia for specific fishing gears; there is no sport fishing license, and no license is required to sell hook and line caught fish. A commercial license is required in North Carolina for vessels; an inland sport fishing license is necessary for some portions of tidal waters; a license is required to sell fish caught by hook and line, but there is a 500 lb exemption per 12 month period.

Virginia has a 10 fish per day summer flounder possession limit (a voluntary 6 fish per day limit is encouraged, as well as not making use of the 2 undersized fish tolerance). No other States in the management unit have summer flounder possession limits.

Nonresidents in Maine are required by law to report all groundfish (summer flounder) catches.

9.3.4.2. Impact of Federal regulations on State management activities.

All States have 13" or 14" minimum size possession laws and are, therefore, compatible with the FMP.

As noted above, Maine, Massachusetts, and North Carolina are compatible with the 5.5" minimum mesh regulation by virtue of their existing regulations. New Hampshire, Delaware, and Virginia are in compliance by virtue of their bans on trawling. Rhode Island, Connecticut, New York, New Jersey, and Maryland would need to take some action to comply with the proposed regulations.

9.3.4.3. Coastal Zone Management Program Consistency.

The CZM Act of 1972, as amended, provides measures for ensuring stability of productive fishery habitat while striving to balance development pressures with social, economic, cultural, and other impacts on the coastal zone. It is recognized that responsible management of both coastal zones and fish stocks must involve mutually supportive goals.

The Council must determine whether the FMP will affect a State's coastal zone. If it will, the FMP must be evaluated relative to the State's approved CZM program to determine whether it is consistent to the maximum extent practicable. The States have 45 days in which to agree or disagree with the Councils' evaluation. If a State fails to respond within 45 days, the State's agreement may be presumed. If a State disagrees, the issue may be resolved through negotiation or, if that fails, by the Secretary.

The FMP was reviewed relative to CZM programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. Letters were sent to all of the States listed. The letters to all of the States except New Hampshire and Pennsylvania stated that the Council concluded that the FMP would affect the State's coastal zone and was consistent to the maximum extent practicable with the State's CZM program as understood by the Council. For New Hampshire, the evaluation was that the FMP might affect the coastal zone and was consistent. For Pennsylvania, the evaluation was that the FMP would not affect the coastal zone. The letters were mailed to the States along with a copy of the hearing draft of the FMP. New Hampshire, Rhode Island, Connecticut, New York, and Pennsylvania have concurred with the Council's opinion. North Carolina disagreed with the Council's opinion. The other States did not respond. On advice of counsel the Council responded to North Carolina on 8 January 1993 that Amendment 3 may not be a mirror image of the regulations of the any or all of the States in the management unit because of local differences, but is "striving to make Amendment 3 consistent with the Coastal Zone Management Plans of the several coastal States to the maximum extent practicable". As the date on the bottom of this page, North Carolina had not responded.

9.3.4.4. Impacts of the Plan relative to the Regulatory Flexibility Act and the Paperwork Reduction Act of 1980.

The Regulatory Flexibility Act requires the examination of the impacts on small businesses, small organizations, and small jurisdictions. The impacts of Amendment 3 do not favor large businesses over small businesses.

The changes to the demarcation line and the frameworked adjustments to the northeast exempted fishery are designed to reduce negative impacts on fishermen and enforcement personnel. The increased threshold for the large mesh net during the winter will allow fishermen to work in the small mesh mixed trawl fishery without discarding as many legal summer flounder that with the 100 lb threshold in Amendment 2. The change in the net strengthener provision restores the previous consistency between the Summer Flounder FMP and the Northeast Multispecies FMP, thereby allowing fishermen that fish under both FMPs to use the same net strengtheners, thereby reducing costs and facilitating compliance.

The Paperwork Reduction Act concerns the collection of information. The intent of the Act is to minimize the Federal paperwork burden for individuals, small business, State and local governments, and other persons as well as to maximize the usefulness of information collected by the Federal government. Amendment 3 will not change the paperwork burden of the FMP.

9.3.4.5. Impacts of the Plan relative to Federalism.

The Amendment does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

9.4. COUNCIL REVIEW AND MONITORING OF THE FMP (this section is unchanged from Amendment 2)

9.4.1. Monitoring

The Councils and ASMFC will monitor the fishery using the best available data, including that specified in section 9.1.3. The commercial, recreational, biological, and survey data specified in section 9.1.3 are critical to the evaluation of the management measures adjustment mechanism. It is necessary that NMFS incorporate all of the above data types from North Carolina summer flounder into the overall NEFC data bases. Additionally, improved stock assessments are necessary for FMP monitoring. As a result of that monitoring, the Councils and ASMFC will determine whether it is necessary to amend the FMP.

The primary organization in the review and monitoring process will be the Summer Flounder FMP Monitoring Committee (section 9.1.2.2).

9.4.2. Research and Data Needs [pursuant to MFCMA 303(a)(8)]

It is also necessary that NMFS conduct more studies to evaluate the equivalency between diamond and square mesh nets. The regulations proposed in this Amendment are based on the best information available. To not provide for diamond versus square mesh would allow fishermen to use 5.5" square mesh, which, based on all research available to the Council and ASMFC, would select for a higher proportion summer flounder smaller than the 13" minimum size limit than does a 5.5" diamond mesh. Conservation of the resource requires the differentiation in minimum mesh size be made. However, much more research in this area is needed, not only for summer flounder, but also for all commercially important species caught with trawls.

Estimates of discarded summer flounder will be very important for adjusting the overall quota in order to meet the target mortality levels. It is, therefore, important that levels of sea sampling effort be sufficient and representative of the fisheries that contribute to summer flounder fishing mortality to accurately describe the level of discard. It must be recognized that this sea sampling will likely involve some vessels not in the summer flounder fishery *per se*, but vessels in the scallop, squid, scup, and groundfish fisheries, for example, where large quantities of summer flounder are caught and possibly discarded.

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Table 1. State Share (%) of Summer Flounder Commercial Landings, 1980-89 (pounds, excludes southern flounder landings) and Recreational Landings (MRFSS Types A & B1; numbers) by State, 1980-89, (%)

<u>State</u>	<u>Commercial Share</u>	<u>Recreational Share</u>
ME	0.0482	0.01
NH	0.0005	0.01
MA	6.9111	3.31
RI	15.8914	1.74
CT	0.9532	1.69
NY	7.7486	14.22
NJ	16.9473	43.06
DE	0.0180	2.77
MD	2.0662	3.76
VA	21.6001	22.55
NC	<u>27.8155</u>	<u>6.87</u>
Total	100.0000	99.99

Sources: Unpublished NMFS General Canvass data, except North Carolina landings have been adjusted by NCDMF personnel to exclude southern flounder landings.

Table 2. Landings, Value and Price of Summer Flounder by Month, 1980-89 averaged, All Gear Combined.

<u>Month</u>	<u>State (<3 mi)</u>			<u>EEZ (>3 Mi)</u>			<u>All</u>		
	<u>1000 Lbs</u>	<u>Value \$1000</u>	<u>Adj. Price</u>	<u>1000 Lbs</u>	<u>Value \$1000</u>	<u>Adj. Price</u>	<u>1000 Lbs</u>	<u>Value \$1000</u>	<u>Adj. Price</u>
JAN	531	495	0.93	4,300	3,789	0.88	4,832	4,285	0.89
FEB	73	58	0.79	3,339	3,563	1.07	3,413	3,621	1.06
MAR	20	20	0.99	2,622	3,366	1.28	2,643	3,386	1.28
APR	29	36	1.24	1,557	1,883	1.21	1,588	1,921	1.21
MAY	565	727	1.29	727	874	1.20	1,293	1,602	1.24
JUN	423	588	1.39	403	580	1.44	826	1,170	1.42
JUL	490	757	1.54	269	478	1.78	761	1,237	1.62
AUG	651	935	1.44	453	589	1.30	1,105	1,526	1.38
SEP	819	848	1.04	1,096	1,028	0.94	1,918	1,879	0.98
OCT	512	435	0.85	1,709	1,585	0.93	2,225	2,026	0.91
NOV	1,187	891	0.75	1,801	1,453	0.81	2,989	2,345	0.78
DEC	1,045	724	0.69	2,900	2,453	0.85	3,946	3,178	0.81
ALL	6,351	6,519	1.03	21,181	21,646	1.02	27,543	28,180	1.02

Note: Prices adjusted with PPI (1982 = 100).

Source: Unpublished NMFS General Canvass data.

Table 3. Summer Flounder Commercial Landings (thousands of lbs) by State by Distance from Shore (miles) and Percent of Total Summer Flounder Landings Taken from the EEZ, 1980-1989

<u>Year</u>	<u>Distance</u>	<u>ME</u>	<u>NH</u>	<u>MA</u>	<u>RI</u>	<u>CT</u>	<u>NY</u>	<u>NJ</u>	<u>DE</u>	<u>MD</u>	<u>VA</u>	<u>NC+</u>	<u>All</u>
1980	0-3	-	-	218	185	3	1,090	493	1	65	1,238	3,399	6,696
	3-200	4	-	147	1,091	44	155	4,311	-	1,258	7,265	10,242	24,520
	Total	4	-	365	1,276	48	1,245	4,805	1	1,323	8,503	13,642	31,216
	% EEZ	100	-	40	85	91	12	89	-	95	85	75	78
1981	0-3	-	-	406	352	21	1,727	853	6	8	441	837	4,655
	3-200	2	-	191	2,507	59	257	3,155	-	394	3,210	6,621	16,400
	Total	2	-	597	2,860	81	1,984	4,008	6	403	3,651	7,459	21,056
	% EEZ	100	-	32	87	73	12	78	-	97	87	88	77
1982	0-3	-	-	855	475	8	1,282	402	7	59	463	2,103	5,657
	3-200	17	1	810	3,507	56	582	3,916	-	300	3,868	4,211	17,270
	Total	17	1	1,665	3,982	64	1,865	4,318	7	360	4,331	6,315	22,927
	% EEZ	100	100	48	88	87	31	90	-	83	89	66	75
1983	0-3	1	-	693	507	32	977	485	5	125	2,757	3,644	9,228
	3-200	82	-	1,648	4,091	96	458	4,340	-	811	5,376	3,413	20,319
	Total	83	-	2,341	4,599	129	1,435	4,826	5	936	8,134	7,057	29,547
	% EEZ	98	-	70	88	74	31	89	-	86	66	48	68
1984	0-3	-	-	721	617	59	1,571	1,342	8	125	3,618	3,174	11,239
	3-200	2	1	766	3,862	71	722	5,021	-	687	6,055	9,334	26,525
	Total	2	1	1,488	4,479	130	2,294	6,364	8	812	9,673	12,509	37,764
	% EEZ	100	100	51	86	54	31	78	-	84	62	74	70
1985	0-3	1	-	530	822	133	1,419	1,187	4	79	928	1,454	6,561
	3-200	1	0	1,718	6,710	50	1,098	4,446	-	498	4,107	7,160	25,791
	Total	2	1	2,249	7,532	183	2,517	5,634	4	577	5,036	8,614	32,352
	% EEZ	28	100	76	89	27	43	78	-	86	81	83	79
1986	0-3	-	-	465	914	145	1,808	1,049	3	27	510	2,176	7,101
	3-200	-	1	2,488	6,127	15	929	2,967	-	288	3,202	3,747	19,764
	Total	-	1	2,953	7,042	160	2,737	4,016	3	315	3,712	5,923	26,865
	% EEZ	-	100	84	87	9	33	73	-	91	86	63	73
1987	0-3	-	-	727	349	82	1,062	480	4	122	1,500	1,204	5,534
	3-200	7	1	2,600	4,424	526	1,578	3,970	-	196	4,290	3,922	21,517
	Total	7	1	3,327	4,774	609	2,641	4,450	4	318	5,790	5,127	27,051
	% EEZ	100	100	78	92	86	59	89	-	61	74	76	79
1988	0-3	-	-	801	338	277	1,685	834	6	192	1,078	1,869	7,084
	3-200	4	-	1,619	4,380	463	1,753	5,171	1	321	6,677	4,900	25,292
	Total	4	-	2,420	4,718	740	3,438	6,006	6	513	7,756	6,770	32,377
	% EEZ	100	-	66	92	62	50	86	3	62	86	72	78
1989	0-3	-	-	283	140	27	133	126	2	104	319	201	1,338
	3-200	9	-	1,594	2,942	485	1,330	2,738	-	99	3,369	4,004	16,574
	Total	9	-	1,877	3,082	513	1,463	2,864	2	204	3,688	4,205	17,913
	% EEZ	100	-	84	95	94	90	95	-	48	91	95	92

- = zero

Note: numbers may not total due to rounding.

Source: unpublished NMFS General Canvass data.

Table 4. The amount of summer flounder caught by otter trawl vessels and sampled by the NMFS Sea Sampling program, November through April, 1990-91. Catch and the percent discarded are listed by NE statistical area.

Area	Lbs Caught	% Discard
514	17	0
521	4	50
525	1025	46
526	931	10
537	6878	5
539	527	16
541	8	0
611	715	19
612	233	3
613	10577	11
614	754	24
615	5	20
616	15277	14
621	7557	16
622	20671	21
623	50	60
625	2700	35
626	10560	41
631	7648	33
632	1042	39
635	8778	26

Source: Unpublished NMFS Sea Sampling Data.

Table 5. The percent of summer flounder less than 14" TL for areas defined by specific longitudes and latitudes. Fish were sampled in February and March 1992 in the NEFSC Winter Flatfish Trawl Survey

	Number Measured	% Less 14" TL	% Less 13" TL
West of 72° 30	994	72.2	63.5
East of 72° 30	227	34.8	24.2
East of 71° 30	206	33.5	22.3
East of 70° 30	109	25.7	13.8
East of 69° 30	4	0	0

Table 6. The percent of trips and landed summer flounder pounds accounting for more than the given threshold of summer flounder, 1989 to 1991

Threshold	Number of trips	Pounds of Summer Flounder
>1	202	155,664
>100	90	152,611
>200	74	150,270
>300	61	147,183
>400	55	145,210
>500	43	139,961

Source: Unpublished NMFS Sea Sampling Data.

Table 7. The percent of otter trawl vessels, trips, and total pounds accounting for more than 100, 200 and 500 lbs of summer flounder per trip, 1983 to 1991

	% Vessels			% Trips			% Lbs		
	>100	>200	>500	>100	>200	>500	>100	>200	>500
83	90	84	76	59	50	38	99	99	96
84	88	84	77	63	53	39	99	98	96
85	94	88	80	63	54	42	99	98	95
86	90	87	80	64	55	44	99	98	93
87	91	86	78	63	55	43	99	98	93
88	92	89	80	63	54	44	99	98	95
89	88	82	75	57	50	41	99	97	94
90	79	85	63	51	42	31	98	96	89
91	80	76	67	55	45	33	98	97	91

Source: Unpublished NMFS Weighout data.

Table 8. Discard rates of summer flounder for mesh sizes from 3 to 5.5 inches based on size frequencies of summer flounder sampled in the NEFSC Winter Trawl Survey and a 13" TL minimum fish size

Mesh	Number	% Discarded	Weight
3.0	51.2		46.3
3.5	49.4		44.7
4.0	44.9		40.6
4.5	37.1		33.5
5.0	27.3		24.3
5.5	18.4		16.2

Note: Mesh size are inside stretch measurements.

Table 9. Species composition in otter trawl tows for various levels of thresholds of scup, *Loligo* squid, and silver hake 1989-1991.

<u>All tows catching 100 lbs of Scup</u>				
Species	1989 %	1990 %	1991 %	1989-91 %
Scup	22.4	37.0	27.6	27.5
<i>Loligo</i>	15.5	13.5	17.3	16.1
Silver Hake	14.9	10.0	8.0	10.7
Skates	11.5	4.8	8.5	8.9
Sea Robin	6.9	4.5	1.8	4.0
White Hake	4.6	5.1	1.9	3.4
Butterfish	4.3	4.1	6.6	5.4
Spiny Dogfish	2.5	5.5	13.7	8.5
Fourspot	1.9	1.1	1.5	1.6
Atlantic Mackerel	1.8	5.9	1.4	2.3
Angler	1.3	0.6	0.9	0.9
Summer Flounder	1.6	2.1	1.3	1.6
Black Sea Bass	1.1	0.6	0.3	0.6
Other	9.9	5.5	9.2	8.8

<u>All tows catching 500 lbs of Scup</u>				
Species	1989 %	1990 %	1991 %	1989-91 %
Scup	46.5	58.2	39.6	44.7
<i>Loligo</i>	7.6	7.4	10.5	9.2
Silver Hake	11.9	5.2	9.3	9.1
Skates	2.3	2.3	6.4	4.6
Sea Robin	11.0	2.5	0.5	3.4
White Hake	3.7	3.9	2.2	2.9
Butterfish	2.8	3.2	5.9	4.7
Spiny Dogfish	0.8	3.3	16.7	10.4
Fourspot	1.5	0.9	1.0	1.1
Atlantic Mackerel	3.0	6.8	2.1	3.2
Angler	0.8	0.3	0.6	0.6
Summer Flounder	1.0	0.7	0.5	0.6
Black Sea Bass	0.9	0.5	0.2	0.4
Other	6.3	4.8	4.6	5.0

All tows catching 100 lbs of *Loligo*

Species	1989 %	1990 %	1991 %	1989-91 %
<i>Loligo</i>	33.7	30.2	33.9	33.2
Silver Hake	16.8	11.2	11.4	13.5
Butterfish	8.4	5.1	9.7	8.5
Skates	9.3	8.0	8.5	8.7
White Hake	6.2	1.9	2.4	3.8
Scup	5.4	15.5	11.3	9.7
Sea Robin	3.6	6.3	1.4	3.0
Yellowtail	3.0	1.4	0.3	1.5
Fourspot	2.0	1.6	2.3	2.0
Summer Flounder	1.8	4.1	1.3	2.0
Spiny Dog	1.6	3.5	9.0	5.3
Other	8.3	11.3	8.4	8.8

All tows catching 500 lbs of *Loligo*

Species	1989 %	1990 %	1991 %	1989-91 %
<i>Loligo</i>	44.8	48.7	49.3	47.3
Silver Hake	13.9	10.5	8.1	10.9
Butterfish	9.9	6.5	7.7	8.5
Skates	9.5	6.8	7.1	8.1
White Hake	4.5	2.0	2.4	3.2
Scup	3.9	5.9	8.1	6.1
Sea Robin	2.5	6.0	1.8	2.6
Yellowtail	1.6	0.2	0.1	0.8
Fourspot	1.6	0.7	2.4	1.9
Summer Flounder	1.1	2.3	1.1	1.3
Spiny Dog	1.0	1.8	5.8	3.3
Black Sea Bass	0.6	0.9	0.1	0.4
Other	5.1	7.6	6.1	5.8

All tows catching 100 lbs of Silver Hake

Species	1989 %	1990 %	1991 %	1989-91 %
Silver Hake	48.7	40.8	38.6	43.3
White Hake	9.1	6.8	7.1	7.9
Skates	9.2	9.1	7.6	8.5
<i>Loligo</i>	7.9	6.5	9.5	8.2
Butterfish	3.3	1.5	4.0	3.2
Scup	2.2	4.4	5.9	4.0
Spiny Dog	3.4	7.4	5.7	5.0
Ocean Pout	1.6	1.2	0.7	1.2
Fourspot	1.4	1.3	1.9	1.6
Yellowtail	1.2	4.2	0.9	1.6
Summer Flounder	0.5	0.9	0.5	0.6
Black Sea Bass	0.3	0.3	0.0	0.2
Other	11.3	15.7	17.8	14.6

All tows catching 500 lbs of Silver Hake

Species	1989 %	1990 %	1991 %	1989-91 %
Silver Hake	59.9	60.4	58.0	59.3
White Hake	10.6	7.8	10.0	9.9
Skates	6.5	2.8	4.6	5.2
<i>Loligo</i>	3.6	4.4	3.0	3.6
Butterfish	2.6	1.1	1.9	2.1
Scup	2.1	1.9	3.9	2.7
Spiny Dog	3.2	3.6	2.9	3.2
Fourspot	1.0	1.0	1.7	1.2
Atlantic Herring	1.4	3.3	2.0	1.9
Yellowtail	0.8	0.5	0.8	0.8
Summer Flounder	0.1	0.7	0.2	0.2
Black Sea Bass	0.2	0.2	0.0	0.1
Other	8.2	12.4	11.0	9.9

Source: NEFSC Sea Sampling data.

Table 10. Cetaceans and Turtles Found in Survey Area

<u>Scientific name</u>	<u>Common name</u>	<u>Est. Minimum Number in Study Area</u>	<u>Endan- gered</u>	<u>Threat- ened</u>
LARGE WHALES				
<i>Balaenoptera physalus</i>	fin whale	1,102	X	
<i>Megaptera novaeangliae</i>	humpback whale	684	X	
<i>Balaenoptera acutorostrata</i>	minke whale		162	
<i>Physeter catodon</i>	sperm whale	300	X	
<i>Eubalaena glacialis</i>	right whale	29	X	
<i>Balaenoptera borealis</i>	sei whale	109	X	
<i>Orcinus orca</i>	killer whale	unk		
SMALL WHALES				
<i>Tursiops truncatus</i>	bottlenose dolphin	6,254		
<i>Globicephala</i> spp.	pilot whales	11,448		
<i>Lagenorhynchus acutus</i>	Atl. white-sided dolphin	24,287		
<i>Phocoena phocoena</i>	harbor porpoise	2,946		
<i>Grampus griseus</i>	grampus (Risso's) dolphin	10,220		
<i>Delphinus delphis</i>	saddleback dolphin	17,606		
<i>Stenella</i> spp.	spotted dolphin	22,376		
<i>Stenella coeruleoalba</i>	striped dolphin	unk		
<i>Lagenorhynchus albirostris</i>	white-beaked dolphin		unk	
<i>Ziphius cavirostris</i>	Cuvier's beaked dolphin	unk		
<i>Stenella longirostris</i>	spinner dolphin	unk		
<i>Steno bredanensis</i>	rough-toothed dolphin	unk		
<i>Delphinapteras leucas</i>	beluga	unk		
<i>Mesoplodon</i> spp.	beaked whales	unk		
TURTLES				
<i>Caretta caretta</i>	loggerhead turtle	4,017		X
<i>Dermochelys coriacea</i>	leatherback turtle	636	X	
<i>Lepidochelys kempi</i>	Kemp's ridley turtle	unk	X	
<i>Chelonia mydas</i>	green turtle	unk		X

Source: University of Rhode Island 1982.

