

Amendment 5
to the Fishery Management Plan for the
Summer Flounder Fishery

April 1993

Mid-Atlantic Fishery Management Council

In cooperation with:

Atlantic States Marine Fisheries Commission
National Marine Fisheries Service
New England Fishery Management Council
South Atlantic Fishery Management Council

Draft adopted by MAFMC: 15 April 1993
Final adopted by MAFMC: 15 July 1993
Final approved by NOAA: 17 December 1993

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2. SUMMARY

This Amendment 5 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 ASMFC and approved by the National Marine Fisheries Service (NMFS), established a coastwide quota to manage the commercial fishery. The quota was allocated to the States based on shares derived from a State's percentage of commercial landings for the period 1980-89. In 1993, the first year the quota was implemented, fishermen from States who had traditionally landed summer flounder in their home ports, changed their fishing patterns and landed summer flounder in other States. In addition, in several instances, vessels fishing for summer flounder encountered emergency situations which forced them to offload in States that were not their point of destination. In both situations, the amount of summer flounder quota available to fishermen who traditionally used the ports in their home State was reduced. The purpose of this amendment is to resolve these problems by allowing two or more States, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine their summer flounder commercial quota between their States.

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	7
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	8
6.2. Habitat Condition	8
6.3. General Causes of Pollution and Habitat Degradation	8
6.4. Habitat Protection Programs	8
6.5. Habitat Conservation and Restoration Recommendations	8
6.6. Habitat Research Needs	8
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	9
9.2. Analysis of Impacts of Adopted Management Measures	17
9.3. Relation of Recommended Measures to Existing Applicable Laws and Policies	21
9.4. Council Review and Monitoring	25
10. REFERENCES	25
11. TABLES AND FIGURES	27

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. PUBLIC HEARING SUMMARIES	App 4-1
5. COMMENTS AND RESPONSES	App 5-1
6. PROPOSED REGULATIONS (blue paper)	PR-1
7. GLOSSARY OF TECHNICAL TERMS AND ACRONYMS (white paper)	App 7-1

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.

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 under reported. 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. Amendment 4 resolved 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.

4.2. PROBLEM FOR RESOLUTION

4.2.1. Summer flounder quota cannot be combined or transferred between States

Amendment 2 to the FMP, as adopted by the Council and approved by the National Marine Fisheries Service (NMFS), established a coastwide quota to manage the commercial fishery. The quota was allocated to the States based on shares derived from a State's percentage of commercial landings for the period 1980-89. In 1993, the first year the quota was implemented, fishermen from States who had traditionally landed summer flounder in their home ports, changed their fishing patterns and landed summer flounder in other States. In addition, in several instances, vessels fishing for summer flounder encountered emergency situations which forced them to offload in States that were not their point of destination. In both situations, the amount of summer flounder quota available to fishermen who traditionally used the ports in their home State was reduced.

One example of the emergency situation is a vessel loaded with summer flounder was steaming for North Carolina. The vessel's propeller reportedly broke and the vessel was towed by the Coast Guard to Cape May, NJ, and arrived during a closure in the New Jersey summer flounder fishery. The summer flounder were landed and shipped by truck to North Carolina, but the vessel was fined for landing during a closure.

Changes in fishing patterns have reportedly occurred for a number of reasons. Apparently Oregon Inlet, North Carolina, is silted such that the larger fishing vessels can have problems traversing it under certain conditions. Under these conditions it is reportedly better for those vessels to land in Hampton, VA, rather than to try to traverse Oregon Inlet and land in Wanchese, North Carolina.

Another geographical adjustment took place during the 1992-93 winter summer flounder fishery. Reportedly the summer flounder did not migrate as far south as usual, so the vessels could fish off Virginia and land in Hampton, Virginia, rather than fishing off North Carolina and landing in Wanchese. An additional benefit to the vessels in this situation was that the fishery took place north of the area where special measures had to be taken to deal with sea turtles. The effect of all of this is that Virginia quota was taken by vessels that normally have landed Wanchese, NC.

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 rigged 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 rigged" 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.

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 not 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.

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 to 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).

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.

Two or more states, under mutual agreement and with the concurrence of the Regional Director, could transfer or combine their summer flounder commercial quota between their states. These transfers or combinations would not permanently affect the state specific share of the coastwide quota that each state would receive each year, i.e., the state-specific shares would remain fixed. The Regional Director may establish regulations and procedures for the implementation of the transfer or combination provision.

Any landings in a State in excess of the previous year's quota, including any transfers from other States, would be subtracted from that year's quota. In the case of a State exceeding a combined quota established for a previous year, each State involved in the combination would receive a proportional reduction (based on their original state-specific shares) in that year's quota.

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.

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 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 possessing summer flounder in excess of the seasonal bycatch amounts. 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 five 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.

Implementation of the vessel reporting shall begin no later than January 1, 1994.

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.

Amendment 5 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.

