

**AMENDMENT 4 TO THE
FISHERY MANAGEMENT PLAN FOR THE
SUMMER FLOUNDER FISHERY**

April 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: 3 March 1993
Final adopted by MAFMC: 15 April 1993
Final approved by NOAA: 24 September 1993

**AMENDMENT 4 TO THE
FISHERY MANAGEMENT PLAN FOR THE
SUMMER FLOUNDER FISHERY**

April 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: 3 March 1993
Final adopted by MAFMC: 15 April 1993
Final approved by NOAA: 24 September 1993**

2. SUMMARY

This Amendment 4 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.

Amendment 2 to the FMP, as adopted by the Council and approved by the National Marine Fisheries Service (NMFS), included a formula to allocate the commercial summer flounder quota to the States based on their share of commercial landings for the period 1980-89. However, for a period of years in the early to mid 1980's, Connecticut did not have the authority to collect landings data from offshore fishermen and NMFS did not provide a port agent to the state. As a result, some landings were not recorded. Consequently, Connecticut's share of the commercial summer flounder quota is based on historic landings data which were underreported. Connecticut's quota is therefore lower than it's quota would have been if summer flounder landings in the state had been more completely documented. The purpose of this Amendment is to resolve this problem by adjusting Connecticut's commercial landings of summer flounder and revising the state-specific shares of the coastwide commercial summer flounder quota as requested by ASMFC.

3. TABLE OF CONTENTS

1. COVER SHEET	1
2. SUMMARY	3
3. TABLE OF CONTENTS	4
4. INTRODUCTION	
4.1. History of Development of the FMP	5
4.2. Problems for Resolution	6
4.3. Management Objectives	6
4.4. Management Unit	7
5. DESCRIPTION OF STOCKS	
5.1. Species and their Distribution	7
5.2. Abundance and Present Condition	7
5.3. Stock Characteristics and Ecological Relationships	7
5.4. Maximum Sustainable Yield	7
5.5. Probable Future Condition	7
6. DESCRIPTION OF HABITAT	
6.1. Habitat Description	7
6.2. Habitat Condition	7
6.3. General Causes of Pollution and Habitat Degradation	7
6.4. Habitat Protection Programs	7
6.5. Habitat Conservation and Restoration Recommendations	7
6.6. Habitat Research Needs	7
7. DESCRIPTION OF FISHING ACTIVITIES	
7.1. Domestic Commercial Fishery	8
7.2. Domestic Recreational Fishery	8
7.3. Foreign Fishing Activities	8
8. DESCRIPTION OF ECONOMIC CHARACTERISTICS OF THE FISHERY	
8.1. Commercial Fishery	8
8.2. Recreational Fishery	8
8.3. International Trade	8
9. FISHERY MANAGEMENT PROGRAM	
9.1. Management Measures	8
9.2. Analysis of Impacts of Adopted Management Measures	17
9.3. Relation of Recommended Measures to Existing Applicable Laws and Policies	22
9.4. Council Review and Monitoring	26
10. REFERENCES	27
11. TABLES AND FIGURES	29

APPENDICES

1. ALTERNATIVES TO THE AMENDMENT	App 1-1
2. REGULATORY IMPACT REVIEW (green paper)	RIR-1
3. ENVIRONMENTAL ASSESSMENT (yellow paper)	EA-1
4. HEARING SUMMARY AND SUMMARY OF WRITTEN COMMENTS	App 4-1
5. PROPOSED REGULATIONS (blue paper)	PR-1
6. GLOSSARY OF TECHNICAL TERMS AND ACRONYMS (white paper)	App 6-1

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.

Amendment 3 to the Summer Flounder FMP was developed in response to fishermen's concerns that the demarcation line for the small mesh exempted fishery bisected Hudson Canyon and would be difficult to enforce. Amendment 3 revised the Northeast exempted fishery line to 72°30.0'W. In addition, Amendment 3 increased the large mesh net threshold to 200 lbs during the winter fishery, 1 November to 30 April. Furthermore, Amendment 3 stipulated that otter trawl vessels fishing from 1 May through 31 October could only retain up to 100 lbs of summer flounder before using the large mesh net. Amendment 3 was approved by the Council on 21 January 1993 and submitted to NMFS on 16 February 1993.

4.2. PROBLEMS FOR RESOLUTION

4.2.1. Connecticut's share of the coastwide commercial summer flounder quota is based on incomplete historic landings data

Amendment 2 to the FMP, as adopted by the Council and approved by the National Marine Fisheries Service (NMFS), included a formula to allocate the commercial summer flounder quota to the States based on their share of commercial landings for the period 1980-89. However, for a period of years in the early to mid 1980's, Connecticut did not have the authority to collect landings data from offshore fishermen and NMFS did not provide a port agent to the state. As a result, some summer flounder landings were not recorded. Consequently, Connecticut's share of the commercial summer flounder quota is based on historic landings data which were underreported. Connecticut's quota is therefore lower than it's quota would have been if summer flounder landings in the state had been more completely documented.

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 burnt) 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 (this section is unchanged from Amendment 2)

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 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 adjusted commercial landings for the period 1980-1989 (Table 1).

Commercial landings of summer flounder would be adjusted to account for undocumented commercial landings of summer flounder in the State of Connecticut for the years 1980 to 1986. The 1987-91 proportion of Connecticut's landings relative to the combined landings of Massachusetts, Rhode Island, New York and New Jersey would be derived and applied to the combined landings of these four States for the years 1980-86 to derive an adjusted Connecticut value for each year 1980-86 (Table 2). These adjusted values would be used to derive the state-specific shares of the coastwide summer flounder quota. The adjusted allocation formula would be implemented in 1993.

Any landings in a State in excess of the previous year's quota would be subtracted from that year's quota. However in 1993, implementation of the adjusted state-specific shares will reduce the original 1993 quota specified in Amendment 2 in all coastal States except Connecticut. In the event that the entire coastwide quota was not taken in 1993, the excess amount would be used to offset the penalties imposed on any State in 1994. However, this offset would only apply to landings up to or below the original state-specific quota level specified in Amendment 2. For example, if the State of New York exceeded their adjusted 1993 quota

of 944,405 lbs by 20,000 lbs (a total of 964,405 lbs) and the 1993 quota was not taken, then the surplus could be used to reduce New York's 1994 penalty by 12,547 lbs since the original New York quota was 956,952 lbs (956,952-944,405). However, New York would still be assessed a penalty of 7,453 lbs (964,405-956,952) which would be deducted from their 1994 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 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 pound bycatch rule 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 (this section is unchanged from Amendment 3)

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 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, 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 2" 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 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% 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, provided that no other nets or netting with mesh smaller than 5.5 inches are on board. 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) seaward of the line described below from 1 November through 30 April and not using a 5.5" minimum mesh (diamond) 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 (landward) 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 outer boundary of 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 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.

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 (this section is unchanged from Amendment 3)

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 3). It was 92% in 1989 (Table 4). 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 a 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 state-specific shares of the coastwide summer flounder quota

The current allocation formula does not account for unreported Connecticut landings which occurred during the years from 1980 to 1986. Consequently, Connecticut's share of the commercial summer flounder quota is based on historic landings data which were underreported. Connecticut's quota is therefore lower than it's quota would have been if summer flounder landings in the State had been more completely documented. Modification to the allocation formula through adjustment of Connecticut's landings data will result in a more equitable distribution of the coastwide commercial summer flounder quota to the States.

There have been three distinct periods of reporting history in Connecticut since 1980. From 1980-83, Connecticut had no statutory authority to collect landings data for trips made outside Connecticut waters and NMFS did not have a port agent in Connecticut to pick up trip slips from dealers. In 1984, 1985, and 1986 offshore landings data was obtained from voluntary interviews with dealers in Stonington, Connecticut but other landings continued to go unrecorded because they did not go through dealers, i.e., they were transported directly to markets in Stonington and southeastern Connecticut.

In 1987, another major dealer began operations in Stonington. As a result, most offshore landings in Connecticut were then accounted for by dealers who participated in the voluntary interview program and NMFS weighout system. Consequently, the period 1987-91 most closely represents the completeness of coverage that exists in adjoining States.