Table 11. Summer Flounder Commercial Landings by State and Gear, 1980-89 Combined

Gear	ME	NH	MA	RI	CT	NY	NJ	DE	MD	VA	NC
	% of Total										
Haul Seines, Beach	-	.	-	0.0	0.0	0.0	-	2.8	0.4	0.1	.
Haul Seines, Long(Danish)	-	.	0.0	-	.	-	0.0	-	.	-	.
Stop Nets	-	.	-	0.0	-	.	-	.	-	.	.
Purse Seines, Menhaden	-	.	1.2	-	.	-	0.0	-	.	0.0	.
Beam Trawls, Other	-	.	-	.	-	.	-	.	-	0.0	.
Otter Trawl Bottom, Fish	93.5	76.9	93.6	94.3	99.2	97.9	98.4	-	93.8	92.5	100.0
Otter Trawl Bottom, Lobster	-	.	-	0.0	-	0.5	0.0	-	.	0.0	.
Otter Trawl Bottom, Scallop	-	.	0.0	-	.	0.0	0.0	-	0.0	0.1	.
Otter Trawl Bottom, Shrimp	3.5	15.4	0.0	-	.	-	-	-	-	-	.
Otter Trawl Bottom, Other	-	.	-	2.8	-	.	-	.	-	-	.
Otter Trawl Midwater	-	.	-	-	-	-	-	-	-	0.0	.
Trawl Midwater, Paired	-	.	0.5	0.0	-	.	0.0	-	.	-	.
Trawl Bottom, Paired	-	.	-	0.1	-	0.0	-	.	-	.	.
Scottish Seine	0.5	-	0.0	0.0	-	.	0.0	-	.	-	.
Weirs	-	.	-	-	-	-	-	-	-	0.0	.
Pound Nets, Fish	-	.	0.6	-	0.0	0.8	0.2	-	2.1	3.9	.
Pound Nets, Other	-	.	0.1	-	.	-	-	-	.	-	.
Floating Traps (Shallow)	-	.	-	1.4	-	.	-	-	-	.	.
Fyke And Hoop Nets, Fish	-	.	-	0.0	-	.	-	1.0	0.2	0.0	.
Pots And Traps, Crab, Blue	-	.	-	.	-	.	-	.	-	0.0	.
Pots And Traps, Eel	-	.	0.0	-	.	-	-	-	-	0.0	.
Pots And Traps, Fish	-	.	0.0	-	.	-	-	-	0.2	0.0	.
Pots And Traps, Lobster Inshore	-	.	-	.	0.0	-	0.0	-	.	-	.
Pots And Traps, Lobster Offshore	-	.	-	.	-	.	0.0	-	.	-	.
Gill Nets, Other	1.7	7.7	0.0	0.1	0.0	0.0	0.0	83.1	1.1	0.0	.
Gill Nets, Drift, Other	-	.	-	.	0.0	-	0.0	8.7	0.0	0.1	.
Gill Nets, Drift, Runaround	-	.	-	.	-	.	0.0	-	-	-	.
Gill Nets, Stake	-	.	-	.	-	.	-	-	0.3	-	.
Lines Hand, Other	-	.	1.7	0.3	0.6	0.5	0.0	4.4	1.5	0.0	.
Lines Troll, Other	-	.	0.0	0.1	-	.	-	.	-	.	.
Lines Long Set With Hooks	-	.	0.0	0.0	-	.	-	.	-	.	.
Spears	-	.	-	.	0.0	-	-	-	-	-	.
Dredges, Clam	-	.	-	.	-	.	-	.	0.0	-	.
Dredges, Conch	-	.	-	.	-	.	-	.	0.0	0.0	.
Dredges Scallop, Bay	-	.	-	.	-	.	-	.	0.0	-	.
Dredges Scallop, Sea	0.8	-	2.1	0.8	-	0.2	1.3	-	0.4	3.2	.
Unk. 989	-	.	-	.	0.0	-	-	-	-	-	.
ALL GEAR	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

* = less than 0.05 %

Source: Unpublished NMFS General Canvass data.

Table 12 Results of Experimental Trawls Conducted off North Carolina

<u>Date</u>	<u>Number of Nets</u>	<u>Type of Net (ft)</u>	<u>No. of Tows</u>	<u>Tow Times (min)</u>	<u>Total Time for Day (hours)</u>	<u>Turtles Caught</u>
12/11/90	2	70' standard	6	90	18	2 Lk
12/17/90	1	72' standard	3	30		None
	1	72' standard	3	60		1 Cc
	1	72' standard	6	90	13.5	1 Cc, 1 Lk
	1	72' w/Jones TED	3	30		None
	1	72' w/Jones TED	3	60		None
	1	72' w/TED w/funnel	6	90	13.5	None
12/19/90	1	72' standard	3	60		None
	1	72' standard	1	45		None
	1	72' standard	3	90	8.25	1 Cc
12/19/90	1	72' w/super shooter	3	60		None
	1	72' w/super shooter	1	45		None
	1	72' w/super shooter	3	90	8.25	1 Lk
12/29/90	1	50' standard	3	70	3.5	1 Cc
01/10/91	1	78' standard	4	90	6	None

Note: Lk = *Lepidochelys kemp* (Kemp's ridley turtle), Cc = *Caretta caretta* (loggerhead turtle).

Source: North Carolina Division of Marine Fisheries, unpublished data.

Table 13 State Laws for Summer Flounder: ME to NC

Maine

- Size limits:** 13" possession restriction. It is also illegal to possess groundfish (including summer flounder) aboard any vessel rigged for groundfishing that has its head or tail removed and is less than the legal size limit.
- Gear restrictions:** 5.5" minimum mesh size for trawls, Scottish seines, bottom tending gillnets and bottom tending seines. Regulations exist regarding the placement of stop seines and fish weirs. Additional Gear/season restrictions for specific locations are detailed in Department regulations.
- Area closures:** Groundfish (summer flounder) spawning closure in Booth Bay and Sheepscot Bay from May 1 to June 30.
- Seasons:** See above.
- Licenses:** A Commercial license is required for the harvest, transport, and sale of fish that are not for personal use: \$20 for individual, resident operators; \$53 for resident operator with crew; \$200 for nonresident operator and crew. No license is required for fish Taken with hook and line for personal use. There is no recreational license, except for Atlantic Salmon.
- Other:** Nonresidents are required by law to report all groundfish (summer flounder) catches.

New Hampshire

- Size limits:** 13" possession restriction.
- Gear restrictions:** Mobile fishing Gear may not be used in State waters between April 16 and Dec 14. Use of trawls and drag seines are prohibited in Piscataqua River or its tributaries north of the Portsmouth Memorial Bridge.
- Area closures:** See above
- Seasons:** None specific to summer flounder.
- Licenses:** Resident Commercial saltwater fishing license: \$26; no sport fishing license. Residents are not required to have a license to sell fish caught by hook and line, but a \$200 minimum license fee is required for nonresidents.

Massachusetts

- Size limits:** 14"
- Gear restrictions:** Minimum mesh sizes for mobile trawl gear:
- * North of Cape Cod: - 5.5" required year round. Permitted small mesh exemptions are allowed for underutilized species (e.g., dogfish and ocean pout) with no bycatch of regulated species.

* South of Cape Cod: 5.5" required year round for any vessel possessing 100 lbs or more of any flounders in combination; 4.5" required June 1 - Oct. 31 for any vessel possessing no more than 100 lbs of any flounders in combination; and no minimum required April 23 - May 31 (squid season).

* East of Cape Cod: 5.5" required year round.

Gillnets may not exceed 2,400 feet; mesh size of gillnets must be greater than 6" stretched measure.

- Area closures:** All waters closed to night trawling. Buzzards Bay is closed to trawling year round. State waters from Nauset Light around Monomoy west to Succonessett Point, Mashpee are closed to trawling from May 1 - Oct. 31. All waters south of Cape Cod banned to gillnetting April 1 - Nov. 15. (See Mass. regulations for additional closures.)
- Seasons:** See above
- Licenses:** Commercial fishing licenses: Vessel license ranges from \$130 to \$260, depending on length; license for individuals = \$65 each. There is no sport license for fish caught for personal use. A license to sell fish caught with hook and line is \$35, and applies to any individual selling fish.

Rhode Island

- Size limits:** 14" possession restriction.
- Gear restrictions:** Trawling is prohibited in the upper portion of Narragansett Bay from Nov 1 - July 1; 5" cod end minimum mesh size in a portion of central Narragansett Bay from Nov 1 - Feb 28. Numerous specific gillnet regulations by geographic location and season; trap and fyke net regulations regarding leaders, distance from shore, distance between traps, etc.
- Area closures:** Numerous restrictions on the location of traps off the Island of Rhode Island, the Sakonnet River, and in Narragansett Bay. Cannot set, haul, and/or maintain a seine within 0.5 mile of the seaward entrance of several ponds/rivers; significant portion of the State is closed to various forms of netting.
- Seasons:** Fish traps must be out of the water Jan 1 - end of Feb.
- Licenses:** Multipurpose Commercial licenses allow for harvest and sale of fish: \$150, with additional fees for specific Gear types. There is no sport license to fish for personal use.

Connecticut

- Size limits:** 14" possession restriction.
- Gear restrictions:** Cod end minimum mesh size of 4.5" in trawls from Nov 15 - May 14, and 3" from Aug 1 - Nov 14. Gillnet minimum mesh size 3"; Pound, trap, fyke, and weir minimum mesh: 2".
- Area closures:** Fish traps and pound nets may not be set in an area off the mouth of the Connecticut

River; pound nets must be set at least one mile apart; trawling is prohibited within an "inshore trawl line;" numerous specific areas are closed to trawl and/or other forms of net Gear.

Seasons: None except as noted above

Licenses: A variety of Commercial resident and nonresident licenses are available allowing for the harvest and sale of fish. Fees are typically in the \$25 - \$150 range. Marine angling with hook and line does not require a license if fish are for personal use only. Personal use fishing with trawls and other specific Gear will require a Commercial license.

New York

Size limits: 14" possession restriction.

Gear restrictions: No minimum mesh size for trawls at the present time.

Area closures: There are numerous specific locations where trawl and/or other net Gear are restricted.

Seasons: None

Licenses: A Commercial license is required for the harvest and sale of fish: Resident: \$100, Nonresident: \$1,000. (The nonresident harvest license may only be purchased in January.) A nonresident license which allows landing only: \$250. There is no sport license for fish caught for personal use.

New Jersey

Size limits: 13" possession restriction.

Gear restrictions: Trawls fishing for summer flounder must have a 4.5" minimum mesh size in the cod end. (A summer flounder trip is defined as one in which 20% of the weight of the catch is comprised of summer flounder.) Gillnets may not exceed 2,400 ft in length from Feb 1 - May 15, and may not exceed 1,200 ft from May 15 - Dec 15.

Area closures: Trawling and purse seining are prohibited within two miles of the coast; gillnetting is limited to the Atlantic Ocean and Delaware Bay.

Seasons: Gillnets cannot be fished from Dec 16 - Feb 1.

Licenses: Commercial Gears are licensed, with fees dependent on the Gear type. There is no sport fishing license for hook and line Gear, and no license is required to sell hook and line caught fish.

Delaware

Size limits: 13" possession restriction.

Gear restrictions: Trawls, purse seines, power operated seines, and runaround gillnets are prohibited. A single gillnet cannot exceed 200 yards in length; a series of connected gillnets cannot exceed 500 yards; a fyke net cannot exceed 72" in diameter; fish traps may not exceed 125 cubic ft and must have an escape panel. There is a moratorium on issuance of new Commercial (> 200 ft) gillnet permits until the number of fishermen

falls below 30.

- Area closures:** Areas within a 0.5 mile sector at the mouths of all major tributaries to the Delaware River and Bay are closed to all fixed Gears; numerous specific areas closed to Commercial fishing.
- Seasons:** From April 1 - May 10, Commercial fishermen cannot set over 1,000 yards of fixed gillnet from one vessel; from May 10 to Sept 30, Commercial fishermen cannot set over 1,000 yards of drifting gillnet from one vessel; drift gillnets cannot be set from 2,400 hours Friday - 1,600 hours Sunday during this period; specific seasonal closures for gillnets in certain areas.
- Licenses:** Commercial food fishing license is required for the harvest and sale of fish: Residents: \$150; Nonresidents: \$1,500. Additional fees are levied for the use of specific Gear types. There is no sport license for fish caught for personal use.

Maryland

- Size limits:** 13" possession restriction, with a 5% tolerance (by number) for Commercial fishermen only.
- Gear restrictions:** Trawls prohibited within one mile of the coastline, and in Chesapeake Bay. Use of monofilament gillnets prohibited, except in coastal bays and the Atlantic Ocean; several specific gillnet restrictions exist for Chesapeake Bay; minimum mesh sizes for pound nets, haul seines, and fyke nets are 1.5"; purse seines prohibited.
- Area closures:** There are numerous specific locations where trawl, gill, seine and/or other net Gear are restricted.
- Seasons:** None
- Licenses:** A tidal fish license is required to catch, buy, or sell fish from tidal waters for Commercial purposes: Resident: \$35, Nonresident: \$100. Additional fees are levied to validate the license for individual Gear types; for example: nets, seines, trawls, and pots used in the ocean: \$100, hook and line: \$25. There is a mandatory 2 year waiting period for any Commercial fishing Gear license. Chesapeake sport fishing license: \$5.

Virginia

- Size limits:** 13" possession restriction, with a 10% (or 2 fish, whichever is greater) enforcement tolerance.
- Possession limits:** Summer flounder = 10 fish per day. (A voluntary 6 fish per day limit is encouraged, as well as not making use of the 2 undersized fish tolerance.)
- Gear restrictions:** Trawls and encircling gillnets are prohibited in Virginia waters. Minimum mesh sizes: pound nets: 2"; haul seines over 200 yards: 3"; gill nets = 2-7/8". The gill net limit increases to 3" on 1/1/92.
- Area closures:** Fish trout lines cannot be set on the sea side of the eastern shore.
- Seasons:** Haul seining in the Chesapeake Bay or its tributaries is prohibited on Sundays. (This

prohibition will be rescinded as of 7/1/90.)

Licenses: Commercial licenses are required for specific fishing Gears, with the fee dependent on the Gear type. There is no sport fishing license, and no license is required to sell hook and line caught fish.

Other: Virginia has developed a State management plan for summer flounder. It proposes: a zero tolerance on undersize fish for all Gears except pound nets; special licenses for seafood sellers and Commercial hook and line fishermen; and limited and delayed entry programs. It also requests the Mid-Atlantic Council to adopt: a 5.5 minimum mesh size for trawls when targeting summer flounder; individual State quotas for summer flounder; and to request that North Carolina either prohibit trawling in the northern portion of its waters from November - February, or establish a 5.5" minimum mesh size during that same period.

North Carolina

Size limits: 13" possession restriction.

Gear restrictions: The following restrictions apply to trawling in the Atlantic Ocean within 3 miles of the beach from the North Carolina/Virginia State line (36° 33' N) to Cape Lookout (34° 36' N) from 1 November 1992 through 30 April 1993:

TRAWL TAILBAGS

a. It is unlawful to trawl with a net (except with fly nets) which has a cod end (tail bag) mesh length of less than 5.5" (stretched mesh) and less than 25 meshes long or possess on the deck of a vessel a cod end with a mesh length less than 5.5" (stretched mesh) attached to or independent of a trawl net.

b. In accordance with Federal regulations, all vessels permitted to fish in the summer flounder fishery are required to use tail bags with a minimum of 5.5" diamond or 6" square mesh in the terminal 75 meshes of the net (or the last 1/3 of the net if the tail bag has less than 75 meshes)

TURTLE EXCLUDER DEVICES (TEDS)

It is unlawful to trawl (except with fly nets) without a North Carolina Division of Marine Fisheries approved TED having a 4" bar maximum spacing with a minimum escape opening of 35" in horizontal taut length by 12" in vertical taut height installed in the trawl.

Trawl nets may not be used in internal, coastal fishing waters for finfish, however an unlimited quantity of legal size flounder may be retained as a bycatch in the trawl fisheries for crab and shrimp. (Non-flounder bycatch is limited to 1,000 pounds per trip). Purse seines are prohibited except for menhaden and Atlantic thread herring; no net may be towed by more than one vessel except in long haul (seine) fishing operations.

Area closures: Numerous specific Gear restrictions by geographic area. Trawls are prohibited within one half mile of the beach between the Virginia line and Oregon Inlet. Trawling is prohibited in designated nursery areas.

Seasons: Several specific seasonal restrictions pertaining to gillnets. The Fishery Director may, by Proclamation, establish fishing Gear specifications for trawls in the territorial sea to protect small flounder from Oct 1 - April 30.

Licenses: A Commercial license is required for vessels, with fees dependent on vessel length (nonresidents have an additional \$200 surcharge). An inland sport fishing license is necessary for some portions of tidal waters. A license is required to sell fish caught by hook and line, but there is a \$500 exemption per 12 month period.

Sources: All personal communication: ME - Honey, NH - Nelson, MA - McKiernan, RI - Sisson, CT - Simpson, NY - Zawacki, NJ - Scarlett, DE - Cole, MD - Speir, VA - Varnell, and NC - McCoy.

Table 14. The amount of summer flounder allocated to commercial fisheries in each State based on a coastwide quota of 12.35 million pounds. The maximum number of trips that would occur at the threshold for thresholds of 100, 200 and 500 pounds is also presented

State	% of Total	Quota	100 lbs	200 lbs	500 lbs
ME	0.0482	5953	59.5	29.8	11.9
NH	0.0005	62	0.6	0.3	0.1
MA	6.9111	853521	8535.2	4267.6	1707.0
RI	15.8914	1962588	19625.9	9812.9	3925.2
CT	0.9532	117720	1177.2	588.6	235.4
NY	7.7486	956952	9569.5	4784.8	1913.9
NJ	16.9473	2092992	20929.9	10465.0	4186.0
DE	0.018	2223	22.2	11.1	4.4
MD	2.0662	255176	2551.8	1275.9	510.4
VA	21.6001	2667612	26676.1	13338.1	5335.2
NC	27.8155	3435214	34352.1	17176.1	6870.4
Total	100.0000	12350000	123500.1	61750.1	24700.0

Figure 1. Northeast Exemption Area.

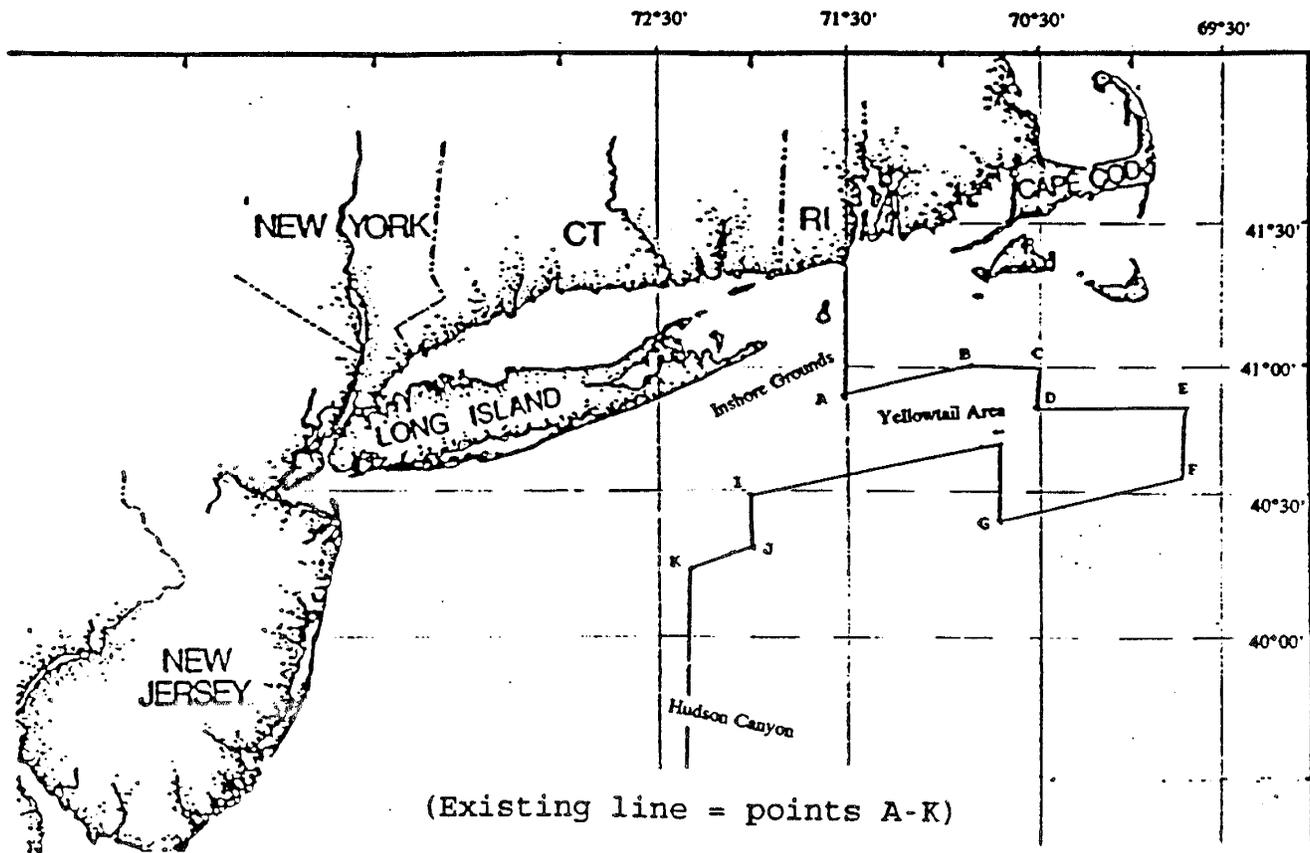
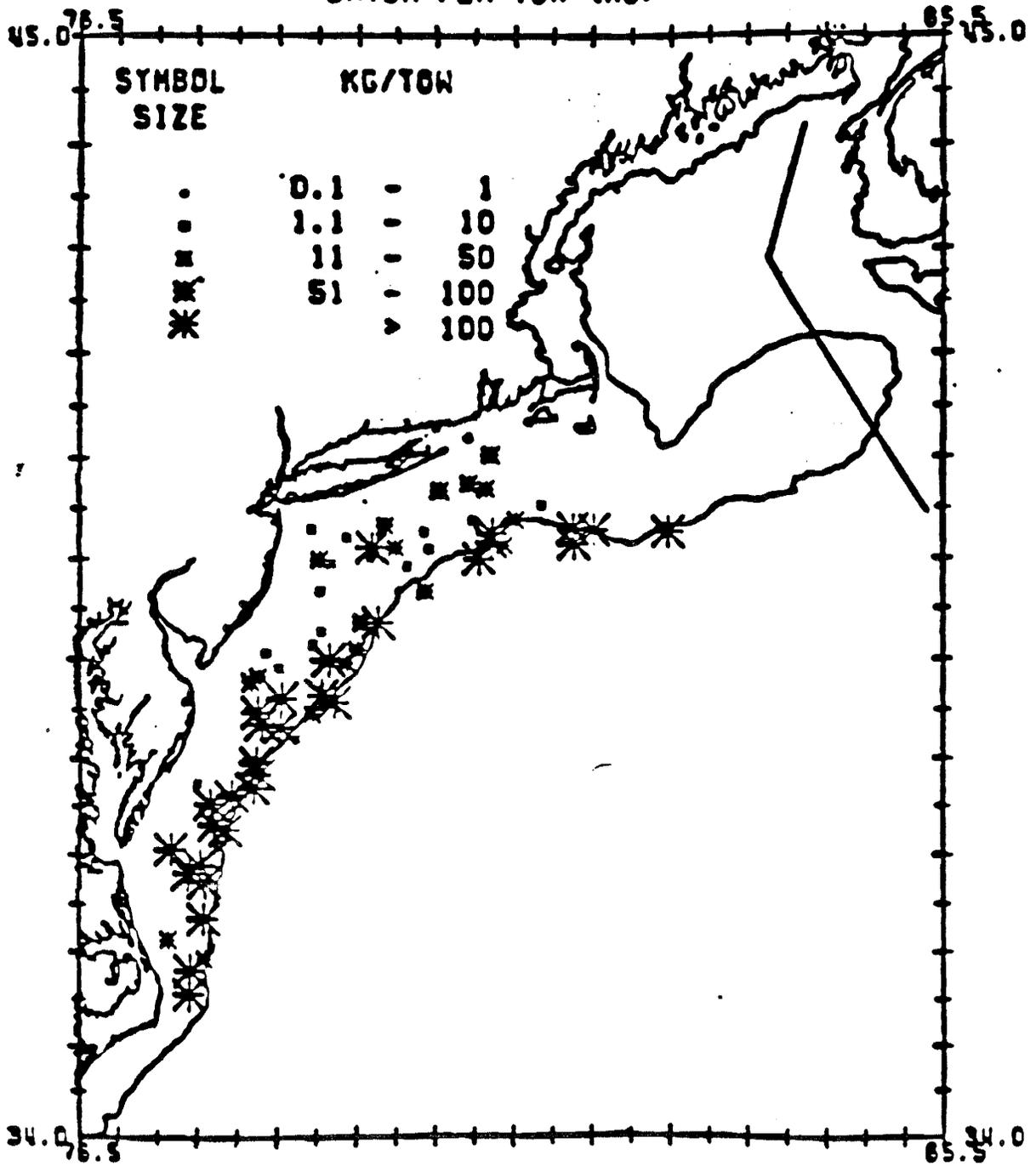


Figure 2.