Amendment 2 established the State by State commercial fishery quota system for summer flounder, based on historical landings data. That system was found to be consistent with National Standard 4, as well as with the other National Standards. However, experience since the implementation of Amendment 2 has led to the conclusion that temporary, in season, adjustments to the State by State quota allocations are appropriate to minimize short-term problems (for example, vessel breakdowns) and long-term problems (for example, a shoaled inlet). These revisions assure that the summer flounder management regime will be fair to all fishermen.

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.

The modifications made to the management regime through Amendment 5, which will allow for the transfer or combination of commercial quota between or among two or more States with the approval of the Regional Director, will allow for variations in the fishery and contingencies that cannot be anticipated.

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 allowing States to transfer or combine their summer flounder commercial quota

Amendment 2 to the FMP, as adopted by the Council and approved by the National Marine Fisheries Service (NMFS), established a coastwide quota to manage the summer flounder commercial fishery. The quota was allocated to the States based on shares derived from a State's percentage of commercial landings for the period 1980-89. However, the Amendment did not contain language that would allow States to transfer or combine quota to address problems that would occur as the result of changes in stock location, modifications in commercial landing patterns, emergency situations, or other factors.

In 1993, the first year the quota was implemented, fishermen from North Carolina, who had traditionally landed summer flounder in North Carolina ports, landed summer flounder in Virginia. They did this for several reasons including the fact that summer flounder were concentrated off the Virginia coast, sea turtles were present off the North Carolina coast and TEDS were required to fish in these areas, and because of the danger associated with navigating through Oregon Inlet on their way to North Carolina ports. As a result, the amount of summer flounder quota available to Virginia fishermen was reduced as the quota was quickly filled by North Carolina vessels.

In addition, in several instances, vessels fishing for summer flounder encountered emergency situations which forced them to offload in States that were not their point of destination. As a result, the quota for fishermen who traditionally used those ports in their home State was reduced.

This Amendment will resolve these problems by allowing two or more States, under mutual agreement and

with the concurrence of the Regional Director, to transfer or combine their summer flounder commercial quota between their States. These transfer/combination of quota could occur both in response to year to year variations in stock dynamics and fishermen behavior, in response to short term emergency situations, or other factors.

For example, an agreement between Virginia and North Carolina would allow for a transfer or combining of quota between these two States to offset the increased use of Virginia ports by North Carolina fishermen in some years. In addition, these agreements could allow for a State to transfer small amounts of quota to another State under emergency situations, e.g., mechanical breakdown of a vessel that would force it to offload in another port that was not its home port. Without an interstate agreement, a vessel might be forced to dump its catch of summer flounder or pay a fine if it had to dock in a State with a closed fishery (e.g., the quarterly quota had been taken in a State and the fishery was closed).

These transfers or combinations would not permanently affect the state-specific share of the coastwide quota that each State would receive each year, i.e., the state-specific shares would remain fixed. As such, there should be no adverse impact to fishermen in the affected States since traditional quota shares would remain unchanged. In addition, the summer flounder stock would not be impacted by shifts in quota between States since the total coastwide quota would remain constant and the target fishing mortality rate would not change.

However, any State utilizing their authority to combine quota should explore impacts on Federal funds and/or Army Corps of Engineers' projects. Specifically, the ability to transfer and combine quota may provide enough relief from an otherwise high priority dredging and bulkheading project to lower the priority of the project to the point that the engineering solution is not implemented.

When a State reaches its quota and the summer flounder fishery is closed, costs are imposed on fishermen and dealers. For the fishermen, their fuel costs increase if that move to a port in another State or income is lost if they are unable move to other ports. Dealers must purchase summer flounder from out of state fishermen and transport it to their facilities. All of these cost increases ultimately increase prices to consumers.

9.2.2.3. Prices to consumers

Amendment 5 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

This amendment will allow States to transfer or combine summer flounder quota. Because these transfers/combinations will be mutually agreed upon by the Directors of Marine Fisheries in each State, they should be beneficial to fishermen in both affected States. Transfers or combinations will only occur in situations where a vessel or vessels are forced to land in other States besides their home State due to changes in stock location, physical barriers to traditional ports, emergency situations, or other factors.

These transfers or combinations would not permanently affect the state-specific share of the coastwide quota that each State would receive each year, i.e., the state-specific shares would remain fixed. As such, there should be no adverse impact to fishermen in the affected States since traditional quota shares would remain unchanged. In addition, the summer flounder stock would not be impacted by shifts in quota between States since the total coastwide quota would remain constant and the target fishing mortality rate would not change.

9.3. RELATION OF RECOMMENDED MEASURES TO EXISTING APPLICABLE LAWS AND POLICIES

9.3.1. FMPs

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

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

9.3.2. Treaties or international agreements

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

9.3.3. Federal law and policies

9.3.3.1. Marine Mammals and Endangered Species

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

Four hundred and seventy one large whale sightings, 1547 small whale sightings and 1172 sea turtles were encountered in the surveys (Table 4). The "estimated minimum population number" for each mammal and turtle in the area, as well as those species currently included under the Endangered Species Act, were also tabulated.

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

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

Pound nets in Maryland and Virginia take between 2 and 4% of the commercial summer flounder landings of these States (Table 5). 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 Capt 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 hawksbill 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 5). 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 6) 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 effect 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 aesthetic 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.