Connecticut landings data from 1987 to 1991 were used with landings data from four adjoining States, Massachusetts, Rhode Island, New York and New Jersey, to adjust Connecticut landings for 1980-1986. These four States were used in the analysis because they cover the waters in which fishermen from southern Massachusetts through New Jersey would have fished. The 1987-91 proportion of Connecticut's landings relative to the combined landings of Massachusetts, Rhode Island, New York and New Jersey was derived and applied to the combined landings of these four States for the years 1980-86 to derive an adjusted Connecticut value for each year 1980-86 (Table 2).

The use of the adjusted Connecticut landings data for allocating the coastwide summer flounder quota to the States results in a slight adjustment to state-specific shares approved in Amendment 2 (Table 5). Relative to the 1993 quota of 12.35 million pounds, this modification reduces the state-specific quota for each of the other coastal states from 25 pounds (Delaware) to 45,658 pounds (North Carolina). However, changes in state-specific quota shares are slight, ranging from 0.0002% to 0.3697%, and thus there should be little impact of these reductions on fishermen in these States. In addition, these changes are not considered to have significant impact or be unfair to any State since the changes are suggested by ASMFC and each State has voted on the Amendment.

In terms of positive or negative impacts on small entities, 6 of the 182 NMFS permitted summer flounder dealers are located in Connecticut. Clearly, the 6 Connecticut dealers will benefit from the increase in the quota share to Connecticut. The distribution of the quota share reduction among all the other 10 States should not impact the 176 dealers from States other than Connecticut.

From the standpoint of possible impacts on fishermen, 21 commercial vessel permits show they land principally in Connecticut, out of a total of 1,732 Federally commercial permitted vessels. As in the case of the dealers discussed above, the 21 Connecticut vessels should benefit from the proposed action. With the reduction in

quota share spread proportionately among the remaining 10 States, the 1,711 commercial permitted vessels principally landing in those States should experience no discernable negative impact. It must also be remembered that vessels may land in any State so long as such landings are legal under the laws of the State of landing (e.g., the State is open for summer flounder landings, the vessel desiring to land has complied with appropriate permitting requirements, etc.).

9.2.2.3. Prices to consumers

Amendment 4 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 changes in the allocation formula resulting from the use of the adjusted summer flounder landings data will more than double the 1993 quota for the state of Connecticut. This increase will benefit fishermen from numerous States who have traditionally landed summer flounder in Connecticut ports. In addition, a permanent adjustment in the allocation formula corrects the problem resulting from the use of incomplete landings data to derive the allocation formula in Amendment 2. Thus, quotas implemented in 1994 and beyond will be less disruptive to traditional commercial landings patterns in the States.

The use of the adjusted Connecticut landings data for allocating the coastwide summer flounder quota to the States results in a slight adjustment to state-specific shares approved in Amendment 2 (Table 3). Relative to the 1993 quota of 12.35 million pounds, this modification reduces the state-specific quota for each of the other coastal States from 25 pounds (Delaware) to 45,658 pounds (North Carolina). However, changes in state-specific quota shares are slight, ranging from 0.0002% to 0.3697%, and individual States have not restricted landings to vessels licensed only in their State. Thus, there should be little impact of these reductions on fishermen in these States.

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. 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 (Table 6).

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 and Virginia take between 2 and 4% of the commercial summer flounder landings of these States (Table 7). 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 fishery 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 6). 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 1 and 2), trawl data collected off North Carolina in December, 1990, and January, 1991, (Table 8) and stranding data (Figure 3), 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 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 (Amendment 2), 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.

NMFS has concurred with the Council's finding that this Amendment will have no affect on sea turtles (Roe pers. comm).

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, 3300 Whitehaven Street NW, Washington, DC 20235.

A proposed rule was published on February 8, 1991 (56 FR 5282) that proposed to designate an area over and surrounding Stellwagen Bank and submerged lands offshore of the Commonwealth of Massachusetts as a National Marine Sanctuary. The proposed rule also announced the public availability of the Draft Environmental Impact Statement/Management Plan (DEIS/MP) prepared for the proposed designation. The designation is intended to protect the conservation, recreational ecological, historical, research, educational and esthetic qualities of the Stellwagen Bank area.

In November of 1992, Stellwagen Bank was designated a marine sanctuary by Congress. However, final action by NMFS and issuance of a Final Environmental Impact Statement are pending.

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 3). 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

9.3.4.1. State management activities

State regulations for summer flounder are summarized in Table 9.

9.3.4.2. Impact of Federal regulations on State management activities

The management measures of this Amendment are identical to those proposed by ASMFC for the coastal States.

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. Maine, New Hampshire, Rhode Island, Connecticut, Pennsylvania, and Delaware have concurred with the Council's opinion.

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 a 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 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.

10. REFERENCES

- Bellmund, S. A., J. A. Musick, R. C. Klinger, R. A. Byles, J. A. Keinath, and D. E. Barnard. 1987. Ecology of sea turtles in Virginia. Unpub. Spec. Sci. Rep. 119 submitted to NMFS, NE Region. VIMS, Gloucester Pt., VA. 48 p.
- Cole, R. 1990. Personal communication. DE Dept. of Nat. Res. and Env. Control., Dover, DE.
- Honey, K. 1990. Personal communication. ME Dept. of Mar. Res., West Boothbay Harbor, ME.
- Lutcavage, M. and J. A. Musick. 1985. Aspects of biology of sea turtles in Virginia. *Copeia* 1985(2): 449-456.
- McCoy, E.G. 1990. Personal communication. NC Dept. of Nat. Res. and Comm. Dev., Moorehead City, NC.
- Mid-Atlantic Fishery Management Council (MAFMC). 1988. Fishery management plan for the summer flounder fishery. Dover, DE.
- MAFMC. 1990. Amendment 1 to the fishery management plan for the summer flounder fishery. Dover, DE.
- McKiernan, D. J. 1990. Personal communication. Massachusetts Div. of Mar. Fish. Boston, MA.
- Musick, J. A., R. A. Byles, R. E. Klinger, and S. A. Bellmund. 1985. Mortality and behavior of sea turtles in the Chesapeake Bay. NOAA, NMFS Contract NA80FA00004. VIMS, Gloucester Point, VA. 52 p.
- Nelson, J.I. 1990. Personal communication. NH Fish and Game Dept., Durham, NH.
- Roe, R. 1993. Personal communication. NMFS NERO, Gloucester, MA.
- Scarlett, P.G. 1990. Personal communication. NJ Dept. of Env. Prot. Trenton, NJ.
- Simpson, D. G. 1990. Personal communication. CT Dept. of Env. Prot., Waterford, CT.
- Sisson, R.T. 1990. Personal communication. RI Div. of Fish and Wildlife. Wakefield, RI.
- Spier, H. 1990. Personal communication. MD Dept. of Nat. Res. Annapolis, MD.
- University of Rhode Island. 1982. A characterization of marine mammals and turtles in the Mid- and North Atlantic areas of the US outer continental shelf. Final Report. Prepared for USDI under contract #AA551-CT8-48.

Varnell, L. 1990. Personal communication. VA Mar. Res. Comm. Richmond, VA.

Zawacki, C. 1990. Personal communication. NY Dept. of Env. Cons., Stony Brook, NY.

Table 1. Adjusted summer flounder landings data and the resulting state-specific quota shares.
Connecticut column and total column for 1980-86 adjusted with numbers from Table 2.

<u>Year</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>TOTAL</u>
80	4,000	0	365,600	1,276,500	380,053	1,245,900	4,805,400	600	1,323,900	8,503,500	13,642,600	31,548,053
81	2,500	0	597,800	2,860,500	466,899	1,984,800	4,008,300	6,700	403,200	3,651,900	7,447,500	21,430,099
82	17,900	400	1,665,200	3,982,600	584,446	1,865,100	4,318,000	7,500	360,100	4,331,900	6,315,000	23,448,146
83	83,500	0	2,341,400	4,599,100	652,169	1,435,100	4,826,200	5,300	936,500	8,134,000	7,057,400	30,070,669
84	2,400	200	1,488,100	4,479,300	722,549	2,294,700	6,364,400	8,700	812,700	9,673,400	12,509,700	38,356,149
85	2,500	300	2,249,400	7,532,800	885,929	2,517,400	5,634,200	4,100	577,400	5,036,700	8,612,600	33,053,329
86	0	100	2,953,600	7,042,100	827,454	2,737,500	4,016,900	3,800	315,500	3,712,400	5,923,800	27,533,154
87	7,700	300	3,327,400	4,774,000	609,100	2,641,400	4,450,500	4,100	318,900	5,790,900	5,127,600	27,051,900
88	4,800	0	2,420,600	4,718,800	740,900	3,438,700	6,006,400	6,600	513,900	7,756,300	6,770,100	32,377,100
89	9,200	0	1,877,900	3,082,900	513,100	1,463,700	2,864,900	2,900	204,100	3,688,900	4,205,500	17,913,100
TL	134,500	1,300	19,287,000	44,348,600	6,382,599	21,624,300	47,295,200	50,300	5,766,200	60,279,900	77,611,800	282,781,699
%	0.0476	0.0005	6.8205	15.683	2.2571	7.6470	16.7250	0.0178	2.0391	21.3168	27.4458	

Source: Connecticut DEP Memo 11/6/92.