1992 WINTER TRAWL SURVEY; SUMMER FLOUNDER
CATCH PER TON (KG)



FALL
 LOGGERHEAD
 N = 325

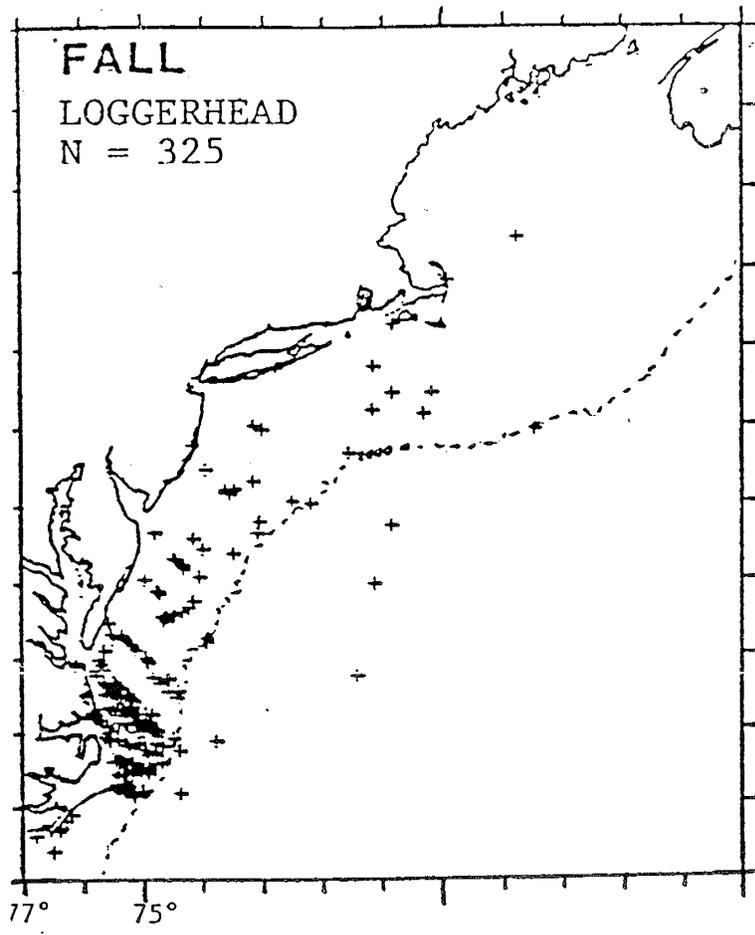


FIGURE 3 : Fall (Sept.22- Dec.21) distribution of loggerhead sea turtles. From CeTAP, 1982.

o o o o

FIGURE 4 : Fishing grounds of North Carolina winter (Oct.- Jan.) trawl fishery. From Ross, 1991.

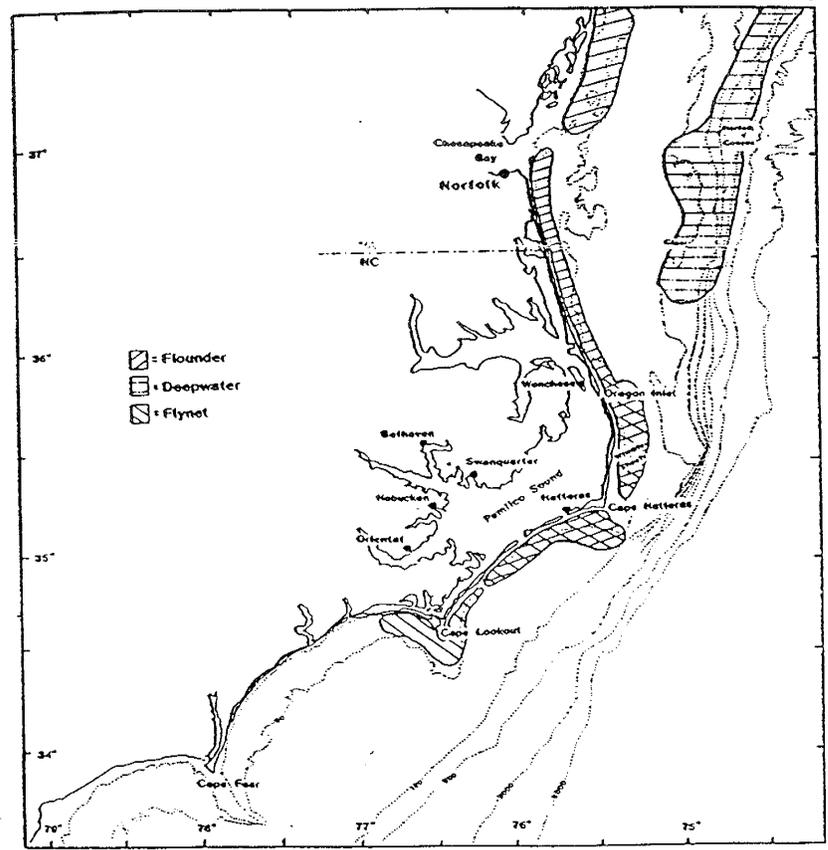
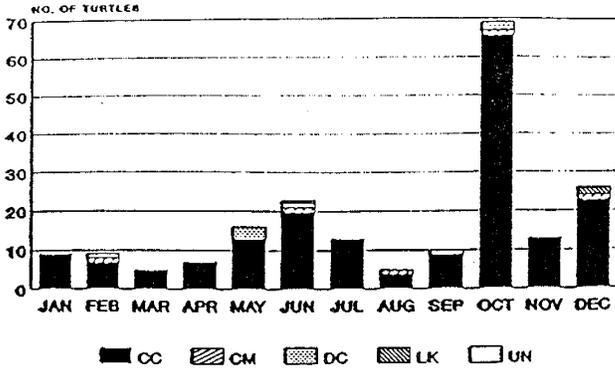


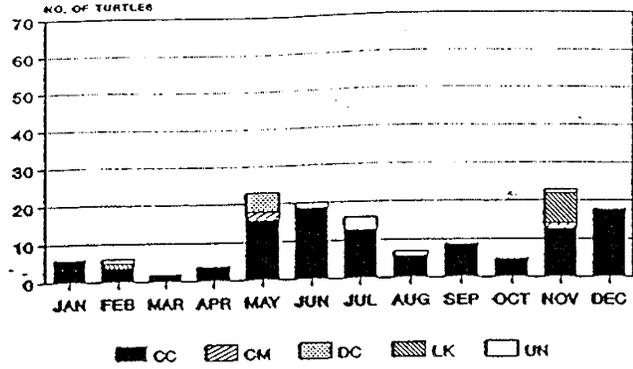
Figure 5:
From NMFS, SEFC. STSSN Database

NORTH CAROLINA SEA TURTLE STRANDINGS, 1985



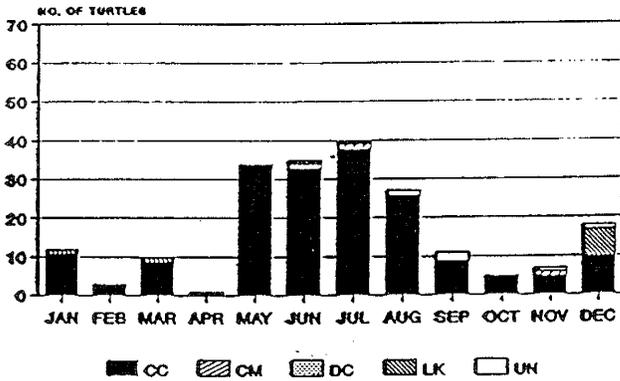
n for '85 = 204

NORTH CAROLINA SEA TURTLE STRANDINGS, 1986



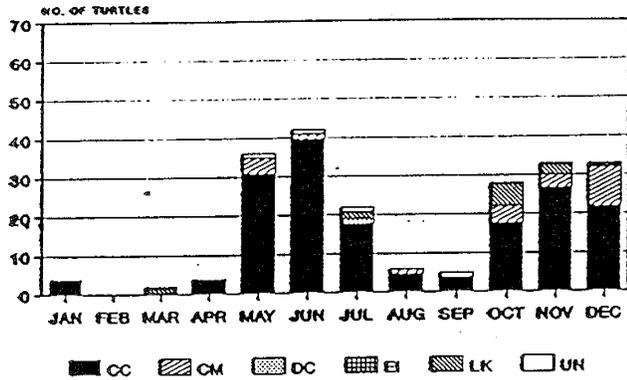
n for '86 = 139

NORTH CAROLINA SEA TURTLE STRANDINGS, 1987



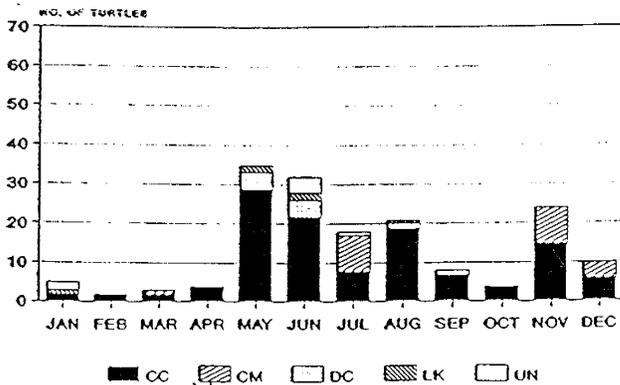
n for '87 = 203

NORTH CAROLINA SEA TURTLE STRANDINGS, 1988



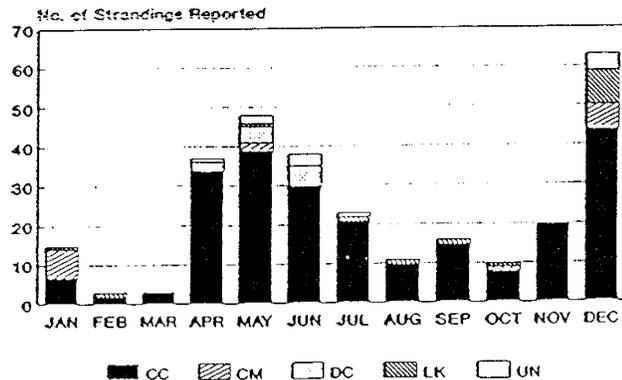
n for '88 = 215

NORTH CAROLINA SEA TURTLE STRANDINGS, 1989



n for '89 = 166

NORTH CAROLINA Sea Turtle Strandings, 1990



n for '90 = 267

CC=*Caretta caretta* CM=*Chelonia mydas* DC=*Dermochelys coriacea* EI=*Eretmochelys imbricata* LK=*Lepidochelys kempi* UN=Unidentified

APPENDIX 1. ALTERNATIVES TO THE AMENDMENT

1. TAKE NO ACTION AT THIS TIME

1.1. Description

This would mean that the exempted fishery demarcation line would be the one included in Amendment 2 and the large mesh threshold would be 100 lbs year round.

1.2. Evaluation

The No Action alternative would not solve the problems identified in section 4. The exempted fishery demarcation line would be difficult to comply with and enforce. The discards of legal summer flounder in the WINTER small mesh fishery would be greater than with the 200 lb threshold.

2. INCREASE LARGE MESH THRESHOLD TO 500 LBS.

2.1 Description

The existing FMP allows otter trawl vessels to retain 100 lbs of summer flounder before using a large mesh (5.5" diamond or 6" square) net. The preferred alternative for Amendment 3 would raise that threshold to 200 lbs for vessels fishing from 1 November to 30 April. This alternative would increase the threshold to 500 lbs.

2.2 Evaluation

Based on NMFS sea sampling data a threshold of 500 lbs per trip would have affected about 21% of the trips and accounted for approximately 89% of the landings (Table 6). A threshold of 500 lbs per trip would have affected approximately 75% of the vessels and 35% of the trips landings summer flounder based on NMFS weighout data (Table 7). However, these 500 lb trips still accounted for over 93% of the total summer flounder landed from 1983-91.

A 500 lb threshold would encourage a directed fishery for summer flounder by vessels using small mesh nets and subvert the positive impacts of the mesh regulation. Small day boats, which usually land much less than 500 lbs per day (based on comments from Industry Advisors and commercial fishermen), would not be negatively impacted by this high bycatch allowance, but may tend to carry out a directed fishery with small mesh gear, thus increasing discards of small summer flounder.

Larger vessels in small mesh fisheries for *Loligo* squid and silver hake would catch and discard large quantities of small (i.e., less than 13" TL) summer flounder that would then be discarded dead (Table 8) in order to retain 500 lbs of marketable fish. Coupled with an increase in the number of 13" TL fish that would be landed (few 13" fish would escape from a 3.0" mesh), mortality of sublegal fish would increase, decreasing yields and ultimately resulting in a reduction in the potential quota for future years. It is probable that most fishermen would prefer a higher quota of larger, more valuable fish to a higher threshold level.

In addition, it is important to note that under the proposed coastwide quota system, a 500 lb threshold would require that some states not have directed summer flounder fisheries because quotas would be filled by vessels landing less than the threshold level (Table 14). Also, at the time that MAFMC staff first proposed the 500 lb threshold (for Amendment 1), there were no quotas so the impacts of alternative thresholds on the quota were not considered.

Discarding from the greater effort to catch the 500 lbs would be difficult to estimate, but would reduce the quota.

3. INCREASE LARGE MESH THRESHOLD TO 200 LBS

3.1. Description

This alternative would increase the large mesh threshold from 100 to 200 lbs. This alternative differs from the preferred alternative in that the 200 lb threshold would apply to summer flounder landings over the entire year, not just the period from 1 November to 30 April.

3.2. Evaluation

The higher threshold would accommodate larger vessels fishing for squid, whiting, and other species and having a bycatch of valuable summer flounder in non exempted areas or during periods of the year when the exemption was not in effect (May through October). In addition, the threshold would be low enough such that a directed small mesh fishery for summer flounder by these vessels would not be encouraged.

However, based on comments received from fishermen, 200 lbs would equal the daily landings of many of the smaller vessels which typically fish for summer flounder closer to shore, for shorter periods, during the summer. A 200 lb threshold would encourage these smaller vessels to use small mesh nets to catch and discard large amounts of sublegal summer flounder to land 200 lbs of 13" TL and larger fish. Coupled with an increase in the number of 13" TL fish that would be landed (few 13" fish would escape the smaller mesh nets), mortality of sublegal fish would increase, decreasing yields and ultimately resulting in a reduction in the potential quota for future years.

4. REVISE THE DEMARCATION LINE FOR THE EXEMPTED FISHERY

4.1. Description

The purpose of this alternative is to revise the exempted fishery demarcation line from Amendment 2 to read as follows:

The line follows 72° 30.0' W. until it reaches 39° 36' N, 72° 30" W (its point of intersection with the 50 fathom contour in Hudson Canyon), thence southeasterly, bisecting Hudson Canyon, to its point of intersection with outer boundary of the EEZ at 37° 54.8" N, 69° 45' W.

The concept of this alternative is to follow the demarcation line in the preferred alternative southward until it approximately reaches the 50 fathom line in Hudson Canyon, then bisect Hudson Canyon in a southeasterly direction until it reaches the outer boundary of the EEZ.

4.2. Evaluation

The existing demarcation line (72° 20' W. south of the yellowtail closed area) essentially bisects Hudson Canyon. Fishermen from New York and Southern New England commented that weather conditions largely determine which side of the Canyon they fish and that the entire Canyon should be included in the exempted fishery area, leading to the preferred alternative in this Amendment (72° 30' W. to the southern border of North Carolina). However, other fishermen claim that the 72° 30' line bisects a fishing ground that extends from the western side of Hudson Canyon some distance westward.

Given the small distances involved between these lines, it is impossible to evaluate the lines using sea sampling, weighout, or other fishery data.

This alternative would make the exempted fishery area smaller than the existing FMP or the preferred alternative for this Amendment.

APPENDIX 2. REGULATORY IMPACT REVIEW

1. INTRODUCTION

1.1. Purpose

The purpose of this document is to present an analysis of the proposed regulations for Amendment 3 to the Summer Flounder Fishery Management Plan (FMP). This document has been prepared in compliance with the procedures of the National Marine Fisheries Service (NMFS) to implement Executive Order (E.O.) 12291. The document also contains an analysis of the impacts of the Plan relative to the Regulatory Flexibility Act and the Paperwork Reduction Act of 1980.

1.2. Description of User Groups

The fishery is described in Sections 7 and 8 of Amendment 2.

1.3. Problems Addressed by Amendment 3

The problems to be addressed are discussed in Section 4.2 of Amendment 3.

1.4. Management Objectives

The objectives of Amendment 3 are to:

1. Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur.
2. Reduce fishing mortality on immature summer flounder to increase spawning stock biomass.
3. Improve the yield from the fishery.
4. Promote compatible management regulations between State and Federal jurisdictions.
5. Promote uniform and effective enforcement of regulations.
6. Minimize regulations to achieve the management objectives stated above.

1.5. Provisions of Amendment 3

The management measures are presented in Sections 3 and 9.1 of Amendment 3. Other alternatives are presented in Appendix 1 to Amendment 3.

2. REGULATORY IMPACT ANALYSIS

The impacts of the management measures are presented in Section 9.2 of Amendment 3. Other alternatives are evaluated in Appendix 1 to Amendment 3.

3. DISCUSSION OF THE BENEFITS AND COSTS OF THE AMENDMENT

E.O. 12291 requires that a benefit-cost analysis of all proposed regulations be performed.

3.1. Costs

Management costs are discussed in section 9.2.

3.2. Benefits

The benefits of Amendment 3 are discussed in section 9.2.

3.3. Benefit - Cost Conclusion

The benefits and costs of Amendment 3 are discussed in section 9.2.

4. Other E.O. 12291 Requirements

E.O. 12291 requires that the following three issues be considered:

1. Will the Plan have an annual effect on the economy of \$100 million or more.
2. Will the Plan lead to an increase in the costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions.
3. Will the Plan have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of US based enterprises to compete with foreign based enterprises in domestic or export markets.

The FMP should not have an annual effect of \$100 million or more. The exvessel value of summer flounder landings has increased from about \$16 million in the early 1980's to a peak \$41 million in 1988. Exvessel value dropped to \$28 million in 1989, due to a nearly 15 million pound decline in landings, but a rise in average price to \$1.56 per pound helped to temper the effect on revenues to harvesters. The Sport Fishing Institute estimated that 10% to 15% of the \$1.05 billion in retail sales directly related to Mid-Atlantic marine recreational fishing in 1985 could be attributed to summer flounder, making it second only to bluefish in importance to anglers. Amendment 3 is intended to allow the summer flounder resource to rebuild, thereby assuring larger catches in the future.

The FMP is not expected to lead to an increase in costs or prices to consumers (section 9.2).

Cost and benefit data are presented and analyzed in section 9.2.2 of Amendment 3.

Governmental costs are discussed in section 9.2.2.4.

The FMP should not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of US based enterprises to compete with foreign based enterprises in domestic or export markets.

5. Impacts of the Plan relative to the Regulatory Flexibility Act and the Paperwork Reduction Act of 1980.

The Regulatory Flexibility Act requires the examination of the impacts on small businesses, small organizations, and small jurisdictions. The impacts of Amendment 3 do not favor large businesses over small businesses.

The changes to the demarcation line and the frameworked adjustments to the northeast exempted fishery are designed to reduce negative impacts on fishermen and enforcement personnel. The increased threshold for the large mesh net during the winter will allow fishermen to work in the small mesh mixed trawl fishery without discarding as many legal summer flounder than with the 100 lb threshold in Amendment 2. The change in the net strengthener provision restores the previous consistency between the Summer Flounder FMP and the Northeast Multispecies FMP, thereby allowing fishermen that fish under both FMPs to use the same net strengtheners, thereby reducing costs and facilitating compliance.

The Paperwork Reduction Act concerns the collection of information. The intent of the Act is to minimize the Federal paperwork burden for individuals, small business, State and local governments, and other persons as well as to maximize the usefulness of information collected by the Federal government. Amendment 3 will not

change the paperwork burden of the FMP.

6. Impacts of the Plan relative to Federalism.

The Amendment does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

APPENDIX 3. SUMMER FLOUNDER FMP AMENDMENT 3 ENVIRONMENTAL ASSESSMENT

1. INTRODUCTION

The FMP was based on a management plan drafted by the State/Federal Summer Flounder Management Program pursuant to a contract between the New Jersey Division of Fish, Game, and Wildlife and NMFS. The State/Federal draft was adopted by the Atlantic States Marine Fisheries Commission (ASMFC) at its annual meeting in October 1982. The Council adopted the FMP on 16 April 1988 and NMFS approved it 19 September 1988. Amendment 1 was intended to impose a minimum net mesh regulation and define overfishing. NMFS approved the overfishing definition but disapproved the minimum net mesh provision. Amendment 2 included management measures to reduce overfishing and enable the stock to rebuild. Amendment 3 is intended to address the problems set forth in section 4.2 of the Amendment.

2. PURPOSE OF AND NEED FOR ACTION

The problems to be addressed in Amendment 3 are set forth in section 4.2 of the Amendment.

3. MANAGEMENT OBJECTIVES

The objectives of the FMP are to:

1. Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur.
2. Reduce fishing mortality on immature summer flounder to increase spawning stock biomass.
3. Improve the yield from the fishery.
4. Promote compatible management regulations between State and Federal jurisdictions.
5. Promote uniform and effective enforcement of regulations.
6. Minimize regulations to achieve the management objectives stated above.

4. MANAGEMENT UNIT

The management unit is summer flounder (*Paralichthys dentatus*) in US waters in the western Atlantic Ocean from the southern border of North Carolina northward to the US-Canadian border.

5. ALTERNATIVES

The management measures are presented in Sections 2 and 9.1 of Amendment 3. Other alternatives are presented in Appendix 1 to Amendment 3.

6. ENVIRONMENTAL IMPACTS

The impacts of adopted management measures are presented in Section 9.2 of Amendment 3. Other alternatives are evaluated in Appendix 1 to Amendment 3.

Relative to the approved Summer Flounder FMP (the original FMP and Amendments 1 and 2), Amendment 3 has no environmental impacts. Amendment 3 makes the western boundary of the northeast exempted fishery a straight longitude line rather than the Amendment 2 line around the yellowtail closed area, increases from 100 to 200 pounds the quantity of summer flounder that may be retained in the non-exempted fishery between November and April before switching to a 5.5" diamond or 6" square mesh net, establishes a frameworked process for modifying the northeast exempted fishery in area and in time to keep discards below the 10% level, and revises the net mesh strengthener provision so it is once again consistent with the similar provision

in the Northeast Multispecies FMP. In effect, Amendment 3 is designed to fine tune Amendment 2 in order to reduce some of the impacts on the fishermen while still keeping discards of undersized summer flounder at an acceptable level.

7. MANAGEMENT COSTS

The impacts of the adopted management measures are presented in Section 9.2 of Amendment 3. Other alternatives are evaluated in Appendix 1 to Amendment 3.

8. TRADEOFFS BETWEEN THE BENEFICIAL AND ADVERSE IMPACTS OF THE AMENDMENT

The impacts of the adopted management measures are presented in Section 9.2 of Amendment 3. Other alternatives are evaluated in Appendix 1 to Amendment 3.

Making the demarcation line for the northeast exempted fishery straight and moving it slightly to the west may result in the capture of more undersized summer flounder, but it enhances compliance and enforcement. The possible negative impact is offset by the Regional Director's ability to stop the exempted fishery as soon as discards exceed 10% and by the ability to revise the exempted fishery annually.

The increased threshold from 100 lbs to 200 lbs in the non-exempted fishery during the winter before requiring large mesh nets is a recognition of the mixed species nature of the small mesh net winter fishery. Fishermen felt that the 100 lb threshold implemented through Amendment 2 was too small and would lead to excessive discards. A threshold larger than 200 lbs could lead to a small mesh fishery directed on summer flounder, with resultant significant discards of sublegal summer flounder. The thresholds of 200 lbs in the winter and 100 lbs in the summer is seen as the best compromise to ease the burden of the large mesh regulation on the fishermen while still offering reasonable protection on sublegal summer flounder.