This Amendment is intended to promote vessel safety since it allows transfer or combination of quota to ports without safety problems rather than forcing vessels to land in ports with safety problems because of the quota allocation system. An example of this situation is the reported problem with Oregon Inlet, NC, where the larger vessels have problems navigating the Inlet at certain times and prefer to land in Virginia. This Amendment would allow the transfer or combination of appropriate amounts of quota so these fishermen were not forced to operate in a potentially dangerous situation.

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 7.

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 on 26 April 1993.

Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, and North Carolina concurred with the Council's assessment as of the date of this document (2 August 1993).

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

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Table 1. Adjusted summer flounder landings data and the resulting state-specific quota shares.

Year	ME	NH	MA	RI	CT	NY	NJ	DE	MD	VA	NC	TOTAL
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. Landings, Value and Price of Summer Flounder by Month, 1980-89 averaged, All Gear Combined.

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

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

Source: Unpublished NMFS General Canvass data.

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

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

- = zero

Note: numbers may not total due to rounding.

Source: unpublished NMFS General Canvass data.

Table 4. 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 5. 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	-	.	-	-	-	-	-	-	-	-	.
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 6. 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	13.5	None
	1	72' standard	3	60		1 Cc
	1	72' standard	6	90		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		None
12/19/90	1	72' standard	3	60	8.25	None
	1	72' standard	1	45		None
	1	72' standard	3	90		1 Cc
12/19/90	1	72' w/super shooter	3	60	8.25	None
	1	72' w/super shooter	1	45		None
	1	72' w/super shooter	3	90		1 Lk
12/29/90	1	50' standard	3	70	3.5	1 Cc
01/10/91	1	78' standard	4	90	6	None

Note: Lk = *Lepidochelys kemp* (Kemp's ridley turtle), Cc = *Caretta caretta* (loggerhead turtle).
 Source: North Carolina Division of Marine Fisheries, unpublished data.

Table 7. 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" minimum size for both commercial and recreational fisheries.
- 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.

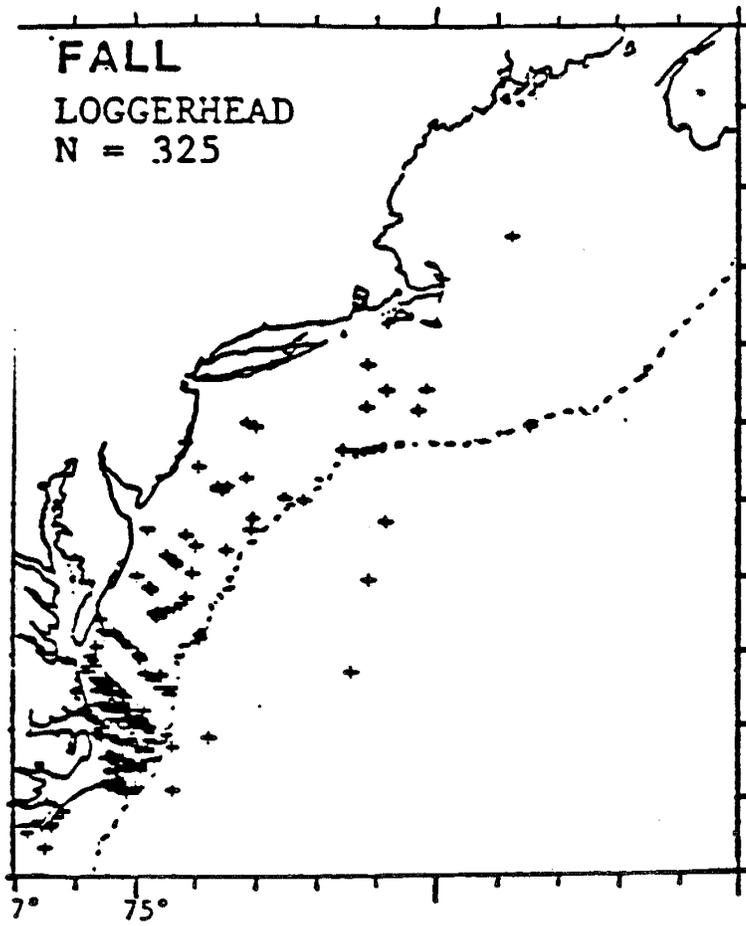


FIGURE 1 : Fall (Sept.22-
 Dec.21) distribution of
 loggerhead sea turtles. From
 CeTAP, 1982.