Table 2. Summer flounder landings data for Connecticut and the combined states of Rhode Island, New York, Massachusetts and New Jersey, 1980-1991. Adjusted Connecticut landings for 1980 to 1986 were derived using data from the five years 1987 - 1991 as described in the text.

<u>Year</u>	<u>Connecticut</u>	<u>Combined RI, NY, MA, & NJ</u>	<u>Adjusted Connecticut</u>
80	-	7,693,400	380,053
81	-	9,451,400	466,899
82	-	11,830,900	584,446
83	-	13,201,800	652,169
84	-	14,626,500	722,549
85	-	17,933,800	885,929
86	-	16,750,100	827,454
87	609,100	15,193,300	-
88	740,900	16,584,500	-
89	513,100	9,289,400	-
90	256,000	4,001,000	-
91	399,000	5,856,000	-
Total 87-91	2,518,100	50,924,200	-

Source: Connecticut DEP Memo 11/6/92.

Table 3. 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</u> <u>Lbs</u>	<u>Value</u> <u>\$1000</u>	<u>Adj.</u> <u>Price</u>	<u>1000</u> <u>Lbs</u>	<u>Value</u> <u>\$1000</u>	<u>Adj.</u> <u>Price</u>	<u>1000</u> <u>Lbs</u>	<u>Value</u> <u>\$1000</u>	<u>Adj.</u> <u>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 4. 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 5. State-specific quota shares (%) based on unadjusted and adjusted landings data. The quotas by state based on a total coastwide quota of 12.35 million pounds are presented for each allocation formula. The difference between the two is also listed.

	<u>Unadjusted</u>		<u>Adjusted</u>		<u>Difference</u>	
	<u>%</u>	<u>lbs</u>	<u>%</u>	<u>lbs</u>	<u>%</u>	<u>lbs</u>
ME	0.0482	5,953	0.0476	5,879	-0.0006	-74
NH	0.0005	62	0.0005	62	0	0
MA	6.9111	853,521	6.8205	842,332	-0.0906	-11,189
RI	15.8914	1,962,588	15.6830	1,936,851	-0.2084	-25,737
CT	0.9532	117,720	2.2571	278,752	+1.3039	+161,032
NY	7.7486	956,952	7.6470	944,405	-0.1016	-12,547
NJ	16.9473	2,092,992	16.725	2,065,538	-0.2223	-27,454
DE	0.0180	2,223	0.0178	2,198	-0.0002	-25
MD	2.0662	255,176	2.0391	251,829	-0.0271	-3,347
VA	21.6001	2,667,612	21.3168	2,632,624	-0.2833	-34,988
NC	27.8155	3,435,214	27.4458	3,389,556	-0.3697	-45,658

Source: Connecticut DEP Memo 11/6/92.

Table 6. 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 7. 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 8. 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 kempi* (Kemp's ridley turtle), Cc = *Caretta caretta* (loggerhead turtle).
 Source: North Carolina Division of Marine Fisheries, unpublished data.

Table 9. Overview of State Laws for Summer Flounder, Maine to North Carolina. (Note that this table is only a summary of State regulations. Fishermen should contact State agencies to obtain a complete copy of regulations applicable to summer flounder in their State.)

Maine

- Size limits:** 13" minimum size limit for both commercial and recreational fisheries. 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: \$33 for individual, resident operators; \$89 for resident operator with crew; \$334 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:** 14" minimum size limit for both commercial and recreational fisheries.
- Possession Limit:** Recreational limit of 6 fish per day.
- Gear restrictions:** Summer flounder may be taken by angling only.
- Seasons:** Recreational season from May 15 to September 30.
- Licenses:** Resident Commercial saltwater fishing license is \$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" minimum size limit for both commercial and recreational fisheries.
- Possession Limit:** Recreational limit of 6 fish per day.
- 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.

Quota: Commercial quota allocated by season and trip limits.

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 for commercial fisheries. Recreational season from May 15 to September 30.

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. A special permit is required of all commercial fishermen taking or landing summer flounder.

Rhode Island

Size limits: 14" minimum size limit for both commercial and recreational fisheries.

Possession Limit: Recreational limit of 6 fish per day.

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.

Quota: Commercial quota allocated by season and trip limits.

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: Recreational season from May 15 to September 30.

Licenses: Multipurpose commercial licenses allow for harvest and sale of fish: \$300 , with additional fees for specific gear types. There is no sport license to fish for personal use.

Connecticut

Size limits: 14" minimum size limit for both commercial and recreational fisheries.

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 \$50 - \$225 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" minimum size limit for both commercial and recreational fisheries.

Possession Limit: Recreational limit of 6 fish per day.

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

Quota: Commercial quota allocated by season.

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

Seasons: Recreational season from May 15 to September 30.

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. A commercial permit is required to fish for or land summer flounder.

New Jersey

Size limits: 13" minimum size for commercial fishery, 14" minimum size for recreational fishery.

Possession Limit: Recreational limit of 6 fish per day.

Gear restrictions: Trawls fishing for summer flounder must have a 5.5" minimum diamond mesh or 6.0" square mesh in cod end of otter trawl if in a directed fishery (defined as in possession of more than 100 pounds of summer flounder).

Quota: Commercial quota allocated by season .

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. Recreational season from May 24 to October 9.

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" minimum size for commercial fishery, 14" minimum size for recreational fishery.
- Possession Limit:** Recreational limit of 6 fish per day.
- 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:** Licensed commercial foodfishermen with valid gillnet permits may possess summer flounder from January 1 to May 23. Recreational season from May 24 to October 9.
- 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" minimum size for commercial fishery, 14" minimum size for recreational fishery.
- Possession Limit:** Recreational limit of 10 fish per day.
- 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. A minimum mesh size of 5.5" diamond or 6.0" square in the cod end of a trawl net is required.
- Quota:** Commercial quota allocated by season .
- Area closures:** There are numerous specific locations where trawl, gill, seine and/or other net gear are restricted.
- Seasons:** The recreational season in Maryland tidal waters of the Atlantic Ocean, its seaside bays and their tributaries is May 15 through September 30. The recreational season in the tidal waters of the Chesapeake Bay and its tributaries is June 1 through October 30.
- 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" minimum size for commercial fishery with a 10% tolerance by weight for pound nets, 14" minimum size for recreational fishery.

- Possession limit:** Recreational limit of 10 fish per day.
- 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".
- Quota:** Commercial quota allocated by season.
- Area closures:** All waters closed to trawling. Numerous area closures specific to gear types and species but unrelated to summer flounder.
- Licenses:** Virginia instituted a commercial fisherman's license, limited/delayed entry to the commercial fishery, mandatory reporting of commercial catch, recreational and charter boat saltwater fishing licenses in 1993. Purchase of a commercial fishing license is a prerequisite to buying the required commercial gear licenses.