The revision to the net strengthener provision is to facilitate compliance by having the same regulations apply to the same group of fishermen fishing under two fishery management plan. Other than reducing costs to the fishermen, it should have no impact.

9. EFFECT ON ENDANGERED SPECIES AND ON THE COASTAL ZONE

Activities conducted under the Summer Flounder Fishery Management Plan were considered for their impacts on endangered species in 1988, pursuant to Section 7 of the Endangered Species Act, as amended. The resultant Biological Opinion, (2 August 1988) concluded that threatened loggerhead (*Caretta caretta*) and endangered Kemp's ridley (*Lepidochelys kempi*) sea turtles were taken in the summer flounder trawl fishery off North Carolina and southern Virginia in some years, as indicated by intermittent sea turtle stranding events. However, due to the infrequency of these events, it was concluded that the continued existence of turtle populations was not jeopardized by fishing activities.

Between November 26 and December 7, 1990, 54 sea turtles, including at least 8 endangered Kemp's ridleys, stranded on North Carolina beaches. The North Carolina Division of Marine Fisheries closed state waters to summer flounder bottom trawling from Cape Hatteras Light to Ocracoke Inlet on December 7, 1990. Twenty one additional sea turtles stranded before the end of December. The total mortality included 56 loggerheads, 9 Kemp's ridleys, 6 green turtles, and 4 unidentified sea turtles. During the closure period a Turtle Excluder Device (TED) was developed, in conjunction with the NMFS Pascagoula Lab, for use on summer flounder bottom trawlers. Experimental tows conducted without TEDs during this time indicated that about 0.14 sea turtles were taken per hour for each net towed off Ocracoke in December, 1990. On December 26, 1990, waters were opened to trawlers pulling TEDs until early January, at which time turtles were no longer encountered in North Carolina waters and fishing without TEDs was allowed.

Because of the above information, fishing activities managed under the FMP were reconsidered for impacts on endangered species. Evaluation of the sea turtle and fishery distribution data, trawl data collected off North Carolina in November and December, 1990 and stranding data indicated that the conflict between turtles and the summer flounder fishery occurs annually in the winter in North Carolina. The Biological Opinion resulting

from the reinitiated consultation concluded that continued unrestricted operation of this fishery would jeopardize the endangered Kemp's ridley sea turtle population. Reasonable and prudent alternatives, including mandatory sea sampler coverage, limited tow times or use of turtle excluder devices (TEDs), were determined to be necessary to allow fishing to continue in a manner that would sufficiently reduce the level of take of sea turtles.

The Council was notified of this situation by NMFS in late August 1991. Management proposals were drafted and hearings held 30 September and 1 and 2 October in North Carolina and Virginia. These proposals have been incorporated in the final version of Amendment 3 (section 9.1.2.5). They were also implemented by NMFS emergency action effective 2 December 1991.

The Draft Biological Opinion resulting from the reinitiated consultation concluded that continued unrestricted operation of this fishery would be likely to jeopardize the continued existence of the endangered Kemp's ridley sea turtle population. Implementation of the reasonable and prudent alternatives discussed in section 9.3.3.1 are necessary to allow activities conducted under the Summer Flounder FMP to continue in compliance with the Endangered Species Act. In addition, formal consultation will be reinitiated on or before 31 May 1993 to assess the long-term impacts of this fishery on Kemp's ridley and other sea turtles and to evaluate the data received during the 1992 - 1993 summer flounder fishery.

The FMP was reviewed relative to CZM programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. Letters were sent to all of the States listed above. The letters to all of the States except New Hampshire and Pennsylvania stated that the Council concluded that Amendment 3 would affect the State's coastal zone and was consistent to the maximum extent practicable with the State's CZM program as understood by the Council. For New Hampshire, the evaluation was that Amendment 3 might affect the coastal zone and was consistent. For Pennsylvania, the evaluation was that Amendment 3 would not affect the coastal zone.

New Hampshire, Massachusetts, New York, New Jersey, Pennsylvania, and North Carolina have concurred with the Council's opinion. No other States have responded.

10. EFFECTS ON FLOOD PLAINS OR WETLANDS

The adopted management measures or their alternatives will not adversely affect flood plains or wetlands, and trails and rivers listed or eligible for listing on the National Trails and Nationwide Inventory of Rivers.

11. LIST OF AGENCIES AND PERSONS CONSULTED IN FORMULATING THE PROPOSED ACTION

In preparing the Amendment, the Council consulted with the Atlantic States Marine Fisheries Commission (ASMFC), NMFS, the New England Fishery Management Council, the South Atlantic Fishery Management Council, the Fish and Wildlife Service, the Department of State, and the States of New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia through their membership on the Council. In addition to the States that are members of this Council, Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and North Carolina were also consulted through the Coastal Zone Management Program consistency process.

12. LIST OF PREPARERS OF ENVIRONMENTAL ASSESSMENT AND PLAN AMENDMENT

The Amendment was prepared by a team of fishery managers and scientists with special expertise in the summer flounder resource including:

Mid-Atlantic Council Demersal Fisheries Committee - Mid- Atlantic Council members Gordon Colvin (Chair, NY), Richard Cole (DE), Jack Travelstead (VA), Bruce Freeman (NJ), W. Peter Jensen (MD), and Connie Young-Dubovsky (ASMFC); South Atlantic Council members Dennis Spitsbergen and Gerald Schill; and New England Council member James McCauley.

ASMFC Summer Flounder Management Board - Gordon Colvin (Chair, NY), William A. Pruitt (VA), Bruce Freeman (NJ), Philip G. Coates (MA), and William Hogarth (NC).

ASMFC Summer Flounder Scientific and Statistical Committee - Dick Sisson (Chair, RI), Jack Musick (VIMS), Paul Scarlett (NJ), Raoul Castenaga (NY), Rick Monaghan (NC), Kathi Rodrigues (NMFS NERO), Wendy Gabriel (NMFS NEFC), John Merriner (NMFS SEFC), Dave Simpson (CT), Tom Currier (MA), Louis Rugolo (MD), Roger Pugliese (SAFMC staff), Howard Russell (NEFMC staff) and Dave Keifer (MAFMC staff)

Mid-Atlantic Council Summer Flounder Advisors - Randy Gant (NY), Robert Jackson, Jr. (MD), Paul Mumford (MD), Gordon Roman (NY), Gary Dickerson (NJ), Charles Amory (VA), Charlie Wertz (NY), Wil Laaksonen (VA), and A. F. Evans (DE).

MAFMC staff - John C. Bryson, David R. Keifer, Thomas B. Hoff, Christopher M. Moore, Richard Seagraves, and Clayton E. Heaton.

13. FINDINGS OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

For the reasons discussed above, it is hereby determined that neither approval and implementation of the proposed action nor the alternatives would affect significantly the quality of the human environment, and that the preparation of an environmental impact statement on the Amendment is not required by Section 102(2)(c) of the National Environmental Policy Act nor its implementing regulations.

Assistant Administrator for Fisheries, NOAA

Date

APPENDIX 4. HEARING SUMMARIES

SOUTH KINGSTON, RI, 30 NOVEMBER 1992

The Summer Flounder Amendment 3 public hearing on November 30, 1992 at the Quality Inn, S. Kingston, RI, was convened at 7:12 p.m. by hearing officer Jim McCauley of the New England Fishery Management Council. Present from ASMFC was Eric Smith. Staff present were David Keifer and Kathy Collins. There were 19 members of the public present.

Mr. McCauley made the opening remarks and commented on how the hearing would be conducted. Mr. Keifer read the summary of Amendment 3. He then asked if there were any questions regarding the Amendment.

Jim O'Malley, Executive Director of East Coast Fisheries, supports the preferred alternative. He said that he would like to see a state quota system put off until there is better data. He added that a moratorium would be counter-productive. (Attachment 1)

David Dowdell, Deep Sea Fish, has a 90' boat with approximately 600 horsepower. He explained that a moratorium would lead to an ITQ system. Also, one mesh on board would produce a lot of waste and as long as small mesh was stowed properly, there should be no problem. He is in support of the line change to 72° 30'. He believes there needs to be quicker processing than the seven days in, seven days out. Regarding the large mesh threshold, 200 pounds is better than 100 pounds but he prefers 500 pounds because it is more realistic to assure less waste. He believes that you shouldn't kick dead saleable fish overboard. An overall quota or catch shouldn't be a problem. He added that getting a permit is a waste because the information is already available. He commended the Council on the action it has taken on summer flounder.

Bob Smith said that the proposed line of 72° 30' would help fishermen and enforcement because it would make it easier to abide by. He believes the threshold should be no less than 200 pounds, but he prefers 400 pounds. He added that 200 pounds puts a serious restriction on the summer fishery.

Peter Barbera, Town Dock, supports the proposed line. He strongly disagrees with the seven days in, seven days out, it is not needed because the information can be faxed in. He said that an increase in the summer and winter fishery is needed and that 500 pounds is not a lot. He does not believe that fluke should be thrown away because it is a ridiculous waste. He added that more poundage would help bigger boats.

Edward Page, *F/V Trinity* (a 96' boat), is against one mesh on board. He thinks that a 400 pound threshold would not be a problem and would stop waste. He believes that permits would be a problem. He added that it would be nice to move around in the fisheries. He also supports the proposed line.

Jake Dykstra, Pt. Judith Coop, supports the proposed line because it corrects some serious problems. He said that the statement "shutting the fishery down" is too broad because over 10% of discards most likely happen near the line but the whole fishery would not have to be shut down. He added that an additional provision to shut down part of an area, not the whole area is better. A 200 pound threshold is better than 100 pounds but it should be 400 in the winter and 200 pounds in the summer and there will probably still be excessive discards. He explained that the changes by Amendment 3 are helpful and he commend the Mid-Atlantic Council on their actions.

Harold Loftus, *F/V Mary Elena*, said that one mesh on board is unworkable and that the seven days in and seven days out is not needed. He believes there should be a 200 pounds summer and a 400 pound winter thresholds so resource is not wasted. He explained that the squid net terminology is not proper. He supports the proposed line.

Dave Roebuck support the proposed line because it addresses a lot of problems. He explained that a 200 pounds and 400 pound threshold is not viable for the way they fish, the more the better. He said that 500

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is more reasonable, otherwise valuable fish are going to be wasted.

Brian Turnbaugh does not support 100 or 200 pound threshold. He believes 500 pounds is something to look seriously at. He added that the small mesh fishing on fluke doesn't matter whether you fish with a 3" or a 5.5" net, because they don't have the discards there. He supports the proposed line.

Bruce Loftus, *F/V Rhode Island* (60' day dragger), supports the proposed line. He said that he needs at least 500 pounds to make a weeks pay, because he cannot make a living on 200 pounds.

Gregory Huba, *Green Arrow* (80' trawler), supports the proposed line because it simplifies things and is earlier to adhere to.

The hearing was adjourned at 8:03 p.m.

RONKONKOMA, NY, 1 DECEMBER 1992

The Summer Flounder Amendment 3 public hearing on December 1, 1992 held at the Holiday Inn, Ronkonkoma, NY was convened at 7:40 p.m. by Tony DiLernia of the Mid-Atlantic Council. Others present were Charlie Johnson and John Mason. Staff present were Dave Keifer and Kathy Collins. There were 13 members of the public present.

Mr. DiLernia made the opening remarks regarding Amendment 3 and commented on how the hearing would be conducted. Mr. Keifer read the summary of Amendment 3 and asked for questions regarding the Amendment.

Rowland Clark, LI Inshore Trawlermen's Assoc., said to go with one year to see where the increase mesh sizes and regulations are going to fall. He said that a 200 pound threshold year round would be best. He also stated that there should be two mesh sizes on board. He added that New York is handicapped on the quotas because of the 14" minimum size limit.

Rick Lofstad, Shinecock and East Coast Fisheries, agrees with the proposed line. He believes that the threshold should be 500 pounds in the winter and 200 pounds in the summer, with the winter being November 1 through April. He said that one mesh on board is inadequate, and that properly stowed would be best. He explained when the sea sampling data is interpreted to determine discards, a large enough sample should be used and the data should be examined carefully. He said that it is critical that numbers are not messed with and that it has to be based on sea sampling data. He supports Pt. Judith's position. If there is a strong young year class, the area shouldn't be closed forever. The Council should determine what a commercial weight would be. He added that the ability to fax in and out should stand because they need to get in quickly because of weather conditions. He also stated that the comments regionally differ on discards on juvenile fluke from north to south, for example, 400 pounds in the winter in Virginia could create a larger discard than in the north.

Tim Swanson said that the bycatch should exceed 200 pounds. He supports 400 pounds in the winter and 200 pounds in the summer.

John Mason, State of NY, explained that the state supports the proposed line and also support 200 pounds bycatch year round, otherwise there would be a waste of the resource. He added that NY adopted trip limits.

Dave Arpotch supports the proposed line change because it would be a safety factor and it would also help the Coast Guard. He supports 500 pounds of bycatch for the winter. He added that a quota and mesh size are too much.

Ron Cocuzza, *F/V Donna Lee*, supports the proposed line. He said that he is not happy with the amendment. He also does not support one mesh on board. He agrees with 200 pounds for the summer and 400 pounds of bycatch for the winter.

The hearing was adjourned at 8:10 p.m.

WALL, NEW JERSEY, 30 NOVEMBER 1992

The Summer Flounder FMP Amendment 3 (Amendment 3) public hearing in Wall, NJ was called to order at exactly 7:00 pm on 30 November by Dr. Roger Locandro, Mid-Atlantic Council member serving as the hearing officer. Also present was Mr. Bruce Freeman (Mid-Atlantic Council member and New Jersey Division of Fish, Game, and Wildlife). Staff present were Drs. Thomas Hoff and Chris Moore.

Dr. Locandro made the opening remarks regarding Amendment 3 and commented on how the hearing would be conducted. Dr. Hoff read the summary of Amendment 3, asking for comments with regard to the revision of the exempted fishery description line off of New York and the increase for the poundage threshold before large mesh netting is required.

There were 19 members of the public present. Three individuals provided testimony for the record on Amendment 3.

Gary Dickerson, Jersey Coast Anglers Assoc. and Manasquan Fishing Club, voiced total opposition to the increase in the bycatch threshold and moving the exemption fishery line. He strongly pointed out that both changes to Amendment 2 that are proposed in Amendment 3 will result only in fishing mortality increasing. He referenced a letter to the Council of 7 October stating their opposition and the fact that Amendment 3 violates the National Standards with regards to being fair and equitable to all fishermen. His comments (he was speaking for both organizations that he represented) will be provided in writing before the comment period closes.

Joseph Branin, Belford Seafood Co-op, totally condemned Amendment 3. He stated his belief that it was produced by an "illegal Council body" since his perception was that no commercial fishermen were on the Council. If he had to be forced to choose among the alternatives, he supported the "No action" one or the increase to 500 lbs. The only exemption line he could support was one that ran east along the 39° 30' line from the Jersey shoreline.

John Cole, Pt. Pleasant Co-op, seconded Mr. Branin's comments and believed that the threshold should be increased to 500 lbs. and the line moved for the exempted fishery to 39° 30'.

The formal hearing on Amendment 3 was adjourned at 7:50 pm.

CAPE MAY COURTHOUSE, NJ, 1 DECEMBER 1992

The meeting was called to order by hearing officer Bruce Freeman at 7:10 pm. Chris Moore and Tom Hoff represented Mid-Atlantic Council staff. Also present were 10 members of the public.

Opening statements were read by Bruce Freeman. Chris Moore presented the summary of Amendment 3. Mr. Freeman then opened the hearing for comments and questions.

Tom Fote, Jersey Coast Anglers Association, commented that he opposed any exemption line and the increase in the threshold because it would increase discards. He opposed Amendment 3. He stated that the plan (Amendment 2) had been very thoughtfully worked out and no additional exemptions should be allowed.

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Paul Thompson, Cape May Party Boat Captain, commented that he agreed with Mr. Fote. He also opposed Amendment 3. He stated that the plan (Amendment 2) should remain unchanged.

The meeting was adjourned at 7:30 pm.

SALISBURY, MD, 3 DECEMBER 1992

The Summer Flounder Amendment 3 public hearing held on December 3, 1992 at the Holiday Inn, Salisbury, MD was convened at 7:07 p.m by hearing officer Rick Cole. Others present were Mid Atlantic Council member Al Goetze. Staff present were Chris Moore and Kathy Collins. There were 5 members of the public present.

Mr. Cole made the opening remarks and commented on how the hearing would be conducted. Dr. Moore read the summary of Amendment 3 and then asked if there were any questions regarding the Amendment.

Dave Martin, Martin Fish Company, asked if any increase in the 100 to 200 pound bycatch would be subtracted from the state quota and if it was subtracted, more would have to be set aside.

Dr. Moore explained that regardless of the threshold, any landings would apply to the quota.

Sam Harrell said that they are being "double banded" because they would be made to use a 5.5" mesh and there would also be a limit put on them. He believes the 5.5" mesh saves a lot of fish and that is enough without a limit. Little boats are going to suffer from this. He added that there is nothing to fish on from June to the trout season in late fall. Quotas stink because boats unload in other states. He said that he likes the 500 pound bycatch limit.

Dave Martin said that what they have been talking about in Maryland is that they may divide their quota into four quarters to make sure they can fish year round. He would like to see the threshold kept at 100 pounds because of what Maryland's quota is. He added that the proposed line change does not affect Maryland.

Jeff Eutsler, *F/V Tony & Jan*, said that he is for the 100 pound threshold and no more than that.

The hearing was adjourned at 7:30 p.m.

MANTEO, NC, DECEMBER 2, 1992

The Summer Flounder Amendment 3 public hearing held on December 2, 1992 at the Elizabethan Inn, Manteo, NC was convened at 7:14 p.m. by hearing officer Dennis Spitsbergen of the South Atlantic Council. Staff present was John Bryson. There were no members of the public present so the hearing was closed at 7:14 p.m.

MOREHEAD CITY, NC, DECEMBER 1, 1992

The Summer Flounder Amendment 3 public hearing held on December 1, 1992 in Joslyn Hall, Carteret Community College, Morehead City, NC was convened at 7:15 p.m by hearing officer Dennis Spitsbergen of the South Atlantic Council. Staff present was John Bryson. There were 35 members of the public present.

Mr. Spitsbergen made the opening remarks and commented on how the hearing would be conducted. Mr. Bryson read the summary of Amendment 3 and asked if there were any questions regarding the Amendment.

There were no questions or comments on Summer Flounder Amendment 3.

The hearing was closed at 7:30 p.m.

RESPONSES TO COMMENTS ON AMENDMENT 3 TO SUMMER FLOUNDER FMP

Questionnaires were distributed at all of the hearings soliciting comments on the proposed measures and the alternatives. Persons were encouraged to fill them out and hand them in or take them home and mail them in. The results are tabulated below. Please note that the number of answers exceeds the number of questionnaires since multiple responses were possible. The non-preferred alternatives are described in Appendix 1.

Summer Flounder FMP Amendment 1 Questionnaire Summary

	<u>Naragansett</u>	<u>Ronkonkoma</u>	<u>Wall</u>	<u>Cape May</u>	<u>Salisbury</u>	<u>Manteo</u>	<u>Morehead</u>	<u>Mail</u>	<u>Total</u>
Preferred alternative	4	-	-	-	-	-	-	-	4
1. No action	-	-	-	-	-	-	-	2	2
2. Mesh threshold 500 lbs.	4	-	2	-	-	-	-	-	6
3. Mesh threshold 200 lbs all year	-	-	-	-	-	-	-	-	-
4. Revise demarcation line	1	-	1	-	-	-	-	-	2

Four comment letters were also received by the Council: from the Jersey Coast Anglers Association (Attachment 2), the Atlantic Coast Conservation Association of Virginia (Attachment 3), Point Judith Fishermen's Cooperative Association, Inc. (Attachment 4), and the United National fishermen's Association (Attachment 5).

The position of the Jersey Coast Anglers Association is opposed to increasing the large mesh threshold from 100 lbs and changing the exempted fishery demarcation line.

The Atlantic Coast Conservation Association of Virginia letter took no position on Amendment 2, but transmitted a letter from that organization to the Virginia Marine Resources Commission commenting on possible Virginia regulations implementing Amendment 2.

Point Judith Fishermen's Cooperative Association supported the 72 o 30' W. line in the preferred alternative, but recommended the large mesh threshold be increased to 400 lbs in the winter and 200 lbs in the summer.

The United National Fishermen's Association did not comment on the provisions on Amendment 3, but recommended that there be no quota and that the minimum net mesh be decreased to 5" diamond and 5.5" square

EAST COAST FISHERIES FOUNDATION, INC.

November 30, 1992

Amendment #3 Public Hearing South Kingstown RI

Dr. Lee G. Anderson, Chairman
Mid-Atlantic Fishery Management Council
Room 2115 Federal Bldg. 300 South New St.
Dover DE 19901-6790

Dear Lee:

First, the members of East Coast would like to express their sincere appreciation to the Mid-Atlantic Council for their willingness to work with the industry and make the changes we all agree are for the better. I believe that the co-operation on both sides has been exemplary.

Second, appended is our letter to Dick Roe of November 17th. In that letter, we made a written commitment to support conservation measures during the delay in implementation of Amendment #2. We stand by that commitment now, since our goals are the same as yours: a healthy resource and a thriving industry, good fishing practices and as little waste as possible.

We support Amendment #3, and once again thank the Council for listening. We also would like to thank the National Marine Fisheries Service for their agreement to implement Emergency Regulations while Amendment #3 is in process. Finally, we urge the Council to consider three additions to Amendment #3.

1. At several Council meetings and public hearings, you have heard the concerns that the numbers in the state quota system are incomplete, especially for New York and Connecticut. Also, landings are already much higher than last year, and the quota system might have the fishery effectively shut down in mid-year. This, of course, will aggravate the problems of discard and high-grading. In addition, there will be market dislocation and severe hardship to individual processors as vessels avoid landing in states where the quota is filled. We believe that this will deprive processors in those states of other species such as squid. As have others, we suggest that a "target quota" be implemented in 1993, and that Amendment #3 include that provision.

2. In reply to East Coast's disagreement with the one-mesh-on-board policy, the Council said "The one mesh on board provision was removed following the public review of Amendment #2 in August 1991." And yet in the proposed regulations for Amendment #2, we find in Sec. 625.8 (Prohibitions) that a vessel may not "possess nets on netting on board," clearly ignoring the stated wishes of the Council. We ask that the Council include in Amendment #3 their repudiation of this senseless burden.

3. The moratorium will serve no purpose but to keep people in the fishery who might otherwise direct their effort elsewhere. They have seen windfall profits accrue to the surf clam vessels and anticipate the same. The result will be increased pressure on fluke. Furthermore, it is unrealistic to expect that the moratorium will lead to anything but ITQ's, as the enclosure from 1978 indicates. You know that we have sought information from NMFS about the effect of ITQ's in the Surf Clam business, but the Agency is clearly unwilling to reveal what it knows. No further steps toward privatization (and a moratorium is exactly that) should be risked until the Agency releases the rest of the Surf Clam report we requested under the Freedom of Information Act. For the record, what we have been able to find out is attached, along with our appeal of the Agency's partial denial.

We believe these measures will benefit the resource and the industry, and hope the Council will consider them.

Sincerely,



James D. O'Malley
Executive Director

JOM/se

EAST COAST FISHERIES FOUNDATION, INC.