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

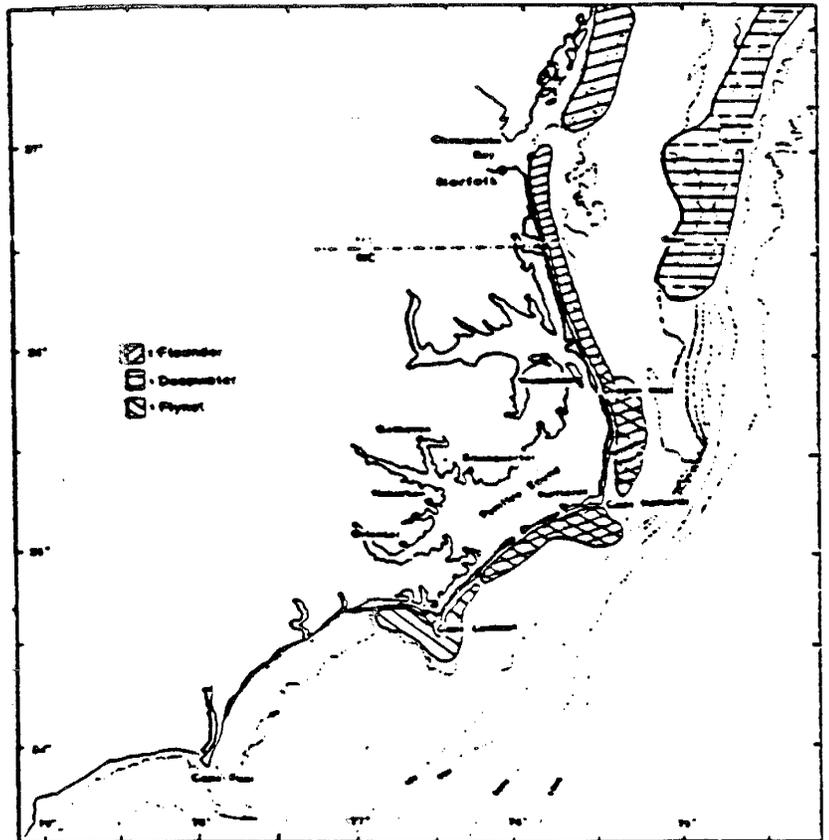
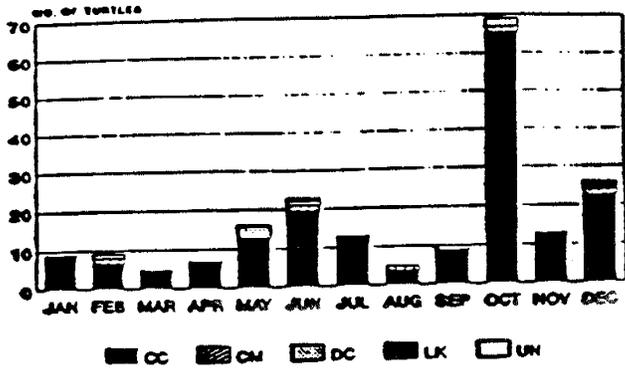


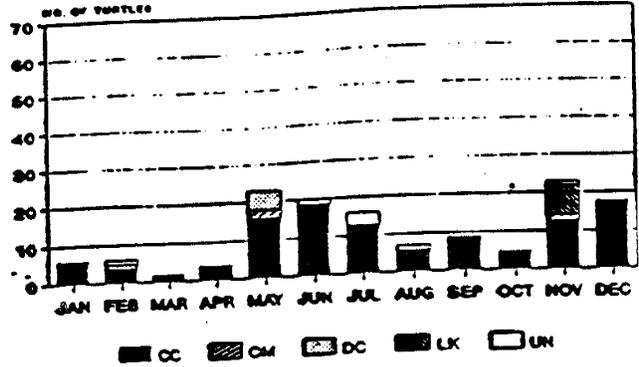
Figure 3 :
From NMFS, SEFC. STSSN Database