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)

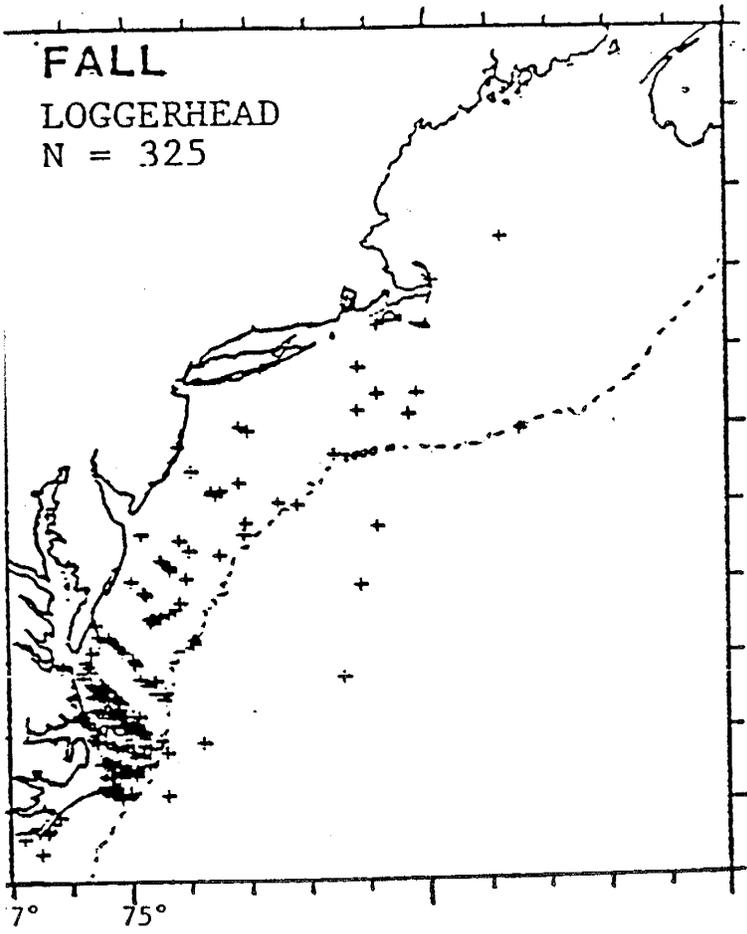
It is unlawful to trawl (except with fly nets) without a North Carolina Division of Marine Fisheries approved TED having a 4" bar maximum spacing with a minimum escape opening of 35" in horizontal taut length by 12" in vertical taut height installed in the trawl.

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 - Grout, MA - McKiernan, RI - Sisson, CT - Simpson, NY - Zawacki, NJ - McCloy, DE - Cole, MD - Early, VA - Boyd, and NC - Spitsbergen.



**FIGURE 1 : Fall (Sept.22-
 Dec.21) distribution of
 loggerhead sea turtles. From
 CeTAP, 1982.**

**FIGURE 2: Fishing grounds of
 North Carolina winter (Oct.-
 Jan.) trawl fishery. From Ross,
 1991.**

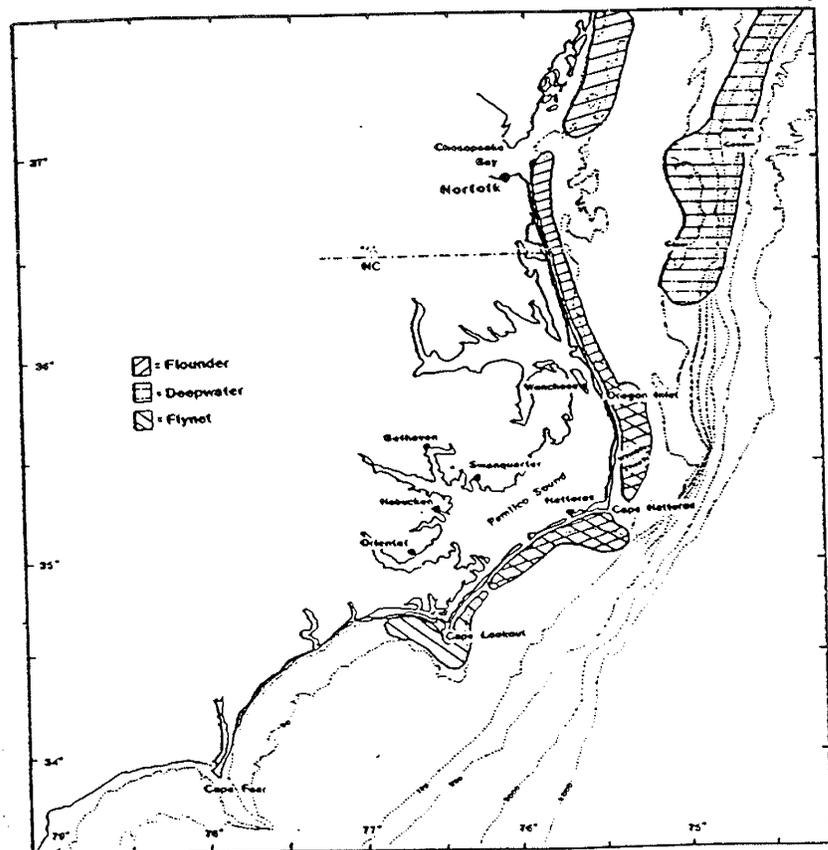
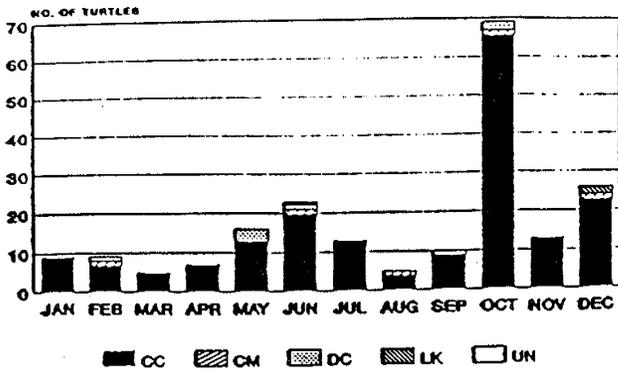


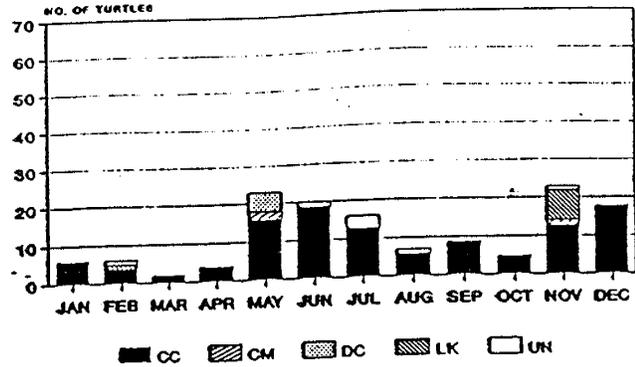
Figure 3:
From NMFS, SEFC. STSSN Database