November 17, 1992

VIA FAX and MAIL

Mr. Richard Roe, Regional Director
National Marine Fisheries Service
One Blackburn Drive
Gloucester MA 01930

COPY

Dear Dick:

With the winter fluke fishery about to begin, we are concerned about the protection of the resource and the timely implementation of sound conservation measures. It is apparent that a paralysis has set in, and it must not be allowed to result in harm to the fluke resource. Therefore, I suggest that NMFS immediately issue the following emergency regulations, to take effect 21 days from the mail drop-date of the "Letter to Permit Holders":

1. Implement the 72/30 line and the exemption program for vessels fishing East of the line. (But with rules 2 & 3, the Exemption Program may be unnecessary.)
2. Any vessels West of the line have a by-catch allowance of 400 pounds if fishing with small mesh.
3. If a vessel is fishing West of the 72/30 line and has more than 400 pounds aboard, any mesh smaller than the regulation 5 1/2" must be properly secured and unavailable for fishing.

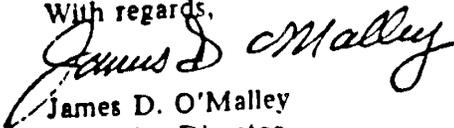
An alternative, favored by East Coast's members in New Jersey, would be to adopt the "Atlantic City Line" (39/30 Latitude) as the northern boundary of the protection area. Inside the box formed by those two lines, no vessel with more than 400 pounds aboard would be allowed to have fine twine available for fishing. There would be no exemption program, just that one rule. NMFS' sea-sampling data supports the position that, properly enforced, that single rule would provide significant protection for small fluke.

These actions will give us breathing room to evaluate and improve the data, the state quota system, and the moratorium. It has been suggested, for example, that there needs to be a year of good landing data to properly establish the quota. We feel that the moratorium is counterproductive (by keeping people in the fishery). And, of course, the one-mesh-on-board is totally unacceptable to us as unreasonable and unnecessary.

But I believe that these other simple and easily-enforced measures would make a significant contribution to the protection of the resource. East Coast fully supports these measures, regardless of the current lawsuit. We want very much to see the fishery rebound, and we believe that it is well on the way to doing exactly that. We feel certain that these actions would benefit all of us and the resource, and would not oppose them in any way.

I look forward to hearing from you at your earliest convenience about these proposals.

With regards,


James D. O'Malley
Executive Director

JOM/se

LIMITED ENTRY

AS A FISHERY MANAGEMENT TOOL

Proceedings of a National Conference to Consider Limited Entry as a Tool in Fishery Management

Denver
July 17-19, 1978

MORATORIA AND ALTERNATIVES

James O'Malley:

I hear many council members using the word "moratorium" and feeling fairly comfortable behind it. I would like to ask Mr. Burke or Mr. Mundt if this moratorium idea is just temporary, if it escapes any of the constitutional provisions, or if moratoria are in fact subject to the same restraints as a complete limited entry system.

Carl Mundt:

The legal analysis of a moratorium law is precisely the same, for practical reasons, as any limitation of entry.

• • • • •

Don Bevan:

Perhaps we could clear the air by recognizing that a moratorium is limited entry. It seems to me that it is difficult to argue that it is anything else. Although it is possible to recognize that limited entry is to a moratorium as proper medical treatment is to the doctor saying, take two aspirin and call me in the morning. But, as our lawyers have told us, a moratorium certainly has to go on exactly the same way as any limited entry scheme in which you are trying to take something away from someone. With regard to the probability of lifting a moratorium, I would certainly agree that the chances are very small. I would equate that with the probability of lifting the moratorium on homesteading in the oil fields of Oklahoma. That moratorium has been there for some time, and I think that the chances of lifting it are remote at the present time.

William Feinberg:

On a moratorium and limited entry being the same, I can only speak for myself, but our surf clam moratorium, in my opinion, is a temporary measure adopted to meet an emergent condition. It is not my intention—and I think that the other people on the Mid-Atlantic council will echo my sentiments—that this is going to be a permanent limited entry in any sense of the word. I am sure that if that concept were presented to us when this plan was originally devised, there would have been a different vote. The plan has a built-in, self-destruct clause of one year with a provision that the moratorium can be reviewed for an extension, and we have reviewed it. The moratorium definitely has given us problems. Jake Dykstra alluded to one, a geographical problem. We were concerned about the administrative and enforcement problems and other hardships that that would create. We decided that the lesser of two evils would be to have the moratorium in effect throughout the range of the surf clam.

• • • • •



"SELF-DESTRUCT
CLAUSE OF
ONE YEAR."
1978

EAST COAST FISHERIES FOUNDATION, INC.

July 16, 1992

VIA FAX

Mr. Richard Roe
Regional Director
National Marine Fisheries Service
One Blackburn Drive
Gloucester MA 01930

Dear Dick:

This is a request under the Freedom of Information Act.

I wish to obtain copies of all documents pertaining to the ownership or "property right" interest in the Atlantic Surf Clam industry during the period 1987-1992.

This request includes, but is not limited to, all documents, reports, memoranda, notes, tape recordings, charts, graphs and other information in writing, on tape, or electronic media (including floppy disks) resulting from a survey undertaken by your office and conducted by Ed MacLeod, Bob Ross, and Ken Beal in January and February of 1992.

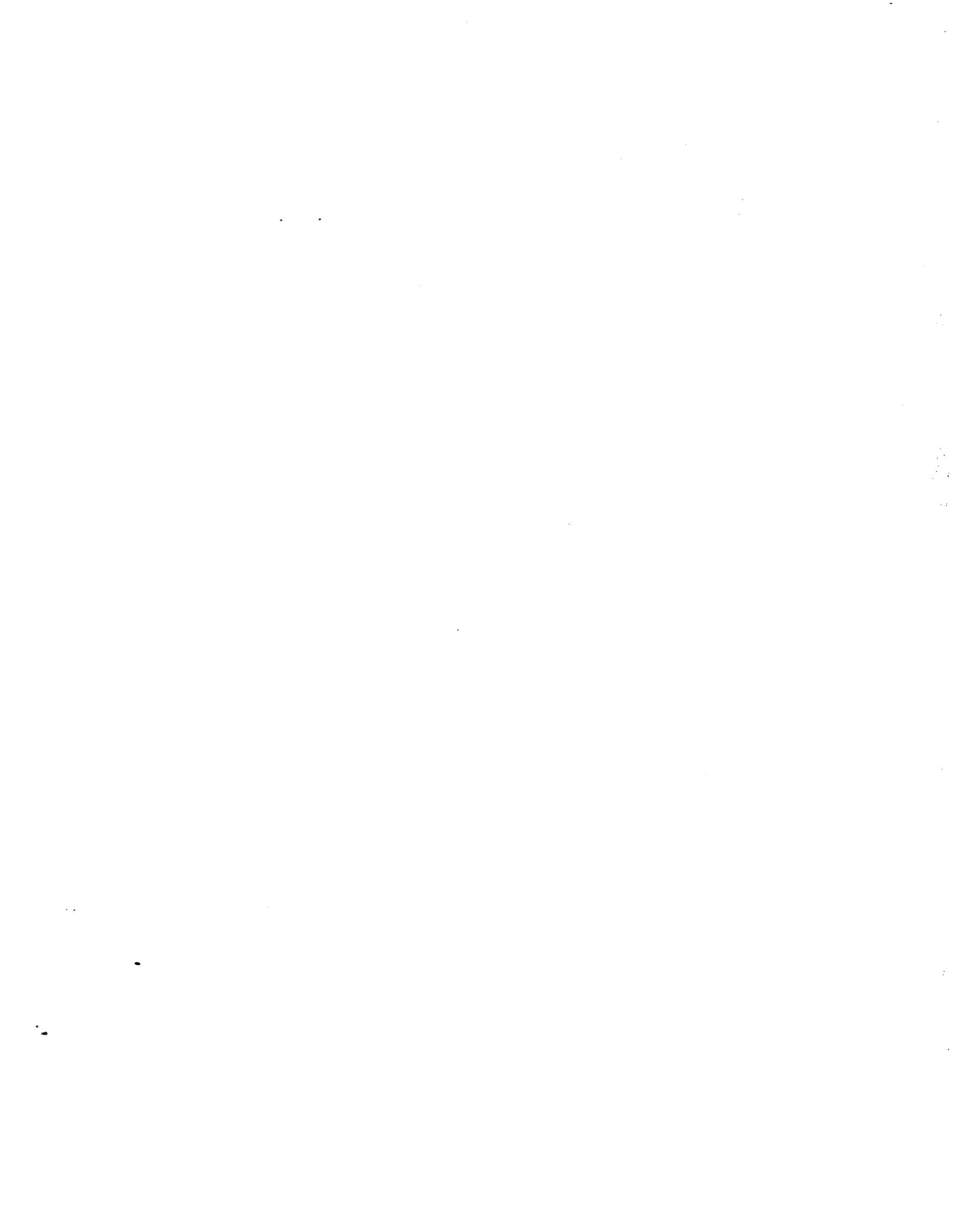
If, for any reason, this request cannot be met, please explain in detail why this is the case.

Sincerely,



James D. O'Malley
Executive Director

JOM/se





UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1335 East-West Highway
Silver Spring, MD 20910
OFFICE OF THE DIRECTOR

AUG 17 1992

Mr. James D. O'Malley
Executive Director
East Coast Fisheries Foundation, Inc.
P.O. Box 649
Narragansett, Rhode Island 02882

Dear Mr. O'Malley:

This is in response to your Freedom of Information Act (FOIA) request via fax of July 16, 1992, received by the Regional Director on that date, requesting all documents pertaining to the ownership or "property right" in the Atlantic surf clam industry during the period 1987-1992, including a survey conducted by Edward MacLeod, Bob Ross, and Ken Beal in January and February of 1992. I interpret the first part of your request to mean that you are requesting a copy of the names of all allocation holders together with the amount of allocation held by each.

I regret to inform you that I must partially deny your request. The reports made relative to the survey you requested contain predecisional communications that were part of a deliberative process to evaluate the agency's administration of the individual transferrable quota system implemented as Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery. This material may be withheld, pursuant to 5 U.S.C. Section 552 (b)(5). This provision protects the quality of the agency's decision-making process that fosters open and frank discussions. The documents to which this exemption applies are a three-page memorandum from Edward MacLeod to Richard Roe dated February 25, 1992, and the documents identified as exhibits include: a twelve-page report by Bob Ross; a five-page report from Kenneth L. Beal; a two-page report from Joel G. MacDonald [also exempted under the attorney/client privilege]; a six-page report by John J. McCarthy; a two-page report from Hannah Goodale and Myles Raizin; and a two-page report by Stanley Wang.

The remainder of the information requested regarding allocation holders and the factual information in the documents identified above is releasable and will be forwarded by separate memorandum from the Northeast Region.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



You may appeal this partial denial within 30 calendar days after the date of this letter. Please address your written appeal to the General Counsel, U.S. Department of Commerce, Room 5883, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Both the envelope and appeal letter should be clearly marked "FREEDOM OF INFORMATION APPEAL." Your appeal should explain why you believe the requested records should be made available under FOIA and why you believe the denial to be in error. You must include a copy of your initial request and a copy of this response with your appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. W. Fox, Jr.", written in a cursive style.

William W. Fox, Jr.

LAW OFFICES OF
RONALD R. COLES
POST ROAD CENTER
62 PORTLAND ROAD
PO BOX 1028
KENNEBUNK, MAINE 04043

TELEPHONE 207-985-6561
FAX 207-985-2693

NEW YORK OFFICES
COLES & WEINER
SUITE 180C
342 MADISON AVE
N.Y. N.Y. 10173
TEL 212-856-9530
FAX 212-856-9556

46 ROUTE 25A
E. SETAUKET, N.Y. 11733

September 14, 1992

BY FAX AND U.S. MAIL

General Counsel
U.S. Department of Commerce
Room 5883
14th and Constitution Avenue, N.W.
Washington, DC 20230

RE: Freedom of Information Appeal
East Coast Fisheries Foundation, Inc. v. National Marine
Fisheries Service, "NMFS"
FOI Request dated 7/16/92; copy attached
FOI Request dated 8/17/92; copy attached
Atlantic Surf Clam Fishery

Dear Sir:

On behalf of East Coast Fisheries Foundation, Inc. ("East Coast") we herewith appeal NMFS's partial denial of a FOI request, copies of the request and denial attached hereto.

NMFS' denial, alleging a section 552(b)(5) exemption, is misplaced. The documents at issue, per NMFS's own description, are "...communications...part of a deliberative process to evaluate [NMFS's] administration of [previously enacted regulations] for the Atlantic Surf Clam and Ocean Quahog Fishery." In other words, the documentation involves agency factual investigation/reporting to determine how well (or poor) the regulations previously adopted serve the industry, the public interest and conservation of the resources.

NMFS's labeling as "predecisional communications" those documents at issue is pure evasion. "Postdecisional memoranda setting forth the reasons for an agency decision already made.. are not exempt from disclosure under 552(b)(5)," Renegotiation Board v. Grumman Aircraft Engineering Corporation. 421 U.S. 168, 183 (1975). Furthermore, "...the public is vitally concerned with the reasons which did supply the basis for an agency policy actually adopted. These reasons, if expressed, within the agency, constitute the 'working law' of the agency and have been held...to be outside of the protection of Exemption 5.", N.L.R.B. v. Sears, Roebuck and Co., 421 U.S. 132, 152-3 (1975).

NMFS's attempt to hide behind an Exemption 5 privilege appears to be a smoke screen to withhold information on the agency's performance, and the effectiveness of its regulations. The documentation requested is exactly what FOI was intended to serve: the bringing/to light of internal agency documents for the public good.

"This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language...indeed focuses on the citizens' right to be informed about what their government is up to'. Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose.", U.S. Department of Justice v. Reporters Committee For Freedom of the Press, 489 U.S. 749, 773 (1989).

As the U.S. Supreme Court recently stated in John Doe Agency v. John Doe Corp., 493 U.S. 146 (1990),

This court repeatedly has stressed the fundamental principle of public access to Government documents that animated the FOIA. "Without question, the Act is broadly conceived. It seeks to permit access to official information long shielded unnecessarily from public view and attempts to create a judicially enforceable public right to secure such information from possibly unwilling official hands." EPA v. Mink, 410 U.S. 73, 80 (1973). The Act's "basic purpose reflected 'a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language'. Department of Air Force v. Rose, 425 U.S. 352, 360-361 (1976), quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965). "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978). See also Department of Justice v. Reporters Committee for Freedom of Press, 489 U.S. 749, 772-773 (1989). There are, to be sure, specific exemptions from disclosure set forth in the Act. "But these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." Rose, 425 U.S. at 361. Accordingly, these exemptions "must be narrowly construed." Ibid. Furthermore, "the burden is on the agency to sustain its action." 5 U.S.C. §552(a)(4)(B).

John Doe Agency, id. at 151-2.

A claim of a section 552(b)(5) exemption "...clearly contemplates that the public is entitled to all such memoranda or letters that a private party could discover in litigation with the agency."

Page 3
General Counsel

Environmental Protection Agency v. Mink, 410 U.S. 73, 93 (1973);
FTC v. Grolier Inc., 462 U.S. 19, 26 (1983).

NMFS's tactic that its factual evaluation somehow then attaches a "predecisional" label is incorrect. It wrongfully suggests that NMFS' factual analysis is a predetermination of agency policy, when in fact it is agency re-evaluation of its own policies. "A strong theme of our opinions has been that an agency will not be permitted to develop a body of 'secret law', used by it in the discharge of its regulatory duties and its dealings with the public, but hidden behind a veil of privilege because it is not designated as 'formal', 'binding' or 'final'", Coastal States Gas Corp. v. D.O.E., 617 Fwd 854, 867 (DC Cir. 1980).

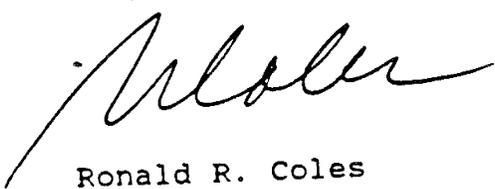
You will note East Coast's request (annexed) wherein "notes and memoranda" are requested. We are distressed to see in NMFS' response (annexed) that these items are not even addressed, and would conclude an intentional bad-faith attempt to evade response.

Lastly, NMFS's denial of the 2 page report from Joel G. MacDonald [Esquire] alleging an attorney/client privilege is incorrect. As held in Hickman v. Taylor, 329 U.S. 495 (1947), that privilege only attaches to materials that were (1) prepared in anticipation of litigation, (2) by or at the request of an attorney, and (3) reveal the theory or strategy of the case. See, Coastal States, supra. Furthermore, "...that when an attorney conveys to his client facts acquired from other persons or sources, those facts are not privileged. To allow the contrary rule would permit agencies to insulate facts from FOIA disclosure by simply routing them through lawyers in the agency and invoking the attorney-client privilege." Brinton v. Department of State, 636 F.2d 600, 604 (DC Cir. 1980).

Under all the circumstances and law above mentioned, NMFS's denial of East Coast's FOI request is improper, unwarranted and appears to involve some degree of bad faith. Please be advised that we are fully prepared to litigate this matter.

Your kind response will be appreciated.

Very truly yours,



Ronald R. Coles

Enclosure.
cc: East Coast Fisheries Foundation, Inc.
RRC:tlw



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Region
One Blackburn Drive
Gloucester MA 01930

September 3, 1992

James D. O'Malley
East Coast Fisheries Foundation
P. O. Box 649
Narragansett, RI 02882

RE: FOIA Request No. 282

Dear Mr. O'Malley:

Enclosed please find copies of the information we are authorized to release, referred to in the August 17, 1992 letter to you from William W. Fox, Jr. This information includes a complete set of allocation holders and the amounts of surf clam and ocean quahog quota they now hold, as requested by you in your letter of July 16, 1992 to Mr. Richard Roe.

If you have any further questions regarding your Freedom of Information Act request, please contact Myles Raizin at (508) 281-9104.

Sincerely,



Jon C. Rittgers
FOIA Officer

Enclosures







UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Region
One Blackburn Drive
Gloucester, MA 01930

February 25, 1992

CONFIDENTIAL

CLOSE HOLD

MEMORANDUM FOR: Richard Roe
Jon Rittgers
Ed MacLeod
FROM: Ed MacLeod, Chairman Surf Clam/Quahog
Review Committee
SUBJECT: Review of the Effectiveness of Our
Administrative and Enforcement Obligations
Under the Surf Clam/Quahog ITQ Plan

In addition to the comments and recommendations made in the attached individual reports, I personally would like to emphasize the following in executive summary:

1. It is apparent that each fishery has its own peculiarities and that each fishery that is being considered for an ITQ must have the amendment or plan suited to that particular fishery. This is a Council responsibility.
2. Although there may be a split in those harvesters that favor an ITQ system and those that oppose it, there is unanimity in their real fears of a monopolistic control of the fishery in the relatively near future. Monitoring should be provided by the Councils.

3.

4.



14. NOAA Counsel should notify the Council of NMFS procedures to be followed if allocations are seized.
15. Many complained that fishermen who used the federal/state line illegally to their advantage were rewarded in distribution of quota.

Attached you will find reports from the following individuals:

Exhibit 1: Bob Ross's summary on the interviews he conducted with the processor segment of the surf clam/quahog industry in the Mid Atlantic Region.

Exhibit 2: Ken Beal's summary on the interviews conducted by Ed MacLeod and him with boat owners, dock operators, captains and crew members in the surf clam/quahog fishery in Maryland and New Jersey.

Exhibit 3: Joel MacDonald's overview of the existing surf clam/quahog ITQ plan for a Counsel's perspective.

Exhibit 4: John McCarthy has presented an overview of the existing surf clam/quahog ITQ plan from a Law Enforcement Special Agent's perspective.

Exhibit 5: Combined comments from Myles Raizin, Policy Analyst, and Hannah Goodale, Resource Management Specialist, who are the NER staff personnel who have the responsibilities of monitoring the surf clam/quahog ITQ plan.

Exhibit 6: Dr. Stanley Wang's general comments on the ITQ plan from an economists perspective as well as a brief outline on this proposal for an economic review.

This report is in its final form. Members of the committee have reviewed the draft package that was submitted. Any substantial additions, deletions, or revisions were discussed and attended to in accordance with a majority concurrence. Minority opinions were discussed and proponents were notified that their comments would be included if they so desired.

Finally, members of the committee were notified that this report is to be treated as an "eyes only," "inhouse" report. It is not for public distribution or discussion without the consent of the Regional Director.

I, also, would like to extend my sincere gratitude to the active members of the committee for giving me the utmost cooperation in fulfilling the request of the Regional Director in a timely manner while fulfilling their other job responsibilities.

We are most grateful to the Port Agents who did a commendable job in lining up the schedule and interviews. We assured those harvesters interviewed that no names would be mentioned in filing our reports. We can state emphatically that they talked openly, and periodically vented their anger. It was difficult, if not impossible to keep the conversation confined strictly to the tagging system and enforcement as you can see from our reports.

Submitted on behalf of the Review Committee:

By Edward J. MacLeod
Edward J. MacLeod, Chairman

SUMMARY: SURF CLAM ITQ IMPLEMENTATION-PROCESSOR EVALUATION.

by

Bob Ross, F/NEO Fisheries Analysis Division

Amendment #8 to the Surf Clam/Ocean Quahog Fishery Management Plan (FMP) included the first implementation of an Individual Transferable Quota (ITQ) system under the Magnuson Act. The ITQ can be fished, sold, bought, leased, given or held by the designated allocation holder. The following report is an attempt to represent issues from the viewpoint of processors actively involved in the surf clam FMP.

>>MONOPOLY ISSUES: Real concern that one major firm will acquire a controlling percentage of the allocations (GCNE).

>>PROCESSOR LOGS: Most processors did not have problems with logs.

>>TAGS: Most processors did not have problems with tag breakage.
>Tag breakage was reported at 2-5%.

>>FOREIGN OWNERSHIP: Some processors are worried about a well financed effort to gain control of allocations.

>>VESSEL CALL-IN: Most processors objected to pre-departure call-in requirements for greater inventory control and safety reasons.

>>MINIMUM SIZE REGULATION: Most processors felt the end-user market demanded larger clams and with unlimited fishing time, vessels can target beds with larger clams and larger yields, so the minimum size is no longer an issue.

>>REDISTRIBUTION OF SEIZED ALLOCATIONS: Allocations can be seized by government agencies for MFCMA violations or non-fisheries related seizures like bankruptcies or drug related activities where allocations were ill-gotten gains from laundered monies.

>Processors would like to know the NMFS procedures if allocations are seized.

assets.

-vessel owners without allocations are turning into company boats to meet payments.

ALLOCATION - USE IT OR LOSE IT:

-The majority of the processors feel strongly that the allocations holders should be required to fish or otherwise use their resource allocation.

-Processors want some appeal mechanism to ensure that allocations which were not used for justifiable reasons are not revoked. The allocation may not be harvested for market reasons, i.e. if consumer sales are off or if inventories are high. If a vessel owner has vessel repairs, or other unforeseen problems, he should not lose allocations.

VIOLATIONS/ILLEGAL ACTIVITIES:

No processors indicated any enforcement irregularities in their own plant, but often they were willing to provide potential scenarios of violations by other processors.

Processors felt that violations were common but had decreased from earlier times when effort limitations were in place and potential allocation numbers were being established.

NON-TAGGED CAGES:

-The most likely location for using non-tagged cages would be in areas where the processor has a dock and processing plant at the same location.

-Processors have mentioned situations where 2 tags were found on cages,

-One individual mentioned a practice of only tagging the last 4 cages in a tractor-trailer truck capable of holding 14-16 cages/load to pass in-transit spot checks of loaded trucks by enforcement agents.

NON-REPORTED LANDINGS:

-Several processors had current NMFS FOIA data on the clam industry and questioned the NMFS records. Not all vessels known by processors to be fishing in a given time frame were identified as fishing on the NMFS records, which indicated not all tags were being reported.

INSHORE VS OFFSHORE HARVESTS:

This practice involves the use of state issued clam tags to harvest clams found in waters under federal jurisdiction (offshore). Due to various quality and meat yield factors, inshore clams are worth less than offshore clams.

-Fishing offshore and tagging with inshore (state) tags was felt to be a common practice, especially since many processors reported overall meat yields are down and most processors felt supplies will run out before the end of the year.