NORTH CAROLINA SEA TURTLE STRANDINGS, 1985



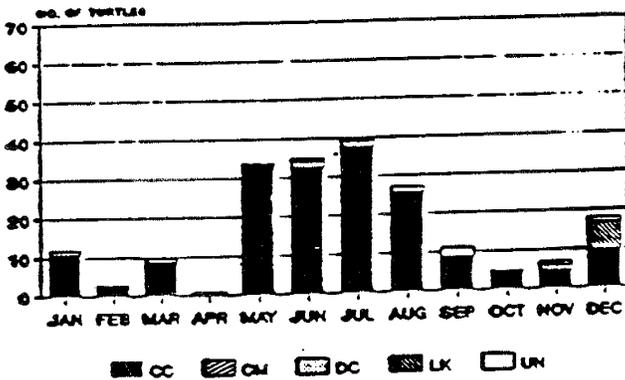
NO 85 - 204

NORTH CAROLINA SEA TURTLE STRANDINGS, 1986



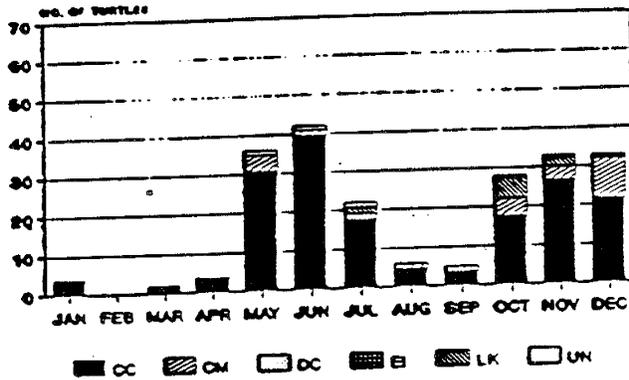
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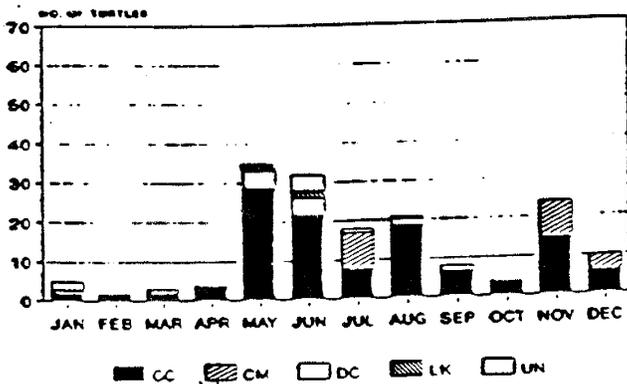
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NORTH CAROLINA SEA TURTLE STRANDINGS, 1988



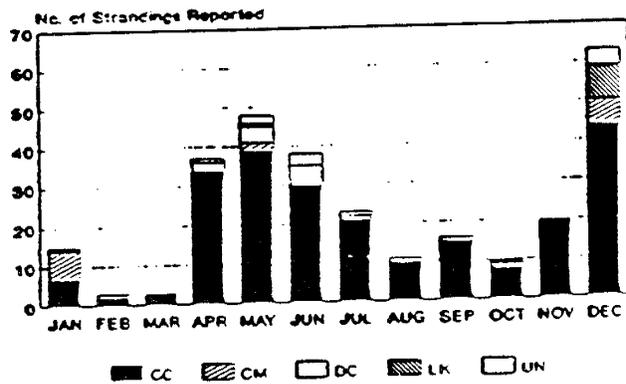
NO 88 - 215

NORTH CAROLINA SEA TURTLE STRANDINGS, 1989



NO 89 - 266

NORTH CAROLINA Sea Turtle Strandings, 1990



NO 90 - 267

CC=*Caretta caretta* CM=*Chelonia mydas* DC=*Derochelys coriacea* El=*Eretmochelys imbricata* LK=*Lepidochelys Kemp* UN=Unidentified

APPENDIX 1. ALTERNATIVES TO THE AMENDMENT

1. TAKE NO ACTION AT THIS TIME

1.1. Description

This would mean that summer flounder quota could not be combined or transferred between States.

1.2. Evaluation

The "No Action" alternative would not solve the problems identified in section 4. States could not transfer or combine summer flounder quota and as result could not respond to changes in stock location, modifications in fishing patterns, emergency situations, or other factors.

When a State reaches its quota and the summer flounder fishery is closed, costs are imposed on fishermen and dealers. For the fishermen, their fuel costs increase if that move to a port in another State or income is lost if they are unable move to other ports. Dealers must purchase summer flounder from out of state fishermen and transport it to their facilities. All of these cost increases ultimately increase prices to consumers. All of these would result from implementation of the "No Action" alternative.

A complete discussion of the costs and benefits of Amendment 5 is set forth in Section 9.2.2 of the Amendment.

2. A COMMERCIAL VESSEL LANDING SUMMER FLOUNDER IN ANY STATE COULD HAVE THEIR LANDINGS COUNTED AS PART OF THE QUOTA OF THE STATE IDENTIFIED BY THE VESSEL'S PRINCIPAL PORT OF LANDING

2.1. Description

This would mean that vessels with commercial permits could land summer flounder in any State (landing State) but have the landings counted as part of the quota of the State identified on the vessel's permit by the principal port of landing (permit State). The implementation of this alternative would require the following:

1. Both the permit State and the landing State would have to have quota available, i.e., both States be open for commercial summer flounder landings.
2. If the quota of the permit State had been taken, the summer flounder landings would be charged against the landing State, assuming such a landing were legal under the laws and regulations of the State of landing.
3. It would be the responsibility of the landing State to ensure that the permit State had available quota.

2.2. Evaluation

This alternative would provide more flexibility to the fishermen than the current system of counting the landings against the State of landing. Also, NMFS fishing vessel permits show the vessel's principal port of landing, so dealers and enforcement officers could allocate the catch properly.

However, this alternative would require a data reporting system significantly more complicated than the current system. Under the current system all of a dealer's purchases are counted against the State of landing and the dealer has only one number to report to NMFS. Under this alternative, dealers would need to report between one and eleven landing numbers to NMFS. Since there are 182 permitted dealers, there would potentially be 2,002 landing numbers reported to the Northeast Fishery Science Center each week. Such a system could create confusion, misunderstanding, and resentment among both dealers and fishermen.

This alternative would require that a State infrastructure be established to administer this alternative. It would be unreasonable to impose the burden on dealers to notify fisheries officials in other States that a vessel

landing summer flounder in their State was charging the landings to the permit State. Aside from the cost of making such calls, which may be to a State hundreds of miles away, dealers may either forget to make the call initially or after receiving a busy signal. In addition, since dealers could purchase summer flounder from vessels from several States, the manner in which dealers maintained their records could result in a double counting of summer flounder landings, i.e., landings counted against both the landing State's and the permit State's quota. This could lead to early closure of a State's fishery and impose unnecessary economic hardship on dealers and fishermen permitted in both the landing and permit State.