NORTH CAROLINA SEA TURTLE STRANDINGS, 1985



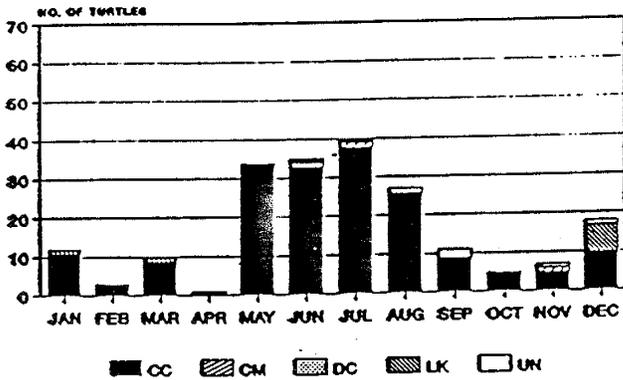
for '85 - 204

NORTH CAROLINA SEA TURTLE STRANDINGS, 1986



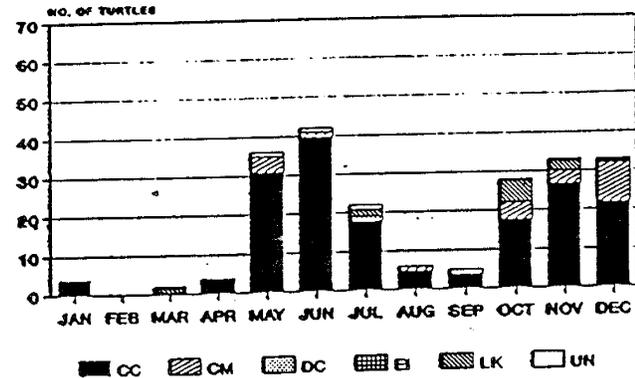
for '86 - 139

NORTH CAROLINA SEA TURTLE STRANDINGS, 1987



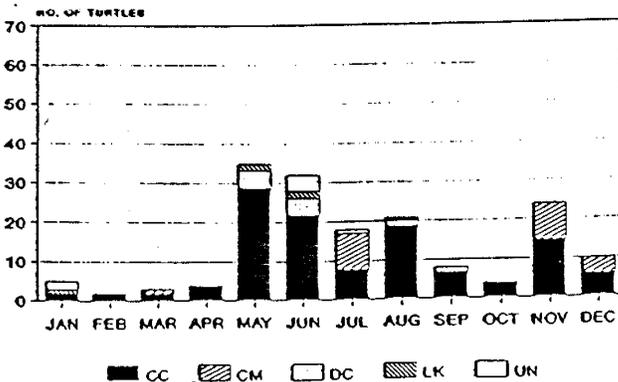
for '87 - 203

NORTH CAROLINA SEA TURTLE STRANDINGS, 1988



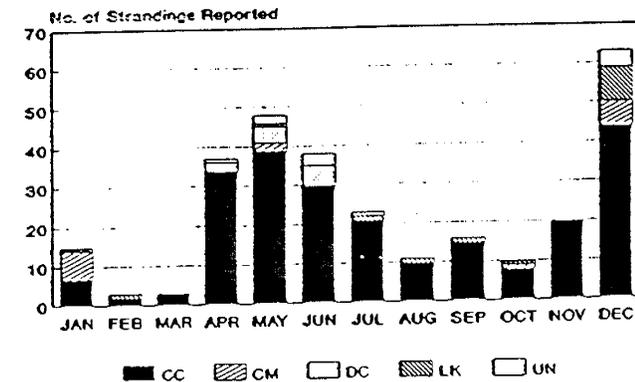
for '88 - 215

NORTH CAROLINA SEA TURTLE STRANDINGS, 1989



for '89 - 166

NORTH CAROLINA Sea Turtle Strandings, 1990



for '90 - 267

CC=*Caretta caretta* CM=*Chelonia mydas* DC=*Dermodochelys 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 original allocation formula in Amendment 2 to the Summer Flounder FMP would remain in effect.

1.2. Evaluation

The "No Action" alternative would not solve the problems identified in section 4. Connecticut's share of the summer flounder commercial quota would be based on historic landings data which were underreported. Connecticut's quota would therefore be lower than it's quota would have been if summer flounder landings in the state had been more completely documented.

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 4 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 4

The problems to be addressed are discussed in Section 4.2 of Amendment 4.

1.4. Management Objectives

The objectives of Amendment 4 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 4

The management measures are presented in Section 9.1 of Amendment 4. Other alternatives are presented in Appendix 1 to Amendment 4.

2. REGULATORY IMPACT ANALYSIS

The impacts of the management measures are presented in Section 9.2 of Amendment 4. Other alternatives are evaluated in Appendix 1 to Amendment 4.

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 4 are discussed in section 9.2.

3.3. Benefit - Cost Conclusion

The benefits and costs of Amendment 4 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 on 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 4 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 4.

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 4 do not favor large businesses over small businesses.

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 4 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 4 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 revised the Northeast exempted fisheries program and increased the large mesh threshold to 200 lbs during the winter fishery, 1 November to 30 April. Amendment 4 is intended to address the problems described in section 4.2 of the Amendment.

2. PURPOSE OF AND NEED FOR ACTION

The problems to be addressed in Amendment 4 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 Section 9.1 of Amendment 4. Other alternatives are presented in Appendix 1 to Amendment 4.

6. ENVIRONMENTAL IMPACTS

The impacts of adopted management measures are presented in Section 9.2 of Amendment 4. Other alternatives are evaluated in Appendix 1 to Amendment 4.

This action should have no impact on other fisheries because the slight reallocation of the quota should not cause fishermen in the ten states which lose quota share to shift to other fisheries.

A discussion of the impact to other fisheries by vessels changing to other fisheries as a result of

implementation of the quota is found in section 9.2.2.3.4 of Amendment 2.

7. MANAGEMENT COSTS

The impacts of the adopted management measures are presented in Section 9.2 of Amendment 4. Other alternatives are evaluated in Appendix 1 to Amendment 4.

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 4. Other alternatives are evaluated in Appendix 1 to Amendment 4.

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 .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 4 (section 9.1.2.5). They were also implemented by NMFS emergency action effective 2 December 1991.

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 4 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 4 might affect the coastal zone and was consistent. For Pennsylvania, the evaluation was that Amendment 4 would not affect the coastal zone.

Maine, New Hampshire, Rhode Island, Connecticut, Pennsylvania, and Delaware 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, Christopher M. Moore, Thomas B. Hoff, 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 SUMMARY AND SUMMARY OF WRITTEN COMMENTS

13 April 1992 Cape May, N.J.

The hearing was called to order by Chairman Lee Anderson at 7:13 p.m., at which time he read the opening remarks.

The hearing was well attended by public and Council members, including Larry Hoffman, Charlie Johnson, Al Goetze, Tom Hill from New England, Jim Gilford, Roger Locandro, Tony DiLernia, Alan Weiss, Bill Wells, Gil Radonski, Carl Safina, Tom McVey, Bruce Freeman, LTjg. Kondratowicz, Mark Schaeffer, Jack Dunnigan (ASMFC), and Dick Seamans and Kathi Rodrigues of NMFS. Staff present were Dave Keifer, Tom Hoff and Joanna Dougherty.

Mr. Keifer read the amendment summary. There were nine speakers.

1. Jake Dykstra: Supports amendment.
2. Charles Amory (VA): Supports amendment. Would like to see Connecticut added to overall total.
3. Joe Branin (Belford Coop): Read statement into record (will forward to Council).
4. Shawn Gehan (Fishermen's Dock, Pt. Pleasant, NJ): Read statement (attached). Does not support amendment.
5. Eric Smith (CT): Read statement (attached).
6. Earl Barr (Wanchese Fish Co, NC): Does not support amendment.
7. Tim Daniels: Agreed with Earl Barr.
8. Robert Guzzo (Stonington, CT): Read statement (attached). Wants numbers doubled.
9. Joe Mandieros: Said they were never asked to record. Very lax enforcement. Supports amendment. Will take Eric's numbers.

Hearing closed at 7:45 p.m.

QUESTIONNAIRES

Seven questionnaires were handed in during the hearing. Three supported the preferred alternative, one supported the no action alternative, one supported the Connecticut increase by raising the quota, and two expressed an opinion.

WRITTEN COMMENTS

Four letters were received during the comment period. Two supported Amendment 4 and two opposed quota management of summer flounder.

Shawn Yelton

**Statement
Of the Fishermen's Dock Cooperative, Inc.
Based in Pt. Pleasant, New Jersey**

**Submitted
April 13, 1993
To the Mid-Atlantic Fishery Management Council
On Amendment 4 to the Summer Flounder FMP**

The Fishermen's Dock Cooperative, Inc. of Pt. Pleasant, New Jersey, representing 17 vessels and providing more than 50 crew and shoreside jobs, would like to take this opportunity to thank the Mid-Atlantic Council for allowing us this time to present our testimony on Amendment 4 to the Summer Flounder FMP.

As the Council is undoubtedly aware, our members have a bit more time than usual to attend meetings as the New Jersey Summer Flounder season for this winter has been closed. The reason the season has closed, and closed so quickly, appears at least to the fishermen of Pt. Pleasant to be the result of a vast abundance of Fluke whose stocks we have seen vastly rebound over the past three years.

With respect to the Amendment before us today, we would just like to make the following comments:

* While we agree that Connecticut deserves a larger share of the quota, the Fishermen's Dock Cooperative strongly feels that it should not come off the quotas of the other states. No one disputes the fact that Connecticut was disadvantaged by the lack of reliable landings data, however, we believe this points out problems inherent in the way fisheries are managed here in the U.S. The information available to fisheries managers is incomplete and tends to lag, and the process drags out so long that we now find ourselves reacting to the crises of 1989 and 1990 when it no longer exists.