-Proposed requirements for vessels to report before departure were universally rejected by the processors. In addition to the safety concerns, the impact of 24-48 hour notice before departure would seriously impact the processors ability to manage their raw material supplies.

-There were no objections by processors to call in requirements prior to vessels landing clams, including reporting harvest locations as part of the reporting requirements.

NON-UNIFORM CAGE SIZES:

Under Amendment #8, one tag corresponds to a "standard" 32 bushel wire cage. It was mentioned that in practice cage sizes have reportedly been increased deliberately to increase yield.

TAG REQUIREMENTS:

Most processors have a daily login sheet by the unloading area of the plant which is filled out as/after the cages are unloaded. At the end of the day/week, the data is compiled and entered onto the federal logbooks. Several processors have the tag numbers entered onto PC's, often as part of an inventory or meat yield analysis process.

-The mechanics of the federal tagging requirements (the processor logbook) were not viewed as a major problem for most processors. Issuing and keeping tag numbers in a numerical series is identified as an ongoing effort in discussions with vessels. Tags in numeric series help speed up the data entry process if using a PC or when filling out the processor logbooks.

-Most processors did not feel tag breakage was a major problem for them. Processors felt they averaged about 2-5% breakage (2-5 tags per 100 cages received) on incoming cages. Most reported the missing tags could be located if necessary (on the dock, on the bed of the truck, in the plant) but most didn't go to great lengths to locate so few tags.

-Some suggestions were voiced to improve/eliminate the tags, including;

>> Replace the current tags with stronger tags made of nylon or metal which are harder to break

>> use re-enforced fiber paper tags such as those used by the airlines on luggage with peel off allocation numbers to stick on the vessel log and processor log to ease record keeping requirements. If the fiber paper tags can be written on, other information could also be included.

>> a hand held credit card/scanner system which would store a given number of allocations and electronically reduce the allocation as cages are landed or sold or transferred to another allocation holder.

>> use an Honor System similar to that used in January 1992 when no tags were available to allocation holders.

>> The idea of serial numbers on cages was mentioned but rejected since most processors rely on several vessels for supplies, cages are often not returned to the same vessel. It would be difficult to ensure a cage would be returned to the correct allocation holder.

-TAG STORAGE IS A PROBLEM. Almost all processors are unclear as to how long they should keep their used tags. Often the tags are taped together as they come off the truck or vessel, or they are taped together at the end of each day and then boxed. With some processors going through 400-500 cages a day there can be a large volume of tags in storage. Record keeping and inventory controls over the used tags was routinely poor, and it would be difficult to normally locate a given tag within a reasonable time frame.

-Processors have been told conflicting information related to holding tags. Information has varied between enforcement agents, NMFS statistics agents, and different NMFS regional office personnel.

PROCESSOR LOGBOOKS:

-Processor logbooks are not a significant problem for most medium and large processors with adequate clerical staff. Small processors with minimal staff or generally poor record keeping

procedures voiced complaints over the time and effort it took to complete the logs. Small processors often receive supplies from several sources which also increases reporting requirements since many different vessels may be involved and tags were often not in numerical series.

-Medium and large firms generally felt one more person was hired to maintain the logbook reporting requirements (part to full time depending on the volume of clams processed).

~~_____~~ In many cases it is the clerical help that completes and signs the logs often with minimal verification of the details by upper management.

ALLOCATIONS:

The vast majority of the processors had problems with the way the resource was initially allocated, whether they actually received any allocation or not.

-A routine comment stated that "the vessels with the most violations received the most allocations". There was a general feeling that landings were inflated for the logbooks, vessels violated the fishing time provisions of the FMP, and inactive vessels were reported as fishing to maintain the vessel permit.

-Several processors felt that the Mid-Atlantic Fisheries Management Council acted too quickly and did not listen to the Industry Advisory group recommendations before Amendment #8. Most agreed the plan development process had been going on far too long, and felt that initially the industry was not working effectively within the FMP process. By the time Amendment #8 was passed, many felt the industry was working more effectively together as a group, but recommendations were ignored. Interest is keen and there is strong support for the creation of a new Industry Advisory Panel.

-Several processors felt the addition of Ocean Quahogs in the Surf Clam ITQ allocations process was a mistake based on poor statistical data. There were complaints that processors were not kept adequately informed as the FMP developed and changes, like the addition of quahogs, were not fully discussed.

-Processors questioned existing procedures if allocations were to be held by government agencies under various circumstances.
Two examples mentioned were:

>If a vessel were to be found in violation of the MFCMA and the allocation was reduced or forfeited by NMFS, how would the

allocation be redistributed?

>If the allocation holder lost his allocation to a government agency (as ill-gotten gains) for drug violations, how would the allocation be redistributed?

-Processor concerns about potential shortages of supply as allocations are consolidated into fewer owners. This is discussed under Monopoly Concerns above.

-Processor concerns about allocations owners who do not actively fish or allow their allocations to be fished. This is discussed under Allocation - Use it or Lose it above.

ENFORCEMENT OF AMENDMENT #8:

Most processors noted a drop in the frequency of plant site visits by NMFS Law Enforcement officers since Amendment #8 has been in effect. Prior to Amendment #8, processors indicated weekly visits were routine, while most processors indicated that visits occur once every 2-3 months now.

-Enforcement agents have checked all aspects of the plan pertaining to processor compliance with Amendment #8 including;

- >> stopping company owned trucks in-transit to verify all accessible cages are tagged,
- >> watching trucks unload at the plant receiving dock with tagged cages,
- >> verifying tag numbers are properly assigned to the owner of record,
- >> verifying that a specific days plant receipts are in order and agree with vessel records for the same day, and
- >> checking storage procedures for the used tags.

-There was a consensus opinion that smaller processors were more concerned with enforcement issues, while the larger processors felt they have more adequate internal controls in place, less financial incentive to violate current regulations and more to lose if violations are identified.

REGULATIONS:

CLAM MINIMUM SIZE ISSUE:

-Most processors felt the minimum size requirement is not needed mainly because market forces require larger clams anyway. Vessels are frequently paid on meat yield and smaller clams provide less of the valuable foot meat, are more time consuming to shuck and process, and can have negative quality characteristics. With the fishing effort restrictions removed, vessels can afford the time to locate beds of larger clams and thereby increase yields and ex-

vessel revenues.

VESSEL CALL-IN PROPOSALS:

-Proposed requirements for vessels to report before departure were universally rejected by the processors. In addition to the safety concerns, the impact of 24-48 hour notice before departure would seriously impact the processors ability to manage their raw material supplies.

BETTER PROCESSOR INVENTORY CONTROLS:

-Processors felt Amendment #8 allows them to better control inventory to match market demand. Prior to Amendment #8, processors had to pack when vessels had their fishing day and hold finished inventory in the plant. Now processors can plan out supplies and work with allocation holders to schedule fishing effort when needed. This reduces the amount of capital that has to be tied up in finished product inventory, and allows for other cost savings by scheduling for such things as down time for employee vacations, equipment maintenance, plant improvements, etc. without worrying about a vessel which has to fish 6 hours within a three week period.

EXPERIMENTAL MAHOGANY CLAM ISSUE:

Most Mid-Atlantic processors felt the clam had little impact on them and the end product was targeted for a different end-users market. There was little outward concern over the issue, unless the inclusion of the Gulf of Maine resource impacted existing allocation holders.

FOREIGN OWNERSHIP CONCERNS:

Several processors voiced concern over foreign ownership of the allocations. With the transferability of the allocation, a wealthy foreign party could acquire a controlling interest of the industry. Since segments of the industry are currently experiencing financial difficulties, if a large conglomerate or wealthy investor groups' long range goals outweighed short term losses, large blocks of allocations could be acquired. Since dealer/processor permits are issued annually, disclosure of ownership requirements may be useful as part of the application renewal process.

-Processors felt more concern over possible foreign ownership than over a possible monopoly by a U.S. corporation. Nationalism was an issue with a feeling that this is a U.S. resource and only U.S. citizens should own it.

RAW MATERIAL PRICES SINCE AMENDMENT #8:

SURF CLAM PRICES:

-Surf clam prices have remained fairly stable since Amendment #8 was approved. There are various payment mechanisms involved in

establishing market price for surf clams. Meat yield is a key factor with expected yields for offshore (EEZ) clams averaging 12-14 pounds/bushel while inshore clams average 9-10 pounds/bushel. Tied in with yield is the fishing location where the clams were harvested, and whether the beds are densely packed which in effect reduces individual clam size and lowers yields.

-Several processors commented that yields are down this year and they felt the allocation would be fully harvested by the end of the year.

-Tied in with reduced yields, most processors expected clam prices to rise by year-end as allocations were exhausted and processors used up remaining carryover inventories.

EX-VESSEL SURF CLAM PRICES:

-Ex-vessel market prices for surf clams vary by processor but currently (2/92) range from \$8.00-8.50 per bushel for offshore clams and \$6.50-7.00 per bushel for inshore clams. Some processors have contracts with allocation holders which includes a per bushel year-end bonus if all clams are sold exclusively to the one processor for the entire year. These price incentives can be up to \$0.25 per bushel.

SALE OF SURF CLAM ALLOCATIONS:

-Surf clam allocations have reportedly gone from initial values of \$13.00 - 15.00 per bushel in late 1990, to \$18.00 in 1991 and are now reportedly selling at \$20.00 per bushel. Processors expect to see the sale of several blocks of allocations in 1992 as the industry continues to consolidate and cash-flow problems force sales of allocations by over-capitalized allocation holders.

LEASE OF SURF CLAM ALLOCATIONS:

Surf clam allocations are currently being leased to vessel owners for \$3.00-4.25 per bushel, with most leases running \$4.00 per bushel.

-There has reportedly been manipulation of the leasing of clam allocations to reduce the ex-vessel price paid to the boat (known as the boat share) by the vessel owner or use "creative accounting" techniques to improve corporate profits for tax purposes. i.e. the owner receives \$8.00 per bushel from the processor, but only pays the vessel on \$4.00 per bushel because the owner is deducting the cost of leasing the allocation from the processor. The vessel owner may actually own the allocation but claim it as a lease to the boat or more likely, he may transfer a like share to the processor to create a paper lease trail for tax purposes. Depending on use of general accounting practices for income tax determination, the money used to "lease" an allocation may be taxed differently from the vessel "owned" allocation. (see vessel section of this committees report for more details on the leasing

issue)

OCEAN QUAHOG PRICES:

In contrast with the surf clam, ocean quahog prices have risen significantly since Amendment #8 was approved. As with surf clams, there are several factors which establish the market price. Meat yield is a significant factor in determining the price and yields are dropping. The industry reportedly averaged a standard 8-10 pounds per bushel, but as productive beds are overworked, yields are running 7-8 pounds per bushel now. Location of harvest is an important factor in pricing quahogs. The quality of the meat, amount of sand, size of quahog, amount of trash, etc. vary depending on where the vessels are fishing. Quahogs have continued to gain market share both as an acceptable substitute for some surf clam products, and for use in a wide range of new quahog end products. Health concerns about raw shellfish have also reportedly improved the market for cooked clam products.

EX-VESSEL OCEAN QUAHOG PRICES:

Ocean quahog prices have risen significantly since Amendment #8 was approved. In late 1989 average quahog prices were \$3.00 - 3.15 per bushel. After Amendment #8, prices rose quickly to average \$3.35 to \$3.50 per bushel, and even with processor resistance, prices continued to strengthen and increased again in 1991 to an average of \$3.75 per bushel. With declining yields, prices are now running \$3.75-4.00 per bushel for quahogs harvested from preferred locations. These are average prices and do not include trucking to the processor. Quahogs caught off Ocean City, MD average \$4.00 per bushel, quahogs caught off Atlantic City, NJ average \$3.75 per bushel, and quahogs caught off Long Island, NY and Virginia average \$3.50 per bushel.

SALE OF OCEAN QUAHOG ALLOCATIONS:

Ocean quahog allocations are reportedly selling for \$4.00-6.00 per bushel, with most averaging \$5.00 per bushel.

LEASE OF OCEAN QUAHOG ALLOCATIONS:

Ocean quahog allocations are currently being leased for \$0.25-0.50 per bushel, with most averaging \$0.40-0.50 per bushel. There has reportedly been some manipulation of the lease of quahog allocations - see "Lease of Surf Clam Allocations" discussed above.

IMPACT OF IMPORTS:

Most processors felt that imports would have little impact on domestic supplies in the near term, even if supplies continue to tighten. Processors did not feel there was a good substitute for the surf clam, and none indicated any effort to explore non-U.S. substitutes at this time. Processors did identify potential

foreign substitutes for ocean quahogs (Iceland and Norway were mentioned), but again there had been no reported effort to contact foreign suppliers.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Region
One Blackburn Drive
Gloucester, MA 01930

Surf Clam/Ocean Quahog ITQ Evaluation

Based on Interviews with Captains, Owners and Crews

By

Kenneth L. Beal

Interviews with NMFS Port Agents and surf clam and ocean quahog fishermen, skippers and vessel owners were conducted in fishing ports in Maryland and New Jersey on February 10-13, 1992. The primary points which we focused on were the acceptability of the cage tags currently in use and the perception of whether enforcement has changed as a result of Amendment 8 to the Surf Clam & Ocean Quahog Fishery Management Plan. Most of the people interviewed offered additional comments on other aspects of Amendment 8, although these comments were not solicited. For purposes of reporting all observations, I will first address the key issues, followed by general comments.

CAGE TAGS

Plastic tags, each with a consecutive number, are issued to the holder of the individual transferable quota, and may be kept aboard the vessel, at home or elsewhere in a safe place. Tag numbers are recorded in the vessel logbooks and in the processor logbooks. The theft of tags is not a major concern, as the tag numbers would have to be recorded in the logbooks, and the thief would be easily identified. However, when quotas are transferred, this information is not reported to NMFS, so NMFS Port Agents are not aware when boats are fishing on a purchased or leased quota.

Tags are attached to the 32-bushel cages when the cages are unloaded from the vessel. Previously, tags were attached aboard the vessel, and this practice was both unsafe and resulted in greater tag breakage. Breakage of the plastic tags is generally caused when two cages rub together. Since the cages are fairly rigid steel frames with wire mesh, the tags are sheered off, normally breaking just behind the locking mechanism. When a cage without a tag arrives at the processing plant, the plant notifies the vessel owner and a search for the broken tag begins. Tags are usually found in the truck, on the wharf, and elsewhere in route.



It has been suggested that a thin, tough, flexible plastic, as used in Federal Express mailing bags could be used. We have not investigated the cost of these various options. Failure to use tags does not appear to be a problem with the independent vessel owners, as their catch is normally trucked to the plant, and the likelihood of an enforcement agent being present at the plant is greater than seeing the agent at the wharf. On the other hand, the potential for landing untagged cages is greater if company vessels are landing at company processing plants. It should be noted though, that we are not aware of any such illegal actions, and in fact we were assured by some captains that they would not expect a plant to engage in this practice.

Overall acceptance of the tagging requirement is good. The record-keeping adds another layer to the workload, but the documentation of the catches is quite accurate.

ENFORCEMENT

In all instances, captains, crew and owners reported that law enforcement officers are seen less frequently since Amendment 8 was approved. This is understandable since the primary tool for enforcement now is the cage tag. Furthermore, since the tagged cages are destined for a processing plant, a law enforcement agent could be more efficient by visiting the plants, rather than the wharfs. Agents must still check vessels for the presence of the fishing permit and other regulations, but they do not have to police the fishing hours and days. The primary reason for a recent visit by one enforcement agent was to explain new regulations. We routinely heard comments from the industry that the law enforcement agents were fair and did a good job. One skipper mentioned that he has seen agents at the wharf at midnight and even at 2:00 and 3:00 a.m. We did not hear any criticisms of the agents or how they enforce the regulations.

Certain individuals alleged that New Jersey vessels will fish for a portion of their catch in the EEZ, and also fish inside the state's waters, then claim all the clams came from state waters. This practice would "save" their federal quota until needed. Those complaining of this practice also allege that an informant broadcasts on the ship-to-shore radios when the U.S. Coast Guard helicopter takes off for a fisheries patrol, and boats working in the EEZ then dash into the state waters. However, others stated equally emphatically that this practice is not done. It should

be noted that New Jersey has a quota on the harvest of surf clams within their waters, too. Furthermore, processing plants control whether they want inshore or offshore clams, based on the yield.

OTHER COMMENTS ON AMENDMENT 8

Overall, there is a split in opinion whether Amendment 8 is a success. Some feel that giving a public resource to a select few is wrong. Many boats did not receive a quota equal to their fishing record and tough decisions had to be made whether to continue in the fishery or not. Another complaint involved vessels which intentionally violated the previous regulations, fishing before or after hours, or on wrong days, for instance. Whether or not these violations were detected, the landings were added to the vessel's record, and the ITQ for the vessel was automatically inflated by these illegal landings. In effect, the outlaws were rewarded for their dishonesty.

Some boat owners have had to lease or purchase quotas from others. Purchase prices for surf clam quotas is about \$20/bushel, while purchase price for ocean quahogs is about \$5/bushel. While this approach is possible if financing is available, small operators without adequate funding have often sold out. Some processing plants have been concentrating quotas, and some family fishing companies have begun an aggressive approach to buy quotas, too. Partnerships have been formed with several vessel owners, mainly to concentrate the amount of quota. Another approach taken by many operators is to concentrate quotas onto fewer vessels, and sell or convert the excess vessels to other fisheries. One operator reduced effort by putting the quotas from 17 boats onto 3, and a family operation with 9 boats has concentrated quotas onto 3 boats. At another dock, only 5 boats are fishing out of 18. Unfortunately, many of the older boats from which the quotas have been taken are unfit to be converted to other fisheries. One owner said he has given a vessel away, and another said one of his was now an artificial reef. Overall, an estimate has been made that about 75 boats are fishing out of 175 permitted in the fishery.

The impact on fishing vessel crews has been significant in many ports. As a result of the concentration of quotas onto fewer vessels, many men were laid off and have been unable to get another berth on a clam vessel. Some were able to fish in other fisheries, and some have shore-side jobs; but still others are unemployed.

The dockside value of surf clams and ocean quahogs has not changed appreciably. Clams are now selling for \$8.00/bushel (same price as pre-Amendment 8), and quahogs for \$3.85 (up slightly from \$3.50). However, the crew shares at settlement have not improved as a result of Amendment 8. Since many of the vessels currently fishing have purchased quotas, the cost of the

extra quota is added to other operating costs, and crew share is reduced accordingly. The normal practice is for operators to assign a value of \$4.00/bushel to the leased quota, and this is subtracted from the dockside price of \$8.00/bushel. Obviously, crew share is less, and one owner of several vessels estimated a crewman earns about \$20,000 less per year now. Some boats have cut crew size from 5 to 3. Most crews are working harder, and earning less.

Under the previous provisions of the FMP, with severely restricted fishing hours and days (6 hours every 3 weeks), boats had to go fishing in bad weather or lose their day. It was hoped that Amendment 8 would eliminate this danger, but unfortunately this has not happened. Processing plants now tell captains when they want a load of clams. Their demands are based on markets, and weather is not a consideration. So boats are often forced to go fishing in bad weather, or lose the connection with that processor. Two vessels which sank in late 1991 (the John Marvin and the Valerie E) were caught in a rapidly-building storm. The crew from the Valerie E were lost, but the crew from the John Marvin were rescued by the Coast Guard. Many people mentioned these sinkings as an indication of no change in the safety factor.

EXHIBIT 3



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
OFFICE OF GENERAL COUNSEL
One Blackburn Drive
Gloucester, Massachusetts 01930
Tel. (508) 281-9211
FTS. 837-9211

CONFIDENTIAL

February 14, 1992

SUBJECT: Individual Transferable Quota (ITQ) Management System

By

Joel G. MacDonald, Regional Counsel

Processing Sector/Shipping: With the exception of tagging requirements, the transportation of surf clams is only minutely applicable to existing pertinent regulations for this fishery (see 50 CFR, part 652); carriers do not share the same regulatory responsibilities of the vessels and processors. ¶



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Region
One Blackburn Drive
Gloucester, MA 01930

XHIBIT 4

February 19, 1992

SUBJECT: SURF CLAM/QUAHOG ITQ REVIEW

By

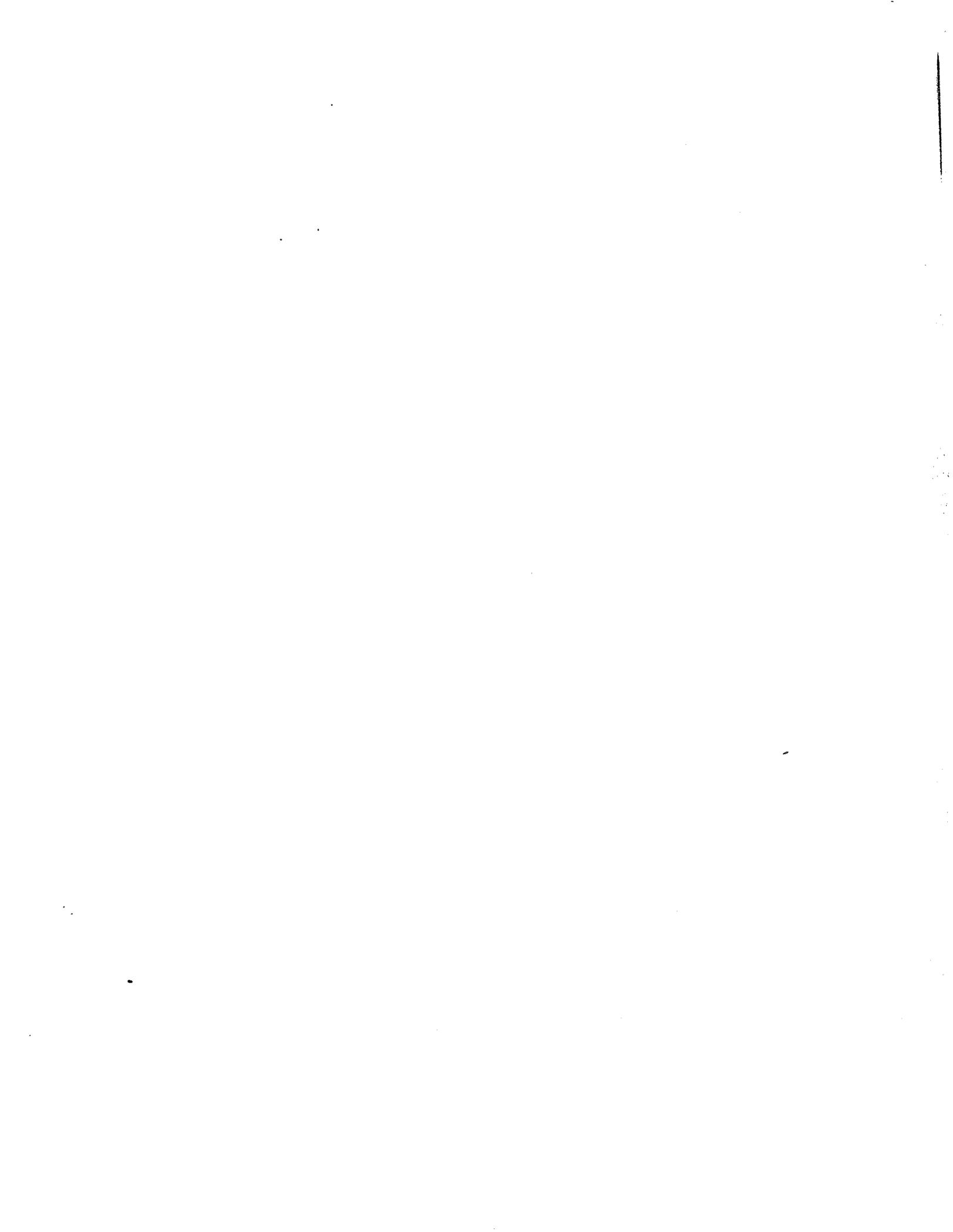
F/EN3 John J. McCarthy

Fleet operation: [There are approximately 75 active vessels in the mid-Atlantic area.]