In addition, and most importantly, such a system would subvert the management authority of the States to manage *their* summer flounder quota. Many States have developed seasonal trip limits to allocate their quota to the commercial fishermen landing in their State. A vessel landing in a State would have to adhere to the regulations of the landing State although the quota would be charged to the permit State. As such, a vessel from a permit State regulated by a trip limit could land in excess of the trip limit in another State with a more generous or nonexistent trip limit. The landings would not be subject to the permit State's trip limit and would thus negatively effect both the permit State's management process and the potential landings of fishermen in the permit State.

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 5 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 5

The problems to be addressed are discussed in Section 4.2 of Amendment 5.

1.4. Management Objectives

The objectives of Amendment 5 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 5

The management measures are presented in Section 9.1 of Amendment 5. Other alternatives are presented in Appendix 1 to Amendment 5.

2. REGULATORY IMPACT ANALYSIS

The impacts of the management measures are presented in Section 9.2 of Amendment 5. Other alternatives are evaluated in Appendix 1 to Amendment 5.

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 5 are discussed in section 9.2.

3.3. Benefit - Cost Conclusion

The benefits and costs of Amendment 5 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 5 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 5.

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 5 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 5 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 5 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 modified the state-specific shares which allocated the coastwide quota to the States. Amendment 5 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 5 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 5. Other alternatives are presented in Appendix 1 to Amendment 5.

6. ENVIRONMENTAL IMPACTS

The impacts of adopted management measures are presented in Section 9.2 of Amendment 5. Other alternatives are evaluated in Appendix 1 to Amendment 5.

This action should have no impact on other fisheries because the ability of the States to transfer and combine quotas should be beneficial to the fishermen..

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 5. Other alternatives are evaluated in Appendix 1 to Amendment 5.

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 5. Other alternatives are evaluated in Appendix 1 to Amendment 5.

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 5 (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 5 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 5 might affect the coastal zone and was consistent. For Pennsylvania, the evaluation was that Amendment 5 would not affect the coastal zone.

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. SUMMER FLOUNDER AMENDMENT #5 PUBLIC HEARING SUMMARIES

Fairhaven, MA 7 June 1993

The hearing was called to order at 7:00 pm by New England Council Alternate member David Pearce. Seventeen members of the public were present. Dave Keifer, Mid-Atlantic Council staff, presented Amendment 5.

David Silvia asked what States would Amendment 5 apply to.

Joe Avila said that, with Alternative 2, North Carolina boats would take Massachusetts flounder.

John Bullard, New Bedford Seafood Co-op, stated he supported the preferred alternative in Amendment 5 and opposed the other alternatives. He said Amendment 5 is a small change to the summer flounder regime, but fishermen should support it. With Amendment 5 Massachusetts may be able to negotiate a quota transfer; without it there is no chance.

Steven Morris supported the preferred alternative, but wants North Carolina landings in Massachusetts to count against the North Carolina quota.

David Silva said the quota is not large enough.

Al Venoit said the transfers might lead to price fixing.

There were comments about the summer flounder quota and how the quota is allocated between the States. There were also comments about the Massachusetts State summer flounder management system.

The hearing was closed at approximately 8:00 pm.

Galilee, RI 8 June 1993

The hearing was called to order at 7:20 pm by New England Council member James McCauley. Eight members of the public were present. Dave Keifer, Mid-Atlantic Council staff, presented Amendment 5.

Peter Barbera, Town Dock, Inc., supported the preferred alternative but worried about the possibility of politics becoming involved in quota transfers.

Eric Smith, Connecticut Department of Marine Fisheries, stated that Connecticut supports the preferred alternative in Amendment 5 because of the flexibility it adds to the management system.

Jim O'Malley, East Coast Fisheries Foundation, inc., supported the preferred alternative in Amendment 5.

Dick Sisson, Rhode Island Division of Marine Fisheries, supported the preferred alternative in Amendment 5 because of the flexibility it adds in dealing with other States.

The hearing was closed at approximately 7:45 pm.

Ronkonkoma, NY 9 June 1993

There was a public hearing held on Amendment #5 to the Summer Flounder Fishery Management Plan on June 9, 1993 at the Holiday Inn in Ronkonkoma, NY. Mr. Tony DiLernia, hearing officer, called the hearing to order at approximately 7:40 pm. Mid-Atlantic staff was represented by Dr. Tom Hoff and Ms. Carol Stevenson served as recording secretary. There were 3 members of the public present.

Dr. Hoff summarized the provisions of Amendment #5. The management unit remains unchanged and is all 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 as follows:

- 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 above.