* The speed with which the Council has taken up this action and the request of North Carolina and Virginia to be able to share quotas indicates to us that if the Council had the will, it could move quickly to either increase or completely lift the 1993 quota. Given the amount of Fluke that our fishermen are currently forced to throw over the side dead, we of Pt. Pleasant strongly feel that both the spirit and intent of the Magnuson Act are being violated. It is clear that we are not allowed to landed the optimal yield from this fishery and that the total allowable catch has been set far too low.

Summer Flounder are prolific breeders and a very fast maturing fish. All the science we have seen indicates that there

existed unusual circumstances, including reduced effort, in 1989 and 1990 which while temporarily depressing the stocks, also led to excellent year classes which we started seeing in 1991 and 1992, which was an excellent year. Further, even though this stock has supposedly been over-fished since the late 1960s, we have seen record levels of abundance in the mid-1980s. The science for this species is not strong enough to support this draconian quota.

In summation, we simply want to make a plea to the members of the Council to take a serious look at the possibility of extending Amendment 4 of the Summer Flounder FMP to include a broad-based increase in the coast-wide quota. We believe this can be justified on the grounds of the most recent data (i.e., 1991-93 landings) available to the Council. Further, we at the Fishermen's Dock know, or at least hope, that the Councilmembers share our outrage and disgust with the despicable waste that is occurring solely due to this management initiative.

We are looking at very difficult times if no such adjustment is made. The abundance of Fluke virtually guarantees that the high seas fleet will fill the coastal quotas long before the Summer Flounder migrate within the reach of our day-boats.

Thank you very much for this opportunity to testify.

- Additional Comments -
Fishermen's Dock Cooperative, Inc.

We would also like to take this opportunity to enter into the record for this hearing - and to direct the attention of all of those involved in fisheries management at the state, regional and federal levels to - the following:

1). The current fluke management regime has severely interfered with our traditional fishing practices at the Point Pleasant Cooperative during a period when the species that has historically provided most of our yearly revenues - silver hake - has become all but unavailable to our boats, when the price of another of our major products - squid - has been on a downward spiral and when we are about to be closed out of what has been for us a historic scallop fishery by the most recent Sea Scallop FMP amendment. The excessively and needlessly harsh fluke restrictions are thus exacerbating a situation which if allowed to continue will unquestionably force a number of our members out of fishing.

2). The current fluke management regime has caused the redistribution of New Jersey's commercial fluke landings away from the traditional pattern by ignoring the limitations of the small dragger fleet and controlling the fishery in a manner that favors the larger boats typical of southern ports. This has - as we have previously cautioned - severely penalized the smaller boat fleet that impacts the fluke stocks the least while it rewards the larger, more "efficient" vessels.

3). The "one mesh on board" requirement imposed by the current fluke management regime has caused the unconscionable waste - through the needless discarding of dead fish - of thousands of pounds of salable fluke by the otter trawl and scallop fleets.

4). The current fluke management regime has forced us into a mode of fishing which doesn't fit with the naturally occurring species assemblages available to us in the New York Bight, doesn't allow the continuation of a style of fishing (and a way of life) that has evolved in the region and has sustained hundreds of fishermen, their families and an extensive support industry over generations, and doesn't sustain a fresh fish distribution and marketing system which we have developed in the Mid-Atlantic to effectively and efficiently deliver ocean-fresh products to customers in the largest seafood market in North America.

5). The current fluke management regime is costing us market position that it has taken us years to gain. Our domestically produced product is being displaced in our local markets by imports of inferior quality that, if your management efforts ever prove effective, we will have to compete with just to get back to where we were.

The recent amendments to the fluke management plan are part and parcel of a management philosophy which, if continued by the National Marine Fisheries Service, the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Council and the various coastal state governments, will doom the traditional small-boat, mixed trawl fishery and will radically and irrevocably change the complexion of our industry and of our coastal fishing communities. Our ability to effectively participate in the four fisheries that have provided the bulk of our income for decades is being severely restricted or stopped by the actions (and the inaction) of this Council. You are well on your way to destroying a traditional industry and a way of life that has thrived since colonial times, that has contributed immeasurably to the character of our coastline and that, once gone, will never be replaced. If this is how you are going to proceed - down a path that has already put the family fishing business on the same endangered list as the family farm - then we hope you are fully aware of the social, economic and cultural consequences that will result.

Eric Smith

AMENDMENT #4

SUMMER FLOUNDER PUBLIC HEARING

TESTIMONY OF

ERIC M. SMITH
CONNECTICUT DEPARTMENT OF ENVIRONMENTAL PROTECTION
FISHERIES DIVISION

APRIL 13, 1993

My name is Eric Smith and I am Assistant Director of the Connecticut DEP's Fisheries Division. I appreciate the opportunity to speak before you on the subject of Amendment Four to the Summer Flounder Fishery Management Plan. My comments are offered for the Department and also on behalf of Connecticut citizens affected by the allocation system embodied in the plan.

I would first like to observe something that might be unpopular in some quarters but we feel very strongly about it. On principle, we have no strong objection to the allocation system. Were it not for the inadvertent bias that surfaced long after the plan had gained considerable momentum, we would not be here, rather, we would be encouraging Connecticut residents to tighten their belts like everyone else in order to achieve a very necessary objective -- the rebuilding of summer flounder spawning stock biomass. While I, like many others, would have wished for some other means than a quota, the deliberations that went into the plan clearly resulted in the conclusion that state-specific quotas were the most equitable means of sharing a very meager pie. I have no quarrel with this mechanism. Our concerns result from the bias in data collection methods that are the root cause of our dilemma.

First, I'd like to dispel the notion that this is "just giving fish to Connecticut because they want it." It is not. It is a proposal offered in recognition that a systematic bias occurred in how data was collected. The proposal represents the fairest way the Atlantic States Commission could develop to return fish to Connecticut's share that would have been there in the first place if the reporting system had performed the same way in all states. Moreover, implementation of the proposal can be done with a virtually undetectable level of impact in the other states.

Eight weeks ago, the Connecticut summer flounder fishery was closed for the year. This is regrettable for a number of reasons. The fact that it probably could have been avoided with more consistent data collection is a hollow sounding reason in the view of Connecticut's fishermen. Much damage has already been done; if this amendment is not approved, the impact throughout the remainder of 1993 and beyond will be enormous. The amendment is an attempt to minimize some of that impact. I would ask fishermen from other areas concerned about this proposal to ask themselves how they would feel if it happened to them. And I hope they will agree that, given the minimal impact of the proposal, it is proper to support it.

Thank you for your consideration.

Mr. Chairman, in reviewing the draft, two technical questions arose. I will provide those questions to staff for them to consider but, unless you disagree, I don't believe it is necessary to describe them at this time.

Importantly, it was the very minor effect on other states' shares which finally influenced the ASMFC Summer Flounder Board to approve this proposal in February, when it became obvious that states could not even measure the differences between the existing shares and the proposed new ones within the context of the dealer-based weekly reporting system, and with a five day delay in the reporting deadline. Effectively, the Commission and then the Council recognized that this level of impact was so minor as to be undetectable and would thus become some minor level of overage (if any) to be deducted from the 1994 shares. Importantly, this understanding was embraced in the context of stock rebuilding which is likely to produce quota shares for 1994 that are measurably greater than the amount of overage which will result from this proposal. In effect, this proposal provides states the opportunity to borrow a small amount of fish from a larger quota next year, to correct a legitimate problem in Connecticut this year. There doesn't have to be any cost to any other state's fishermen this year; no fish have to be taken away.

Believe me, I'm sensitive to concerns that fishermen may have. In this day and age of commercial fisheries, no one feels they're in a position of giving up any kind of opportunity. I understand this. I'd like to explain the viewpoint in Connecticut, though, so that fishermen elsewhere can have the benefit of that perspective. Arthur Medeiros, President of the Connecticut-based Southern New England Fishermen's Association ^{has made comments to you} ~~will comment as well~~, and I'm sure he ~~will~~ convey ^{to you} in his own way just what effect this has had in Connecticut. *Others are here to speak this evening.*

When the state share system was designed, a bias was created. This much is now widely agreed upon and, while it has taken some time for that acknowledgment to be achieved, I truly appreciate the strength of conviction that has allowed the Council and the Commission to alter their course and rectify a problem.