CLAM/QUAHOG ITQ ADMINISTRATION
HANNAH GOODALE AND MYLES RAIZIN
FEBRUARY 18, 1992

OWNERSHIP ISSUES

GC/NE has suggested that it may be necessary to monitor ITQ ownership because of anti-trust concerns.





UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Region
One Blackburn Drive
Gloucester, MA 01930

IBIT 6

February 19, 1992

Surf Clam/Ocean Quahog ITQ Program Evaluation

Stanley Wang, Ph.D
Supervisory Economist

It is a common knowledge that fishery management systems generally impose constraints on fishery operations and alter producers' strategies in exploiting the fishery resource. The US Atlantic surf clam and ocean quahog fisheries are the first US fisheries which have been managed under a vessel ITQ management system. Prior to 1990, these fisheries were managed with overall quotas and a vessel moratorium program coupled with a set of area closures and trip regulations and gear restrictions. This was a very complex management system for maintaining a year-long fishery and meeting various social and economic objectives. This complex management system had evolved over time and was in place for a period slightly longer than 10 years. During this period, various arguments and counter-arguments were forwarded with an intent to change or maintain this complex system. Finally, the system was replaced with a vessel ITQ system in 1990.

AS the first US fisheries to be under an ITQ management system, the US Atlantic surf clam and ocean quahog fisheries are unique for studying industry behaviors under different management regimes. Our preliminary analysis of the behaviors has revealed some interesting findings. In the Northeast Regional Office, Dr. Stanley Wang has been charged to evaluate the industry performance under different management systems. While his study has been under way, it is to emphasize the evaluation of the industry (harvesting and processing sectorial) behaviors and strategies under the complex management system prior to 1990 and the ITQ system after 1990. Several criteria will be adopted in his analyses and include industry concentration, market share control, pricing, price spreads, fishing patterns, fishery productivity, capitalization, labor employment (fishing crew and related industries), and optimal combination of input (capital and labor). Economic theory of firms and industrial organization as well as statistic theory will be vigorously applied. Relevant statistical tests will be also conducted in the study. Some concerns, arguments and counter-arguments during the development of the ITQ system will be selected for detailed examination and evaluation.



Finally, in views of the current enthusiasm toward limited entry programs including ITQ management systems, this general review chaired by Mr. Edward MacLeod coupled with the Wang study could shed light on design and implementation of any ITQ management systems.



P.O. Box 111, Spring Lake, N.J. 07762

December 3, 1992

To: Mid-Atlantic Marine Fishery Council

From: Jersey Coast Anglers Association - Gary Dickerson

Subject: Amendment 3 Summer Flounder Management Plan

The exempted fishery, the increase in the bi-catch allowances and the movement of the line are unacceptable. We will explain why.

When you are looking at a quota which is a 58% reduction in the average catch over the last 10 years, why is there any need for a bi-catch or exempted fishery. We agree to allow 100 pounds of bi-catch anything else is a directed fishery. An increase in the bi-catch is nothing more than creating a loophole in the plan to permit the use of small mesh nets. The purpose of the plan is to reduce the mortality of juvenile fish and give the stocks an opportunity to recover.

The F.M.P. requires that the Regional Director monitor discards through the sea sampling program and terminate the exempted fishery if discards exceed 10% of the catch. Page 23 of amendment 3 indicates that as the line is moved westward from 71:30 to 72:30 discards will increase. From November to April during 1990 - 1991 the N.M.F.S. sea sampling program collected data on a number of otter trawl vessels fishing in areas east of 71:30. A combined total of 9390 pounds of summer flounder was caught by these vessels with approximately 11% discard. East of 72:30 and between 71:30 to 72:30 the discard rates were approximately 13%.

Now convert this from pounds to fish. The survey by N.M.F.S. collected 1221 summer flounder in 138 tows over a wide geographic area. Length frequency distribution of summer flounder taken east of 71:30 indicated that 33.5% were less than 14" total length; 22.3 less than 13" total length. East of 72:30 35% less than 14" total length - 24.2% less than 13" total length.

Now we go back to the 10% termination number eliminating the exempted fishery. With current available data all indications point to a fishery that will exceed the 10% mark in both pounds and fish. How can the council justify opening it up? Lets collect more data first. Don't let the horses out before we attempt to close the barn door.

A bi-catch of more than 100 pounds is totally unacceptable. The plan has a 100 pound bi-catch and quota in place. There is no justification for any increase even if trip durations are longer in the Winter. Tables on page 38, 39, and 40 show percentages of catch in the scup, loligo and silver hake fisheries. Based on the 500 pound tows for scup, summer flounder make up 0.6% of the catch. Therefore with every 500 pounds of fish brought up while scup fishing 3 pounds are summer flounder. This correlates into a trip catch of 16,666 pounds of fish to reach the 100 pounds of summer flounder allowed. The same set of factors translates into a catch of 7,700 pounds of loligo to reach the 100 pounds of summer flounder. The silver hake numbers are 50,000 pounds of catch to reach the 100 pounds of summer flounder. Based upon the information provided their cannot be any justification for increasing the bi-catch above 100 pounds.

The quota system beginning in January is another argument for rejecting any increase of the bi-catch. With a decrease in the historical catch of 58% how can an increase in the bi-catch be justified. It was stated by the F.M.P. staff that if a concerted effort was made to fill the quota it would take approximately 2 to 3 months at most. If the directed fishery can end the season in 3 months why is there any need to increase the bi-catch.

It is the opinion of the J.C.A.A. that the exempted fishery, the moving of the line from 71:30 to 72:30 and any increase in the bi-catch are unnecessary and unjustified. We are completely against them and wish to remind the council that the purpose of the plan is to reduce mortality to enable the stocks time to recover.

The J.C.A.A. has agreed to accept the size limit, bag limit and season for the recreational angler. The spirit behind the agreement is conservation enabling recovery of summer flounder. If amendment 3 is allowed to become part of the F.M.P. the support of the organization I represent will be lost. It is disappointing that before a plan can even be put in place there are so many attempts to circumvent the spirit of conservation that created the plan.

ATLANTIC COAST CONSERVATION ASSOCIATION OF VIRGINIA

November 23, 1992

Mr. Bryson:

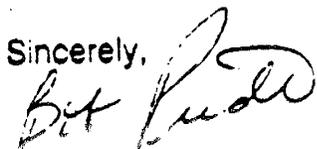
I apologize in advance if I have misspelled your name. Gary Dickerson suggested we communicate with your office with respect to Summer Flounder issues.

Because there appears to be no hearing in Virginia, we are forwarding this position paper to you. We will attempt to have a representative in Manteo on December 2, but may not be able to find someone who can get down there.

Please accept this fax as part of the public testimony.

You can contact me at 804-481-1226 during the day or at 804-481-0749 in the evening or on weekends. My mailing address is 2105 Turnberry Cove, Virginia Beach, VA 23454. I'd appreciate a copy of Amendment 3 and other pertinent documents related to the public hearings.

Sincerely,



Bob Pride

Fisheries Management Committee
Summer Flounder Program Chairman

ATLANTIC COAST CONSERVATION ASSOCIATION OF VIRGINIA

November 20, 1992

Bill Pruitt, Commissioner
Virginia Marine Resources Commission
2600 Washington Avenue
Newport News, Virginia 23607

Dear Mr. Pruitt:

The ACCA of Virginia has followed recent developments concerning Summer Flounder with keen interest. As you probably recall, our organization and its predecessor were involved with the events leading to limiting the commercial otter trawl industry to Federal waters and the compromise recreational bag limits implemented at the same time.

During the 1980's, VMRC allowed commercial trawlers into State waters, causing a precipitous decline in both the recreational and commercial landings of Summer Flounder. For years, recreational angler groups protested this situation. Finally, in 1989, in the face of overwhelming scientific evidence that Summer Flounder were in serious trouble, VMRC addressed the situation by limiting trawlers to Federal waters. At that time, VMRC also imposed a recreational bag limit of 10 fish in addition to the minimum possession size previously implemented. The recreational bag limit was imposed primarily to appease commercial interests: there was no scientific evidence that the recreational catch was contributing significantly to the decline of Summer Flounder.

Data presented in MAFMC's Amendment 2 to the Fishery Management Plan for Summer Flounder indicates recreational fishermen accounted for over 40% of Summer Flounder landed coastwide from 1980 to 1989. Although the data are not clear, it seems that recreational anglers accounted for closer to 50% of the harvest in Virginia waters during the same period, except in 1989 when the recreational catch plummeted to 15% of total landings coastwide and about 12% of landings in Virginia. Recreational landings remain less than 20% of total landings today.

In plain language, this means recreational anglers have already lost at least 50% of their previous share of the harvest coastwide and perhaps even more in Virginia.

VMRC is now under pressure from NMFS to adopt the management provisions for Summer Flounder in Amendment 2. This would mean increasing Virginia's minimum recreational possession size to 14 inches, decreasing the bag limit from 10 to 6 fish, eliminating the bycatch tolerance and imposing a May 15 to September 30 season. Commercial management provisions do not include the season; but do include a quota, minimum size for commercial fishermen in Federal waters of 13 inches, an increase in net

Mr. Prullt 11/23/92

mesh size and a commercial moratorium for this fishery which is essentially a moratorium on entry.

The overall coastwide commercial quota is set at 12.35 million pounds of which 2.6 million is allocated to Virginia waters.¹ This quota represents 44% of the average commercial landings coastwide from 1980-89 and the same percentage of average Virginia commercial landings for the same period.² In the 1980-89 time frame, recreational anglers landed an average of 15 million Summer Flounder coastwide.³ Federal estimates of the recreational catch under this plan is 4.36 million fish coastwide, or 29% of the 1980-89 average. In Virginia, recreational anglers are estimated to catch about 22% of the coastwide recreational figure, or 959,200 fish, under the plan. Please note that the commercial allocation, in pounds, is 44% of the baseline average and that the recreational allocation, measured in numbers of fish, is 29% of the baseline average.

VMRC staff has discovered that MAFMC justifies this discrepancy by assuming the average fish landed by recreational anglers will weigh 1.92 pounds. This would mean the recreational share is 8.37 million pounds, about 40% of combined commercial and recreational landings. Data to support this average weight is not in Amendment 2. By dividing the average recreational landings 1980-89 in pounds (Table 39) by the 15 million fish, we see the average fish has weighed 1.26 pounds coastwide. Data for Virginia fish indicate an average weight is somewhat less, about 1.14 pounds. Data prior to implementation of minimum recreational possession sizes in Virginia indicate the average fish was .92 pounds. We believe the average fish landed in Virginia will be between 15 and 16 inches and weigh between 1.2 and 1.5 pounds. Coastwide studies indicate a 15.7" fish weighs 1.55 pounds, with Virginia fish running somewhat smaller. With either number, the recreational angler is being shortchanged as compared to the commercial quota. It appears the 1.92 pound average has been promoted to make the allocation seem fair. A 1.92 pound fish will be 17-18" in length. It is highly unlikely that the coastwide average will increase this much and it is certain that it will not be the case in Virginia. It should be noted that the projection of average size is based upon the assumption that the plan is in effect, especially the minimum mesh size for commercial fisheries. These regulations are not in effect for 1992. Therefore, the underlying assumption for the 1.92 pound average size projection is invalid. Commercial landings in 1992 will be largely unrestricted as relates to plan measures, and the impact on the 1990-91 year classes will be devastating. Until the commercial measures have been in effect for a year or more, the projected average of 1.92 pounds cannot be achieved, even if you can believe it is both possible and accurate.

All commercial allocations between gear types and geographic areas in the plan are based upon 10 year historical averages: the recreational allocation does not use the

¹Source: VMRC FMAC Finfish Subcommittee meetings, November, 1992

²Amendment 2 to the FMP for Summer Flounder, Table 39 and Table 35

³Amendment 2 to the FMP for Summer Flounder, Table 81

Mr. Pruitt 11/23/92**Page 3**

same historical perspective. In view of the facts, it should be the commercial sector that accepts all of the reduction in harvest and recreational restrictions be relaxed in order to maintain the historical balance (as used for the commercial allocations). Given the VMRC's charter requirements to balance the allocation of the finfish resources equitably among all user groups, we believe VMRC would be acting improperly if it implemented this plan without modification. Since there is no scientific evidence presented in the Plan to suggest the decline of Summer Flounder is even in part due to recreational harvest, this plan is inconsistent with VMRC's legislative guidelines.

Since commercial otter trawls harvest most Summer Flounder landed in Virginia, and because they are limited to Federal waters, the commercial fishery in Virginia will be largely subject to these Federal regulations. With minor exceptions, the ACCA has no issue with respect to the commercial Summer Flounder fishery in State waters. In fact, we fully concur with VMRC ideas concerning allocation of the commercial quota by quarter and preservation of some portion each quarter for watermen working in State waters. Our concern is the dramatic impact a 6 fish limit would have on the recreational fishery considering the recreational catch decline already experienced and the apparent discrimination against the recreational angler with respect to allocation of the harvest.

The party and charter industry, especially on the Eastern Shore, has been adversely impacted by recent regulations for Bluefin Tuna, Gray Trout and both Red and Black Drum. Due to the availability of Summer Flounder in April and early May, the Eastern Shore fleet runs a substantial number of charters in those few weeks which would be closed under the Plan. With a seasonal restriction and the 6 fish bag limit, charter and party boat anglers will likely consider another way to spend their recreational dollars. In many cases, that would remove the revenue from the State entirely since statistics from the Virginia Saltwater Tournament Citation Program indicate that fully one-half of all Summer Flounder citations each year are issued to out-of-state anglers.

Summer Flounder fishing also accounts for a substantial portion of the recreational fishing activity in the lower bay and about 45% of all fishing trips in the Commonwealth. The proposed season ends just as the Fall Summer Flounder run is getting underway and would curtail recreational fishing activities and its economic contribution to area tackle shops and marinas and to the hospitality industry.

To put the value of recreationally caught finfish in perspective, we have attached a copy of the Executive Summary from a 1988 study of the economic value of marine recreational fishing conducted in the Commonwealth of Massachusetts. This study is extremely credible. It examines the economic impact of the average of nearly one million people who participated in the marine recreational fishing in Massachusetts annually between 1979 and 1989. These people took an estimated 4 million fishing trips per year and caught about 20 million fish. They spent \$638 million within the Commonwealth of Massachusetts during 1988. According to the study, these recreational fishing

Mr. Pruitt 11/23/92

expenditures provided for over 19,000 jobs, \$291 million in wages, salaries and proprietors' incomes, and over \$57 million in state and local tax receipts.

This study can be compared to NMFS's Marine Recreational Fishery Statistics Survey for trip, participant, and catch. The MRFSS, however, consistently underestimates recreational trip economic impacts by their own admission, to an unknown degree.⁴ Similarly, a VMRC/NMFS report on recreational fishing in Virginia shows 909,000 anglers took 2,912,000 trips and caught almost 28 million fish.⁵ Upon analysis, the data from all three sources correlates to a large degree with respect to numbers of anglers, trips and fish.

What becomes clear is the Massachusetts study looked closely at the total impacts of recreational fishing: the MRFSS study really does not. MRFSS data ignores boat purchase and maintenance expenses and impacts from expenditures related to lodging and food for out-of-town anglers. Both ignore indirect expenditures from non-fishing companions and incidental non-fishing expenditures. Application of the Massachusetts data to Virginia directly may be inappropriate, but it does provide a meaningful framework for looking intelligently at economic impacts of the recreational fishery in Virginia.

Marine recreation, *i.e.*, saltwater boating and fishing, represents about 14% of the \$52 billion spent each year in the United States for all recreation and leisure time activities. That is \$7.3 billion per year. It is time for the NMFS and the VMRC to recognize the economic impact of marine fisheries regulations applied to the recreational user group. According to the Massachusetts study, the economic value of a recreationally harvested fish was \$33 in 1988 dollars. Can the same be said for commercially harvested fish? The VMRC should know the answer to this question before it makes finfish management decisions.

Given the economic value of recreational fishing activity to the Commonwealth, a Summer Flounder bag limit of 6 fish and a limited fishing season would be damaging to the economy of the Commonwealth as well as discriminatory. When coupled with severe curtailment of commercial harvest, increased recreational efforts could result in a far greater yield per pound of Summer Flounder caught in terms of economic benefit to the Commonwealth.

Recreational anglers have been repeatedly subjected to bag limits in the past four years, with little or no scientific basis for imposition of such limits. Statistics show clearly that commercial catches as a percentage of the total are increasing and, in some cases like the Summer Flounder, commercial landings as measured by tonnage are increasing from year to year over the past four years. If commercial fisheries are primarily responsible for

⁴FMP for Summer Flounder, Hearing Draft 11/9/87, p. 41.

⁵Marine Recreational Fishing in Virginia, VMRC Technical Report no. 87-01

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the reduction in stocks, the commercial landings should be reduced to meet any desired conservation target.

NMFS data clearly indicated a recreational season for Maryland, Virginia and North Carolina would have no appreciable impact on reducing exploitation.⁶ We therefore conclude there is no reason to impose a season in Virginia.

Analysis of data presented in the Plan to support a six fish bag limit is not easy. Details supporting this measure are primarily derived from 1989 data: a year when the recreational catch was severely depressed. Most important are Tables 44, 74, 75 and 80 in the Amendment 2 document. Table 44 shows that 76.6% of recreational fish landed in 1989 were over 14". That does not correlate with data in the 1987 Plan which indicated 45% of recreational landings from 1979-85 were over 14" and only 34% of Virginia landings were over 14". We realize that minimum size restrictions have skewed the percentage upward since that time, but logic and personal experience don't account for such an increase. We believe, and reasonable interpretation of the available data suggests, that the size distribution of fish will not change significantly on average over time. We believe fish over 14" will still average about 34% in Virginia and 45% coastwide. However, 34% of the fish hooked will still be over 14", but the percentage released as undersized fish will increase. Therefore the recreational angler will have a pool of potential "keepers" that is substantially smaller. The data clearly indicate that 14% of Summer Flounder coastwide are at least 13" but less than 14". The reduction in exploitation associated with the 14" minimum size will amount to at least 29% in Virginia if no bag limit existed. With the 10 fish limit already in place, adjusted for elimination of the undersized allowance, Virginia will exceed the 47% goal by simply implementing the 14" minimum size.

NMFS data indicates that anglers catching Summer Flounder averaged 1.9 fish per trip in 1979-85.⁷ Data for 1980-89 is not presented on a similar basis. There are data in the MRFSS that indicate about 8,000,000 trips per year are Summer Flounder trips, about 45% of all trips. Therefore, this landings rate seems consistent (15 million fish / 8 million trips = 1.87 fish per trip). The 1987 Plan (Table 58) indicates that 74% of trips are unsuccessful for landing any Summer Flounder. (Believe it or not, studies repeatedly show 20-40% of recreational trips result in no fish caught at all) This means only 2 million trips are successful and about 22% of those, or 457,000, are in Virginia. In reality, the average catch, 1980-89 was 7.2 fish for successful summer flounder anglers. However, Table 74 shows that in 1986-1990 successful anglers only caught 2.32 fish per successful trip, a 75% reduction from the 10 year average and a 66% reduction from the 1986 MRFSS. Table 74 also shows that of successful angler trips, only 1.6% caught more than 10 fish and only 5.6% caught more than 6. We believe this is attributable in part to declining stocks, but believe it is primarily attributable to implementation of minimum

⁶Amendment 2 FMP for Summer Flounder, Tables 78 and 79

⁷FMP for the Summer Flounder Fishery, 11/9/87, Table 58 p. 130

recreational size limits in most states and possession limits in some states during 1986-90. In other words, the recreational angler has already met and exceeded the Plan goals and the Plan fails to credit recreational anglers with those conservation efforts. That represents discrimination of the highest order. Anglers in states, like Virginia, that have already conserved for several years, are being harshly penalized.

The difference between a possession limit of 6 and 10 is only 4% of successful trips. Table 75 uses this information to project the reduction by size and possession limit. Remember that this data is projected from 1986-90 data when recreational success rates and trip catches were already severely depressed due to the impact of commercial over fishing, especially in Virginia's state waters.

Given the fact that recreational anglers in Virginia have already sacrificed at least 50% of their share of the Summer Flounder catch, the ACCA of Virginia is of the opinion that the recreational angler should not be subjected to any restriction on Summer Flounder other than the same minimum size limit as commercial fishermen. However, our concern for the well being of the species supersedes our concern for fairness in the allocation procedures. We therefore take a position that includes the following provisions:

- VMRC enact commercial provisions in Virginia at least as stringent as those in Amendment 2 to the FMP for Summer Flounder;
- Include no recreational season at this time;
- Establish a 14" minimum possession length for recreational fish with no tolerance;
- Establish a recreational bag limit of no less than 10 fish per person per day;
- Incorporate a clear mechanism to re-examine recreational restrictions as the actual status of Virginia Summer Flounder stocks becomes clear.

We believe these measures will be more than adequate to meet the 47% targeted reduction in exploitation requested by NMFS, at least in Virginia. The facts are such that the increased possession size alone will meet that target, with or without a bag limit of any number of fish. We trust the Commission will not feel compelled to enact further restrictions which will be damaging to the economy of the Commonwealth and disheartening to anglers. Recreational anglers in Virginia are already faced with a number of regulations which have no clear scientific basis and whose actual impact on protection of the finfish is largely unknown.

What is known is that 96% of commercial Summer Flounder landings are taken by otter trawls operating in the EEZ. This harvest takes place during the Summer Flounder's spawning season and throughout the winter. Help us guide the Federal management measures in a direction that will develop a solution to that problem. At the same time,

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recreational anglers can be expected to fairly contribute to the reduction in exploitation required to replenish the stocks. Just don't expect the recreational angler to continue to accept management plans and regulations which favor commercial interests.

It is very clear to us, and we hope it is becoming clearer to you, that recreational fishery economic impacts are far more substantial than previously accepted. Continuing to implement restrictions in the recreational sector which are perceived as unfair and unnecessary by anglers will cause substantial losses of income, jobs and taxes as anglers cut their expenses in relation to restrictions. However, if restrictions are perceived to be implemented fairly and to truly be beneficial to finfish stocks, these losses will largely be mitigated by a cooperative attitude on the part of recreational anglers.

Sincerely,

Original Signed by Eddy Harwell

Eddy Harwell
President
Atlantic Coast Conservation Association of Virginia

EH:rhp
Attachment: 1988 Study Summary

cc.

Sidney H. Camden
George S. Forrest
John W. Freeman, Sr.
Tom Fote
Elizabeth Haskell
Timothy G. Hayes
Bob Hutchinson

William A. Hudnall
Donald L. Liverman, Sr.
Skip Miller
Miles Raizen
Robbie Robinson
Peter W. Rowe
Jane C. Webb



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Fisheries Science Center
165 Water Street
Woods Hole, MA 02543-1097

October 15, 1992

MEMORANDUM FOR: MRF Steering Committee

FROM: *Tom* Tom Morrissey

SUBJECT: Economic Value of MRF

Attached is the Executive Summary and other material from a report of a study of the economic impact of marine recreational fishing in Massachusetts. I have added two tables from the NMFS' 1989 MRF Survey in the event you may want to compare the estimates of participation and number of trips by state to obtain a very rough idea of the economic impacts of MRF in other northeast states.

Although the study looked only at state level impacts, note that the methodology employed could be used to conduct a substate analysis to determine, for example, the economic impact both of out of state fishermen and resident fishermen from inland communities on the coastal communities of the state. In addition, the results for one year may be used as the basis for estimates for other years, using updated estimates of fishing activity from the MRF Statistics Survey.

This is a highly creditable study and the results may be useful in a general way. Additional information on the study may be obtained by contacting The Environmental Institute, Blaisdell House, University of Massachusetts, Amherst, MA 01003-0040 (tel.: 413-545-2842). A copy of the full report is available as Research Bulletin Number 742, from the College of Food and Natural Resources, Agriculture Experiment Station, at UMass, Amherst.