Dr. Hoff said that Amendment #2 to the FMP, as adopted by the Council and ASMFC and approved by NMFS, established a coastwide quota to manage the commercial fishery. The quota was allocated to the States based on shares derived from a State's percentage of commercial landings for the period 1980-89. In 1993, the first year the quota was implemented, fishermen from States who had traditionally landed summer flounder in their home ports, changed their fishing patterns and landed summer flounder in other States. In addition, in several instances, vessels fishing for summer flounder encountered emergency situations which forced them to offload in States that were not their point of destination. In both situations, the amount of summer flounder quota available to fishermen who traditionally used the ports in their home State was reduced. The purpose of Amendment #5 is to resolve these problems by allowing two or more States, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine their summer flounder commercial quota between their respective States.

Dr. Hoff then stated the alternatives of Amendment #5:

1. Take no action at this time.
2. Allow a commercial vessel to land summer flounder in any state, but count the landings against the quota of the state of the vessel's principal port of landing. Dr. Hoff elaborated that this would mean vessels with commercial permits could land summer flounder in any state, but have the landings counted against the quota of the state listed on the vessel's permit as the principal port of landing. If the quota of the state of principal port of landing had been taken, the landings would be charged against the state of landing, assuming such a landing were legal under the laws and regulations of the state of landing.

Dr. Hoff stated that the impacts of the alternatives are discussed in Appendix I to Amendment #5, however, several impacts of this alternative were not identified in the hearing draft of Amendment #5. This Alternative, in many cases, would take away from the state's ability to manage their summer flounder quota. If vessels could land at will in other states and have the landings charged against the home state's quota, then the home state would have less ability to manage to account for local seasonal fisheries. The result could be that fishermen who only land in their home state could have their fishery closed or reduced in the next year by more mobile fishermen who land in a number of states. Additionally, the extremely complicated reporting system that this alternative would require could result in a state's quota being exceeded before the landings data could be compiled. The FMP requires that such quota overruns be deducted from the next year's quota.

Mr. Donald Ball, a dragger fisherman from Montauk, stated that he supported Alternative #2. He didn't like the idea that his state was charged with the landings from the more southern, out-of-state boats.

Mr. Chris Wood, F/V *Sylvia S.* from Montauk, said he was concerned about the out of state landings from the more southern boats counting against New York's quota. He said New York's quota was not very large in comparison to North Carolina's quota, and he was concerned about losing the little bit of quota New York has. He supported Alternative #2 where the quota would be charged against the vessel's principal port of landing.

Dr. Bonnie McCay, Rutgers University, commented that the fishing pressure would perhaps increase in New York if, for example, North Carolina transferred part of their quota to New York. She wondered if that problem had been looked at or addressed.

The hearing concluded at approximately 8:00 pm.

Toms River, NJ 7 June 1993

The Public Hearing for Amendment 5 to the Summer Flounder Fishery Management Plan was called to order at 7:05 p.m. Mr. Tom McVey of the Mid-Atlantic Fishery Management Council served as Moderator for this hearing. Ms. Hannah Goodale represented the National Marine Fisheries Service. Mr. John Cole, Manager of the Fisherman's Co-op at Point Pleasant, was the sole person in attendance at this public hearing.

Dr. Chris Moore, Council staff, presented the draft Amendment and the alternative to the preferred measures. Judi Abbott served as recording secretary.

Mr. Cole's comments are as follows: "from what the wording of the Amendment, is I don't see any problem with it, and I don't think our fishermen will have any problem with it. I think that we would be very much in favor of that, providing that everything in it holds true that those out-of-state boats give us some of their quota. They come in and they harvest it, then it is deducted from their states' quota. I don't think there is any problem with that, as long as it can be monitored in a way where it doesn't take away from the home state's quota or the home state people. In other words, if North Carolina gave us 100,000 lbs and they produced 110,000 lbs, that extra 10,000 lbs should override on their state, and not on the state where they are landing. Thank you."

Mr. McVey thanked Mr. Cole for his comments. The public hearing was adjourned at 7:12 p.m.

Salisbury, MD 8 June 1993

No members of the public attended, so no hearing was held.

Norfolk, VA 1 June 1993

There was a public hearing held on Amendment #5 to the Summer Flounder Fishery Management Plan on June 1, 1993 at the Airport Hilton in Norfolk, VA. Mr. Jack Travelstead, hearing officer, called the hearing to order at approximately 7:10 pm. Mid-Atlantic staff was represented by Mr. John Bryson, Dr. Tom Hoff, and Ms. Carol Stevenson, who served as recording secretary. There were approximately 40 members of the public present, including Council members, representatives of the National Marine Fisheries Service, and industry representatives.

Mr. Bryson summarized the provisions of Amendment #5. He stated the management unit of summer flounder is the western Atlantic Ocean from the southern border of North Carolina northward to the US/Canadian border. He said the objectives of the FMP remained unchanged and were as follows:

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 above.

Mr. Bryson said that Amendment #2 to the FMP, as adopted by the Council and ASMFC and approved by NMFS, established a coastwide quota to manage the commercial fishery. The quota was allocated to the States based on shares derived from a State's percentage of commercial landings for the period 1980-89. In 1993, the first year the quota was implemented, fishermen from States who had traditionally landed summer flounder in their home ports, changed their fishing patterns and landed summer flounder in other States. In several instances, vessels fishing for summer flounder encountered emergency situations which forced them

to offload in States that were not their point of destination. In both situations, the amount of summer flounder quota available to fishermen who traditionally used the ports in their home State was reduced. The purpose of Amendment #5 is to resolve these problems by allowing two or more States, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine their summer flounder commercial quota between their respective States.