The problem is this: For a period of years in the early to mid-1980's, Connecticut did not have the authority to collect landings data from offshore fishermen, and NMFS never devoted a port agent to the State. Landings were estimated via a one-time-only, year-end telephone call to dealers. As a result, Connecticut landings were not documented with a diligence equal to that employed in other states and, in some cases, were not recorded at all.

The proposal embodied in Amendment Four is intended to reconcile this bias by reconstructing the level of landings that likely occurred, based on the performance of the southern New England fishery surrounding Connecticut in the affected years. As you can see from the public hearing document, rectifying the problem marginally increases Connecticut's state share from 0.95% to 2.25%. The effect on other states in order to rectify the problem is minor in terms of the proportion of the change to the magnitude of the states' quota -- in state shares, from two one hundredths of one percent in Delaware to less than four tenths of one percent in North Carolina. The differences among state shares simply reflect the proportion of their total quota share (North Carolina had the greatest share, states like Delaware and Maine had the lowest).

Two technical questions referred to in the public hearing comments of Eric Smith, April 13, 1993.

1. Should the draft regulations include the provision embodied on page 13 (the measure minimizing impact in the event the 1993 coastwide quota is not taken)?
2. Also on page 13, paragraph 7, is the provision regarding closing the EEZ to vessels of a particular state consistent with the final provisions of Amendment 2?

Earl Surr

Memorandum for Record

From: Timothy B. Daniels, Wanchese Fish Co.

Date: 18 February 1993

Subject: Summer Flounder (Fluke)

1. NOAA estimates that U.S. Commercial Landing for 1992 of Summer Flounder will be about 20.2 million pounds (9.2 kmt.) If we add to this a reasonable allocation of 8.6 kmt for recreational fisherman the number grows to 17.8 kmt. (39,240,000 #'s)

2. If we compare this data to previous years, the statistics appear somewhat encouraging:

	Recreational	Commercial	Total
1990 - 6.6 kmt.	5,366,740	9,153,260	= 14,520,000
1991 - 9.8 kmt.	7,920,000	13,640,000	= 21,560,000
1992 - 17.8 kmt.	19,000,000	20,240,000	= 39,240,000

The increase from 1990 to 1991 was 48.5% in Summer Flounder Landings. The increase from 1991 - 1992 was 45%. The increase from 1990 - 1992 was 200.7%

3. The average 1993 trip in Virginia appears to be up 50% over 1992. January to February 10, 1993 allowed only 20 fishing days because of weather conditions and in that time Virginia landed 1,200,000 #'s of Summer Flounder. This represents 45% of the annual quota. This in the first 20 fishing days of the year. These statistics do not appear to support the contention that Summer Flounder fish stocks are overexploited.

4. Many boats have departed for Florida to begin the Calico Scallop Fishery. This further reduces the fishing pressure on Summer Flounder.

5. It seems to me that we are unnecessarily constraining the fluke landings of the Eastern United States. The 5 1/2" mesh size for N.C. nets, The 13" minimum size fish, and the Virginia 3 mile limit seems to have increased the landings by over 200% without any other constraints.

PROBLEMS

1. STATE TO STATE LANDINGS:

- (A) THE FISH MASS HAS MIGRATED NORTH TO R.I. AND MASS.
- (B) THE ONLY STATE WITH ANY QUOTA REMAINING IS NORTH CAROLINA. IT IS 2-3 DAYS STEAMING TIME FROM THE FISHING GROUNDS TO OUR BASE IN WANCHESE NORTH CAROLINA.
- (C) THIS SITUATION IS EFFECTING THE QUALITY OF THE FISH AND THE COSTS OF THE FISH TO THE CONSUMER.

2. THERE IS NOT CURRENTLY ANY ORDERLY RULE REGARDING THE EXISTING QUOTA'S AND THE LANDING OF FISH, I.E.:

- (A) SOME STATES ALLOW OUT OF STATE BOATS TO LAND AND OTHERS DO NOT, I.E.: N.J. WILL NOT ALLOW N.C. AND VA. BOATS TO LAND IF THEY DO NOT HAVE A PREVIOUS HISTORY OF LANDING IN N.J.. N.C. AND VA. DO ALLOW N.J. BOATS TO LAND FISH ANYTIME.
- (B) WE HAVE THE SAME PROBLEM WITH R.I. AND MASS.. R.I. BOATS GO TO MASS., WITH THE RIGHT TO OFF LOAD THEIR BOATS TO GO ON THE MASS. QUOTA, BUT THE FISH WERE SOLD FROM R.I.. R.I. DEALERS DO NOT ALLOW MASS. BOATS TO 1/2 PACK IN R.I.

QUESTION: WHEN WILL WE ESTABLISH AN ORDERLY PROCEDURE THAT WILL ALLOW FISH TO BE LANDED AT ANY FISHING PORT, REGARDLESS OF STATE, WHEN THEY HAVE QUOTA'S, FISHING PERMITS AND PROPER GEAR.

3. A SECOND MAJOR PROBLEM AND WASTEFUL RULE REGARDS BY-CATCHES.

FOR EXAMPLE WE HAD A BOAT FISHING FOR DOG FISH, IN THE HARVESTING PROCESS WE CAUGHT 1500 POUNDS OF FLUKE OFF OF MASS.

WE ARE CURRENTLY ALLOWED TO TAKE ONLY 100 POUNDS FOR LANDING, THUS 1400 POUNDS HAD TO BE DUMPED OVER BOARD. THIS IS WASTEFUL LAND DOES NOT MAKE ECONOMIC SENSE. THIS IS NOT CONSERVATION.

THESE ARE A FEW EXAMPLES OF THE MIS-MANAGEMENT OF THE SUMMER FLOUNDER PROBLEMS.

THIS MEETING TODAY IS TO TRY AND GIVE CONN. MORE QUOTA. I PERSONALLY DO NOT HAVE A PROBLEM WITH THIS BECAUSE I FEEL THAT ALL STATE QUOTA'S HAVE BEEN SET TO LOW. VA. HAS BEEN PACKING BOATS FOR ITS DEALERS FOR YEARS. THESE LANDINGS HAVE NOT BEEN REPORTED ON VA. OR N.C. QUOTAS.

FURTHERMORE, WE KNOW THAT THE VA. / N.C. DATA IS INCORRECT, JUST AS YOU ARE ADMITTING THAT CONN. DATA IS INCORRECT. WE FEEL THAT REDUCING ALL OF THE OTHER STATES QUOTA'S TO GIVE MORE QUOTA TO CONN., IS UN-THINKABLE.

IT APPEARS TO US THAT THE MID-ATLANTIC COUNCIL HAS JUMPED TO A CONCLUSION BASED ON ONE BAD YEAR (THE CLASS OF 89-90) WITHOUT TAKING INTO CONSIDERATION WHAT HAS HAPPENED SINCE THEM. SINCE 89-90 YEAR, THE LANDINGS HAVE BEEN STEADILY RISING BY ABOUT 50 PERCENT PER YEAR. THE 5 1/2 INCH MESH SIZE, THE 13 INCH FLOUNDER RULE IN N.J., VA., N.C. AND THE 14 INCH RULE FURTHER NORTH, HAS STEADILY BROUGHT THE STOCK BACK TO THE POINT WHERE IT IS IN GOOD CONDITION.

DUE TO THE WEATHER FISHERMEN HAVE ONLY BEEN ABLE TO FISH 50 PERCENT OF THE TIME.

(SEE MEMORANDUM ENCLOSED WITH DETAILS)

WHEN VIRGINIA CLOSED, WANCHESE FISH CO. HAD TO MOVE ITS LANDINGS TO N.C. UNDER OUR N.C. QUOTA WITH THE RESULTS THAT THE FIRST TWO VESSELS TO ENTER OREGON INLET, RAN AGROUND DUE TO SHOALING. EXTENSIVE DAMAGE TO RUDDERS, WHEELS AND THE BOTTOM OCCURRED. AS A MATTER OF FACT ONE OF THE TWO BOATS IS STILL ON THE SHOAL AND THE OTHER TIED UP DUE TO WEATHER.

THIS STATE BY STATE QUOTA SYSTEM IS CAUSING UNCALLED FOR HAZARDS TO THE SAFETY OF THE CREWS, OUR VESSELS AND SAFETY PROBLEMS. IT IS CAUSING FINANCIAL HARDSHIPS AS WELL.