JOHN LUCY

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IMPACT IN VA



Research Bulletin Number 742/February 1992

Economic Impact of Marine Recreational Fishing in Massachusetts

by

David A. Storey

P. Geoffrey Allen

Department of Resource Economics

Published by the Massachusetts Agricultural Experiment Station



**College of Food and Natural Resources
University of Massachusetts at Amherst**

EXECUTIVE SUMMARY

Marine recreational fishing is an important activity in Massachusetts. Annual surveys conducted by the National Marine Fisheries Service (NMFS) indicate that between 1979 and 1989, an average of nearly one million people per year participated in saltwater recreational fishing in the Commonwealth. Out-of-state residents represented about one-third of the total. The recreational anglers averaged nearly four million fishing trips per year and caught over 20 million fish per year.

Information has been lacking, however, about the economics of marine recreational fishing. At the policy level, it would be useful to evaluate the economic consequences of changes in the fishing activity. Such changes might stem from natural increases or decreases in fish stocks and fishing catches, or from policies to encourage or discourage recreational fishing relative to commercial fishing or other uses of coastal waters. In order to provide the necessary economic information, the authors conducted a study for the Massachusetts Division of Marine Fisheries. The results are summarized here.

In a questionnaire added to the regular NMFS intercept survey that was conducted in Massachusetts between August 1987 and December 1988, we asked recreational fishermen to record their fishing-related expenses. They were asked about expenses incurred on the fishing trip, including such items as food, lodging, fuel, bait, and charter or party boat fees. Excluded were purchases of souvenirs, other entertainment, or any expenses by non-fishing companions, such as food or lodging for others in the traveling party. The interviewed fishermen were also asked to record their non-trip fishing-related expenses during the previous year including purchases of fishing gear and other durable equipment. Fishermen who were boat owners were also asked how much of their boat use was for fishing, how much the boat and related equipment cost, and how much were their annual upkeep expenses (maintenance, slip rental, insurance, etc.).

Usable responses to the economic information survey were received from a large sample of 2,125 recreational fishermen. Respondents included 683 shore fishermen, 533 party or charter boat fishermen, and 909 who were fishing from private or rental boats. Of the 2,074 respondents who reported their home location, 1,560 were state residents and 514 were from out-of-state. As might be expected, a greater proportion of out-of-state fishermen stayed overnight (one or more nights) away from home during the fishing trip surveyed — 65% against 23% for in-state residents.

The sample results were expanded to state level estimates by multiplying sample averages by NMFS 1988 participation and fishing trip estimates. Only expenditures made within Massachusetts were included in the final totals. In 1988, the 607,000 resident fishermen were estimated to have spent \$545 million and the 266,000 non-residents \$93 million, for a grand total of \$638 million. For residents, trip-related expenses were a small part of the total. Non-trip-related expenses were 76% of the total, and over 80% of them were for the purchase and maintenance of boats and related equipment. For non-residents, the breakdowns were quite different. Trip-related expenses were over 70% of total expenses. The non-resident group is of primary importance in the economic impact analysis to follow.

The economic impacts of the fishing-related expenditures were estimated using a regional input-output model developed by the Regional Science Research Institute (RSRI). In an input-output model, changes in the final demand of consumers for specified products are used to estimate first round or direct changes to producing, transport, trade and government sectors. These first round

effects in turn give rise to indirect effects where, for example, the increased production of fishing tackle requires purchase of steel and stimulates steel production. For tourist activities, of which recreational fishing is a particular example, the set of changes is quite complex. The typical tourist dollar is allocated among food, restaurant, lodging, automobile running costs, recreational equipment purchases, boat fees, and so on. The total set of final demand changes in such a case is referred to as a translator, because it translates an average dollar of expenditure into the proportion going into each sector of the economy. The RSRI model has 494 sectors and many, but not all, are directly influenced by changes in spending by marine anglers. Since no suitable translator existed, a major task in the study was to construct one. Sample survey responses were combined with other information to construct the required translator.

Under the standard input-output assumptions, only the spending of people outside the area of study is of importance. If residents find their ability to engage in recreational fishing is curtailed, they would tend to spend their money on other activities in the state. Non-residents engage in the same activity elsewhere, a net loss to the state's economy. The same approach was followed in our study by constructing a translator specifically for non-residents, who had different spending patterns than residents. However, since much more recreational fishing is carried out in Massachusetts by residents than by non-residents, and the redistribution of economic activity within the state is of interest, a translator was also constructed for residents. Each translator was used separately to measure the economic impact of changes in marine recreational fishing. It would be possible to conduct a sub-state analysis in the same way, with residents in coastal communities separated from the rest of the sample.

The \$92.7 million estimated to have been spent directly by non-residents in 1988 was estimated to result ultimately in 3,267 jobs, \$44.7 million in income (wages, salaries and proprietors' incomes), \$136.6 million in output (primarily value of sales but margins only for wholesale and retail sectors), \$76.7 million in value added, \$3.6 million in state taxes and \$5.1 million in local taxes. These are jobs, incomes, and tax receipts that would be lost if marine recreational fishing were suddenly to become unavailable in Massachusetts. Because of the nature of input-output modeling, partial gains or losses in marine recreational fishing activity can be calculated from the impacts estimated proportionately. For example, an increase in trip-related spending by non-residents of \$1 million would lead to 39 new jobs, \$504,160 in new incomes, \$40,179 in new state tax receipts and \$57,211 in new local tax receipts.

Direct expenditures by residents of \$545 million in 1988 provided for over 16,000 jobs, \$246.2 million in income, \$19.9 million in state taxes and \$28.6 million in local taxes. Loss of marine recreational fishing activity would lead to reduction in the size of the industries providing goods and services to fishermen and at least temporary unemployment of that work force before it switched to support of other activities.

These results, directly applicable to 1988, can serve as the basis for estimates for other years as well, when used in conjunction with updated NMFS fishing activity estimates. The results are conservative in the sense that they include only direct expenses for marine fishing and their impacts. Peripheral expenditures by fishermen and their companions were not included even though in some cases they may have occurred as a direct result of the fishing activity.

(WOULD THAT
HAPPY OR ELSE -
WRITE? (ie To
Another state?)



POINT JUDITH

Fishermen's Cooperative Ass'n., Inc.

An Equal Opportunity Employer

TO: John C. Bryson, Executive Director
Mid-Atlantic Fishery Management Council
Room 2115 Federal Building
300 South New Street
Dover, DE 19901

FROM: James A. McCauley, President
on behalf of the Point Judith Fishermen's Cooperative
Association, Inc.

DATE: December 14, 1992

RE: Comments on Amendment #3 Summer Flounder Plan

The members of the Co-op strongly support the 72 30'W as the new demarcation line for the Exempted Fishery Program.

The members agree that the possession limit for summer flounder should be increased from the 100 pound threshold. Due to the size of the vessels; (75-95 feet), and the length of the trips (3-4 days), the majority of offshore fishermen members support a 400 pound threshold during the winter fishery. Our inshore boat members support a 200 pound trip limit during the summer season. Both groups have historically caught summer flounder at that level as a by-catch in recent years while targeting other species usually caught with small mesh.

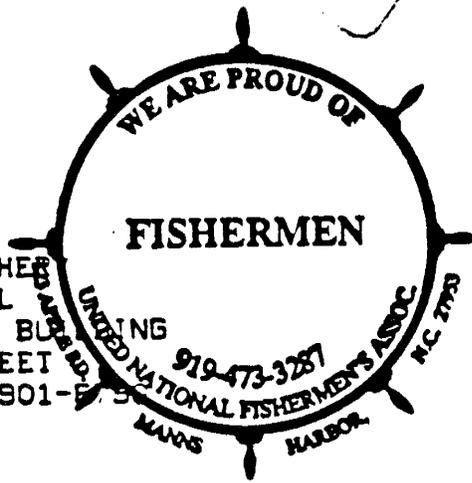
The possession limit should be in place year round to avoid unnecessary discarding. Rhode Island is trying to establish criteria which will reserve enough of the quota to cover the projected by-catch throughout the year. What provisions are being made to cover the possession limit allowance in other states? What happens in states with a minimum quota where the number of possession limit trips exceed that state's quota?

Are vessels fishing only in state waters under a state commercial fishing license, therefore not eligible for a Federal Summer Flounder Permit under the summer flounder control date requirement, able to retain summer flounder according to the state's quota management system? In other words, can fish be sold to a dealer under the sellers State

Commercial License? How does the dealer report the landings on the Federal Report if the landings are permissible.

Please do not take the time to answer these questions at this time, possibly the answers will be forthcoming in the implementation information of the Plan at some point.

MID- ATLANTIC FISHERY
MANAGEMENT COUNCIL
ROOM 2115 FEDERAL BUILDING
300 SOUTH NEW STREET
DOVER DELAWARE 19901-8795



AMENDMENT 3 TO THE FISHERY MANAGEMENT PLAN
FOR THE SUMMER FLOUNDER FISHERY 10/1992

INDUSTRY COMMENTS

ARE THE SUMMER FLOUNDERS IN DECLINE ? THE (ASMFC) HAS FAILED TO TAKE INTO ACCOUNT THE NATURAL CYCLE OF THE SUMMER FLOUNDER POPULATION.

THE (ASMFC) AND (NMFS) HAS FAILED TO CORRELATE THE LONG TERM WEATHER PATTERNS WITH THE SUMMER FLOUNDER LANDINGS. IF THE WEATHER FACTOR AND THE NUMBER OF BOATS HAD BEEN COMPARED THEN A PATTERN WOULD HAVE EMERGED THAT WOULD HAVE SHOWN A 7 YEAR CYCLE AND A THIRTY YEAR BOTTOM CYCLE THIS CORRESPOND'S WITH A WEATHER PATTERN THAT APPEARS OFF AFRICA AND INFLUENCES THE DROUGHT AND HURRICANE SEVERITY. NOAA SHOULD COMPUTER CORRELATE THE KNOWN LANDINGS AND WEATHER FACTOR TO OFFER SCIENTIFIC EVIDENCE FOR THIS THEORY TO (ASMFC) STUDIES AS EARLY AS 1936 ON TRAWL NET SELECTIVITY OFFER INCITE INTO FLOUNDER AND FLAT FISH LANDINGS THESE ARE NOT CORRELATED INTO THE BEST SCIENTIFIC INFORMATION.

4.1 DEVELOPMENT OF THE PLAN:: INDICATES THAT THE PROGRAMMATIC GRANT FUNDS WERE ILL SPENT.

FACTORS THAT HAVE NOT BEEN CORRELATED INTO THE SUMMER FLOUNDER POPULATION EQUATION ARE NUMBER OF BOATS, POWER, OTHER FISHING EFFORT. NUMBER OF MEN PER BOAT, REGULATION EFFECT.

THE (ASMFC) HAS NOT TAKEN INTO ACCOUNT THE NUMBER OF BOATS THAT FISHED FOR SUMMER FLOUNDER PRIOR TO 1978 THAT NO LONGER PARTICIPATE IN THE FISHERY. EXAMPLE LARGE STEEL HULLS THAT CHANGED FROM SCALLOPING IN SUMMER TO FLOUNDERING IN WINTER THAT HAVE STAYED SCALLOPING SINCE THE EARLY 1980'S DUE TO Milder WINTER WEATHER. THUS A DECLINE IN LANDINGS. OTHER SMALLER CAROLINA AND VIRGINIA BOAT THAT SHRIMPED OR WORKED THE CALICO SCALLOPS IN FL. IN THE 1970'S AND EARLY 1980'S THAT SHOWS AS A DECLINE IN LANDINGS. THE IMPLEMENTATION OF THE 13" LANDING LAW BY NORTH CAROLINA SHOWED AS A MARKED DECREASE IN SMALL FLOUNDER BEING LANDED AND A DECLINE IN THE YEAR CLASSES. THE 13" LAW THAT (NMFS) IMPLEMENTED FORCED A REDUCTION OF YEAR CLASSES.

THE ENSUING 5 1/2 " 6" SQUARE MESH REGULATION LEAD TO A FURTHER STATICAL DECLINE OF THE YEAR CLASSES. NEITHER HAD SUFFICIENT TIME TO SHOW A RECOVERY OF THE STOCK.

9.2.1.1. MYS (SECTION 5.4) HAS NOT BEEN SPECIFIED FOR SUMMER FLOUNDERS . INDICATES A LACK OF STUDY OF LONG TERM LANDINGS AND

1

WEATHER CORRELATION.

NMFS HAS FAILED TO CONSIDER HATCHERY PRODUCTION OF FLOUNDER FOR RELEASE INTO THE WILD IF JAPAN IS AN EXAMPLE THE U.S. FLOUNDER COULD BE UP TO PEAK PRODUCTION IN 6 YEARS.

F_{max} IS NOT A TRUE REFERENCE POINT AS HATCHERY PRODUCTION HAS NOT BEEN UNDER CONSIDERATION 9.2.1.2 IS USELESS

9.2.1.4 (A) FAIR AND EQUITABLE TO ALL SUCH FISHERMEN AT PRESENT ONLY VESSELS ARE PERMITTED (MANGUSON) SEC.301. (4) (A) FAIR AND EQUITABLE TO ALL SUCH FISHERMEN.

NMFS HAS NOT IMPLEMENTED AN INDIVIDUAL PERMIT PROGRAM AND DOES NOT KNOW HOW MANY FISHERMEN THERE ARE IN THE U.S.

(DECLINE OF THE SEA TURTLE CAUSE AND PREVENTION) PAGE 6 CAPTIVE BREEDING OFFERS AN ALTERNATIVE TO T.E.D.S. THE FISHING INDUSTRY COULD BUY TURTLES TO REPLACE THOSE ALLEDGALLY KILLED BY THE FISHING INDUSTRY. LITTLE PROOF EXIST AS TO CAUSE OF DEATH IN MOST CASES. GIANT CELL MENINGO-ENCEPHALITIS OR BROKEN NECK DISEASE COULD ACCOUNT FOR A NUMBER OF DEATHS OF TURTLES.

9.2.1.5. IT APPEARS THAT LITTLE EFFICIENCY EXIST. IN STUDYING FISHERY RESOURCES.

IT IS CLEAR TO THE FISHING INDUSTRY THAT THE OTHER METHODS TO REBUILD THE STOCK HAVE NOT BEEN STUDIED OR CONSIDERED. THEREFORE IT IS RECOMMENDED THAT NO ALLOCATION BE PUT INTO EFFECT AND THAT NET SIZE BE REDUCED TO READ >5 IN STRETCH AND >5 1/2 SQUARE. THE STOCKS ARE ON A NATURAL UP CYCLE AND THE HATCHERY PROGRAM COULD SUPPLEMENT THIS PROGRAM THE MONEY FOR THE HATCHERY PROGRAM CAN COME FROM A SALT WATER SPORT FISHING LICENSE .

SINCERELY,

James Fletcher

JAMES FLETCHER, DIRECTOR

PART 625 -- [AMENDED]

1. The authority citation for Part 625 continues to read as follows:

AUTHORITY: 16 U.S.C. 1801 *et seq.*

2. Section 625.8, paragraphs (c)(2) through (c)(10) are redesignated as paragraphs (c)(4) through (c)(12), respectively; paragraphs (a)(3), (a)(7) and newly redesignated (c)(6) are revised; and paragraphs (c)(2) and (c)(3) are added to read as follows:

§625.8 Prohibitions.

(a) * * *

(3) Possess 100 or more pounds (45.4 kg) of summer flounder between 1 May and 31 October or 200 lbs (90.7 kg) or more of summer flounder between 1 November and 30 April of summer flounder, unless the vessel meets the minimum mesh requirement specified in §625.24,(a) or is fishing in the exempted area with an exemption permit as specified in §625.24(b)(1), or holds an exemption permit and is in transit from the exemption area with the nets properly stowed as specified in §625.24(b)(1)(ii), or is fishing with exempted gear specified in §625.24(b)(2);

* * * * *

(7) Possess nets or netting on board with mesh that does not meet the requirements of §625.24(a), or nets that are modified or obstructed if fishing with an exempted net described in §625.24(b), except pieces of netting may be carried on board if they are no larger than 3 feet square (0.9 m square);

* * * * *

(c) * * *

(2) Possess in or harvest from the EEZ summer flounder that do not meet the minimum size specified in §625.23(b);

(3) Possess nets of netting with mesh not meeting the minimum mesh requirement of §625.24 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of §625.24(a).

* * * * *

(6) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a moratorium permit not subject to the possession limit in §625.5 unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state.

* * * * *

3. Section 625.20 paragraphs (a)(8) and (a)(9), are redesignated as paragraphs (a)(9) and (a)(10) respectively, and new paragraphs (a)(8) and (b)(8) are added to read as follows:

* * * * *

(a) * * *

(8) Sea sampling and winter trawl survey data, or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses;

* * * * *

(b) * * *

(8) Adjustments to the exempted area boundary and season specified in §625.24(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraphs (a)(8) and (10) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent by weight.

* * * * *

4. Section 625.24 paragraphs (a), (b)(1), and (e) are revised to read as follows:

§625.24 Gear restrictions.

(a) *General.* Otter trawlers whose owners are issued a permit (including moratorium permit) under §625.4 and that land or possess 100 or more pounds (45.4 kg) of summer flounder between 1 May and 31 October or 200 lbs (90.8 kg) or more of summer flounder between 1 November and 30 April, per trip, must fish with nets that have a minimum mesh size of 5 1/2 inches (14.0 cm) diamond mesh or 6 inches (15.2 cm) square mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension.

(b) * * *

(1) Vessels issued a permit under paragraph §625.4(b) and fishing from 1 November through 30 April in the "exemption area" which is east of a line that follows 72° 30.0' W. until it intersects the outer boundary of the EEZ. Vessels fishing with an exemption permit cannot fish west of the foregoing line.

(i) The Regional Director may terminate this exemption if he or she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent by weight of their entire catch of summer flounder per trip. If he/she makes such a determination, the Regional Director shall publish a notice in the FEDERAL REGISTER terminating the exemption for the remainder of the exemption season.

(ii) Vessels issued a permit under paragraph §625.4(o) may transit the area west or south of the line described in paragraph (b)(1) of this section if the vessel's fishing gear is stowed in a manner prescribed under 50 CFR 651.20(f) so that it is not readily "available for immediate use" outside the exempted area.

* * * * *

(e) *Net modification.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chaffing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the cod end along each of the following: The top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined in §625.24(e), if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in §625.24(a).

APPENDIX 6. ABBREVIATIONS AND DEFINITIONS OF TERMS

Act (MFCMA) - the Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 USC 1801 et seq.

adjusted dollars - dollars standardized to a base year based on the Consumer Price Index.

ASMFC (Commission) - Atlantic States Marine Fisheries Commission.

CFR - Code of Federal Regulations.

Charter or party boat - any vessel which carries passengers for hire to engage in fishing.

Committee - the Summer Flounder FMP Review and Monitoring Committee. The Committee is made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the Commission, the Northeast Regional Office of NMFS, the Northeast Fisheries Center, and the Southeast Fisheries Center. The MAFMC Executive Director or his designee chairs the Committee.

Council (MAFMC) - the Mid-Atlantic Fishery Management Council.

CPI - Consumer Price Index; a comparative ratio of a certain group of goods across time.

CPUE - catch per unit of effort.

Domestic Annual Harvest (DAH) - the capacity of US fishermen, both commercial and recreational, to harvest and their intent to use that capacity.

Domestic Annual Processing (DAP) - the capacity of US processors to process, including freezing, and their intent to use that capacity.

Exclusive Economic Zone (EEZ) - the zone contiguous to the territorial sea of the US, the inner boundary of which is a line coterminous with the seaward boundary of each of the coastal States and the outer boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

Fishing for summer flounder - any activity, other than scientific research vessel activity, which involves: (a) the catching, taking, or harvesting of 100 pounds of summer flounder or more per trip; (b) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of 100 pounds of summer flounder or more per trip; or (c) any operations at sea in support of, or in preparation for, any activity described in paragraphs (a) or (b) of this definition.

Fishing mortality rate - the part of the total mortality rate (which also includes natural mortality) applying to a fish population that is caused by man's harvesting. Fishing mortality is usually expressed as an instantaneous rate (F), and can range from 0 for no fishing to very high values such as 1.5 or 2.0. The corresponding annual fishing mortality rate (A) is easily computed but not frequently used. Values of A that would correspond to the F values of 1.5 and 2.0 would be 78% and 86%, meaning that there would be only 22% and 14% of the fish alive (without any natural mortality) at the end of the year that were alive at the beginning of the year. Fishing mortality rates are estimated using a variety of techniques, depending on the available data for a species or stock.

Fishing mortality rate reduction strategy - reducing fishing mortality on summer flounder to 0.53 in the first year of FMP implementation and maintaining it at that level through year 3. In year 4 and subsequent years, the target fishing mortality rate will be F_{max} (0.23).

$F_{0.1}$ - the rate of fishing mortality for a given method of fishing at which the increase in yield per recruit for a

small increase in fishing mortality results in only 10% increase in yield per recruit for the same increase in fishing mortality from a virgin fishery.

F_{max} - a calculated instantaneous fishing mortality rate that is defined as "the rate of fishing mortality for a given method of fishing that maximizes the harvest in weight taken from a single year class of fish over its entire life span".

F_{rep} is the fishing mortality rate that results in a year class replacing the spawning biomass of its parents on average.

FMP - fishery management plan.

FR - *Federal Register*.

GRT - gross registered ton.

ICES gauge - International Council for the Exploration of the Seas (ICES) longitudinal mesh gauge set a 4 kg pressure; as used in mesh selectivity studies.

internal waters - marine waters landward of the territorial sea.

L_{50} - length at which 50% of the fish are mature.

M (natural mortality) - instantaneous rate of death attributable to all causes except fishing.

MSY - maximum sustainable yield. The largest average catch of yield that can continuously be taken from a stock under existing environmental conditions, while maintaining the stock size.

MRFSS - Marine Recreational Fishery Statistics Surveys, 1979 - 1991.

NEFC - the Northeast Fisheries Center of the NMFS.

NMFS - the National Marine Fisheries Service of NOAA.

NOAA - the National Oceanic and Atmospheric Administration of the US Dept. of Commerce.

OY - Optimum Yield.

Regional Director (RD) - the Regional Director, Northeast Region, NMFS.

recruitment - the addition of fish to the fishable population due to migration or to growth. Recruits are usually fish from one year class that have just grown large enough to be retained by the fishing gear.

Secretary - the Secretary of Commerce, or his designee.

serial spawners - species which have egg batches that are continuously matured and shed during a protracted spawning season.

Spawning stock biomass per recruit (SSB/R) - measures the average or expected contribution of any one young fish to the spawning stock biomass over its lifetime. A useful reference point is the level of SSB/R that would be obtained if there were no fishing. This is a maximum value for SSB/R which can be compared to levels of SSB/R calculated for different fishing levels.

state waters - internal waters and the Territorial Sea.

stock assessment - the biological assessment of the status of the resources. This analysis provides the official

estimates of stock size, spawning stock size, fishing mortalities, recruitment, and other parameters used in this Plan. The data from these assessments shall constitute the "best scientific information currently available" as required by the Act.

summer flounder - the species *Paralichthys dentatus*.

Territorial Sea - marine waters from the shoreline to 3 miles seaward.

take means to catch and retain on board either in the hold lose or in boxes. It does not include fish from the most recent tow on deck and not yet sorted.

TL - total length.

Total Allowable Level of Foreign Fishing (TALFF) - that portion of the Optimum Yield made available for foreign fishing.

USDC - US Department of Commerce.

year-class - the fish spawned or hatched in a given year.

Yield per recruit - the theoretical yield that would be obtained from a group of fish of one age if they were harvested according to a certain exploitation pattern over the life span of the fish. From this type of analysis, certain critical fishing mortality rates are estimated that are used as biological reference points for management, such as F_{max} and $F_{0.1}$.

Z - instantaneous rate of total mortality; the ratio of numbers of deaths per unit of time to population abundance during that time.