RECENTLY, THREE BASEBALL PLAYERS HIT A DOCK IN FLORIDA KILLING TWO AND BADLY INJURING ONE. THIS BROUGHT GREAT NATIONAL MEDIA AND FEDERAL ATTENTION. CONTRASTED THAT WE THE RISKS YOUR REGULATIONS ARE CAUSING THE FISHING INDUSTRY. WE QUESTION THAT WHEN YOU PUT IN THE QUOTA SYSTEM, THAT LITTLE OR NO THOUGHT WAS GIVEN TO CREW AND VESSEL SAFETY.

IN ADDITION THE USE OF TED'S IS GOING TO FURTHER REDUCE LANDINGS BY 30-40 PERCENT IN OUR JUDGEMENT. COUPLE THIS UP WITH 50 PERCENT OF THE N.C. BOATS HAVE MOVED INTO THE CALICO SCALLOP FISHERY IN FL. AND ARE NOT COMING BACK.

RECOMMENDATIONS

1. DO AWAY WITH THE QUOTAS. CONSIDER GOING TO I.T.Q. (INDIVIDUAL TRIP QUOTA) SYSTEM.
2. LET FISHERMAN, DEALERS AND COUNCIL GET BACK INTO HARMONY IN

- THESE HARD ECONOMIC TIMES. DO AWAY WITH STATE BY STATE QUOTAS.
3. DISCOUNT THE DATA FROM THE BAD YEAR OF 89-90. DEAL ONLY WITH THE DATA FROM 1991-92 AND 1993. WE ALREADY HAVE THE 1993 DATA BECAUSE ALL STATES ARE NOW CLOSED EXCEPT N.C. THEN WE WILL HAVE ACCURATE DATA FROM WHICH TO CONSIDER QUOTA'S.
 4. WANCHESE FISH CO. HAS PREVIOUSLY VOLUNTEERED TO MAKE ITS TRAWLERS AND CREW AVAILABLE TO YOUR BIOLOGIST TO ARRIVE AT THE ACTUAL STATE OF THE STOCK. THIS OFFER WAS REFUSED ON THE BASIS OF "WE KNOW THERE ARE NOT FISH OUT THERE". THIS IN SPITE OF COMMERCIAL FISHERMAN STATING THE STOCK AND CATCHES WERE PLENTIFUL AND NOT OVER FISHED. THE LAST THING OUR INDUSTRY WANTS IS DEPLETION OF THE STOCK. WE ARE CONSERVATIONISTS.

A handwritten signature in black ink, appearing to read "Capt. E.W. Barr". The signature is fluid and cursive, with a long, sweeping stroke at the end.

CAPTAIN E.W. BARR

WANCHESE FISH CO.

(Guzzo)

In the years 1987 through 1991, Stonington, Connecticut, has landed significant amounts of summer flounder which are not included in the Connecticut landings. These summer flounder landings are primarily from ~~Connecticut~~ ^{out of state} boats which spend considerable time in the summer home ported in Stonington. A check of Connecticut records confirm that these "across the dock" fish are not included. From the records of Stonington Seafood, these non-recorded Connecticut fish are as follows:

1987 -	397,123 lbs.
1988 -	239,161 lbs.
1989 -	115,950 lbs.
1990 -	103,000 lbs.
1991 -	<u>138,362</u> lbs.
	993,596 lbs.

Thus, Connecticut landings were 3,511,696, not 2,518,100 as assumed in the September 19, 1991 memo. Comparing Connecticut's catch to the combined Rhode Island, New York, Massachusetts and New Jersey catch data results in a 6.8% share for Connecticut. Applying this factor to the combined Rhode Island, New York, Massachusetts and New Jersey data leads to the following adjusted Connecticut data for 1980-1986:

1980 -	523,151 lbs.
1981 -	642,695 lbs.
1982 -	804,501 lbs.
1983 -	897,722 lbs.
1984 -	994,602 lbs.
1985 -	1,219,498 lbs.
1986 -	1,139,006 lbs.
<hr/>	
1987 -	1,006,223 lbs.
1988 -	980,151 lbs.
1989 -	628,950 lbs.

Adding the out of state shipments increases, the 1980-1989 Connecticut landings, 2,453,850 lbs. Assuming that those

landings are not reported elsewhere (if they are, they should be deducted from that state), Connecticut's share of the total landings is $8,836,449/285,235,549$ or 3.09785. Applying this percentage to the 13,500,000 quota, Connecticut's share should be 418,203 lbs.

APPENDIX 5. DRAFT PROPOSED REGULATIONS

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR 625

[Docket No.]

Atlantic Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to revise the allocation formula used to derive the state-specific quotas for the summer flounder commercial fishery.

DATE: Comments on the proposed rule must be received on or before [insert date 45 days after publication in the FEDERAL REGISTER].

ADDRESSES: Comments on the proposed rule, the FMP, or supporting documents should be sent to Mr. Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, Massachusetts 01930-2298. Mark the outside of the envelope "Comments on Summer Flounder Plan".

Copies of the Amendment, the environmental assessment, and the regulatory impact review are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19901- 6790.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, Resource Policy Analyst, 508-281-9423.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Amendment was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission and the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed Amendment was published in the FEDERAL REGISTER on [insert date] (FR). Copies of the Amendment are available from the Council upon request at the address given above. The Amendment revises management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act of 1976, as amended (MFCMA). The management unit continues to be summer flounder in US waters in the western Atlantic Ocean from North Carolina northward. The objectives of the FMP continue to be: (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; and (6) Minimize regulations to achieve the management objectives stated above.

Amendment 1 to the FMP added a definition of overfishing. Amendment 2 instituted measures to stop overfishing and allow the stock to rebuild. Amendment 3 revised the Northeast exempted fishery program and increased the large mesh threshold to 200 lbs during the winter fishery from 1 November to 30 April. Amendment 4 is designed to make one revision to Amendment 2.

Amendment 2 to the FMP, as adopted by the Council and approved by the National Marine Fisheries Service (NMFS), included a formula to allocate the commercial summer flounder quota to the States based on their share of commercial landings for the period 1980-89. However, for a period of years in the early to mid 1980's, Connecticut did not have the authority to collect landings data from offshore fishermen and NMFS did not provide a port agent to the state. As a result, some landings were not recorded. Consequently, Connecticut's share of the commercial summer flounder quota is based on historic landings data which were underreported. Connecticut's quota is therefore lower than it's quota would have been if summer flounder landings in the state had been more completely documented. The purpose of this amendment is to resolve this problem by adjusting Connecticut's commercial landings of summer flounder and revising the state-specific shares of the coastwide commercial summer flounder quota.

The remaining provisions of the existing FMP continue in effect unchanged.

CLASSIFICATION: Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of the receipt of the Amendment and proposed regulations. At this time the Secretary has not determined that the Amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an environmental assessment for the Amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address listed above.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the draft regulatory impact review which demonstrates positive net short term and long term economic benefits to the fishery under the proposed management measures. A copy of this review may be obtained from the Council at the address listed above.

The proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, require the Secretary to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of the order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because of the reasons set forth in the regulatory impact review prepared by the Council, a copy of which may be obtained from the Council at the address listed above. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. For New Hampshire, the evaluation was that the Amendment might affect the coastal zone and was consistent. For Pennsylvania, the Council determined that this rule will not affect the coastal zone. Maine, New Hampshire, Rhode Island, Connecticut, Pennsylvania, and Delaware have concurred with the Council's opinion.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 625

Administrative practice and procedure, Fish, Fisheries, Vessel permits and fees.

Dated:

Assistant Administrator for Fisheries

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 625.20(d) is revised to read as follows:

§625.20 Catch quotas and other restrictions.

* * * * *

(d) *Distribution of annual quota.* The annual commercial quota will be distributed to the States based upon the following percentages:

<u>State</u>	<u>Share (%)</u>
Maine	0.0476
New Hampshire	0.0005
Massachusetts	6.8205
Rhode Island	15.6830
Connecticut	2.2571
New York	7.6470
New Jersey	16.7250
Delaware	0.0178
Maryland	2.0391
Virginia	21.3168
North Carolina	27.4458

All summer flounder sold in a State shall be applied against that State's annual commercial quota regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any State will be deducted from that State's annual quota for the following year.

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 - 1988.

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.