Mr. Bryson then stated the alternatives to Amendment #5:

1. Take no action at this time.
2. Allow a commercial vessel to land summer flounder at any state, but count the landing against the quota of the state of the vessel's principal port of landing. Mr. Bryson elaborated that this would mean vessels with commercial permits could land summer flounder in any state, but have the landings counted against the quota that stayed listed on the vessel's permit as the principal port of landing. If the quota of the state of principal port of landing had been taken, the landings would be charged against the state of landing, assuming such a landing were legal under the laws and regulations of the state of landing.

Mr. Bryson stated that several impacts of the alternative were not identified in the hearing draft of Amendment #5. He elaborated that Alternative #3 would take away from the state's ability to manage their summer flounder quotas. If vessels could land at will in other states and have the landings charged against the home state's quota, then the home state would have less ability to manage to account for local seasonal variations. It also would mean that the more mobile fishermen would be able to land in multi states and may, in fact, due to reporting problems, be able to land so quickly that the records would not get back and the home port state may find itself exceeding its' quota through no knowledge of its own and actually have its quota for the following year reduced. Mr. Bryson reported that if there were overruns of quota, it would be deducted from the next year's quota. If there was a combination between 2 states, and there was an overrun, the reduction would be proportional to the original quotas of those states.

Mr. Charles Bergmann, Axelsson & Johnson Fish Co., Inc. in Cape May, NJ stated that they believe that Amendment #5 which allows states to transfer summer flounder commercial quota amongst themselves is a step in the right direction, but felt it should be taken a step further. First of all, they believe there should be no quota at all, but if there has to be a quota, they prefer that it remain a Federal quota. He stated that with summer flounder being a mobile fishery, the vessels are forced to travel up and down the coast to catch their product. By having state quotas, the Federal Government is placing at risk the lives and property of members of this fishery by restricting the ports of where these vessels may land their product. To protect both the inshore and offshore interests, the Federal quota should be divided into seasons to allow for the migration of the fish from offshore to inshore and then out again. He submitted written comments for the record (Attachment #1).

Mr. Jonathan Rubins, Lund's Fisheries in Cape May, NJ. agreed fully with Mr. Bergmann's statement.

Capt. Earl Barr stated that both Wanchese Fish Co., Inc. & Fish Marine Corporation support Amendment #5 as proposed. However, he believes that the quotas are too short, based on the facts of the fishery. He said that since 1990, landings have been steadily rising about 50% per year due to the 5.5" mesh size and 13" minimum size in NJ, VA & NC, and the 14" minimum size further north. He feels that these measures have brought the stocks back to the point where they are in good condition, and that a major increase in the quota could easily be accommodated. He commented that the database was not accurate enough, nor was it up to date with the latest information possible. He also criticized the slowness of the Council system in taking action and getting regulations implemented.

Mr. Tim Daniels of the Wanchese Fish Company stated that being able to transfer the quota from state to state is a step in the right direction, but he doesn't feel that the fishermen should be made to go to whatever port he wants to in order to land.

Mr. Tony Penello supported Alternative #2.

Mr. David Boyd stated that as far as Virginia was concerned, throughout most of the 1980's, the vast majority of their offshore summer flounder landings (90-95%) have come from North Carolina boats. He stated that he didn't really have a big problem with transferring quota, except that if it is done during the quarter, it makes management in the state almost impossible.

Mr. Bruce Graham, Tidewater Anglers Club, submitted a letter for the record (Attachment #2). He stated that the transfer of quota should only be allowed before a quarter begins to ensure everyone has an equitable chance to fish.

Mr. Art Smith, representing Fishermen's Seafood from Wanchese, NC and Norfolk, VA, supported the alternative where 2 states can work together. He said the only objection he would have with 2 states working together, is if 1 of the states had any type of landing license. He said that New Jersey and New York were very restrictive about who could land and who could not. He would not want to see any quota go to a state that would restrict whether or not you could land there. He also supported allocating before the start of the quarter.

Mr. Al Maynard, representing East Coast Fisheries Association, stated that the Board of Directors was very conscious of what the Council had done in Amendment #5 in responding to the industry. The Association supports the preferred alternative and recognizes that it does take a working arrangement between the states. He had a technical comment dealing with the draft proposed regulation in that the regulation addressed flounder sold, but throughout Amendment #5, and especially on Page 13 it referenced flounder landed. He said that the only way to make it workable is for it to be flounder landed.

Mr. Charlie Amory, from L.D. Amory Co. in Hampton, VA, supported the preferred alternative.

Mr. Bill Wells spoke in favor of Amendment #5 and felt that most of the people in the audience supported it. He said that David Boyd had brought up a good point concerning 2 states combining, and that there was going to have to be some guidelines as to when it will be done, and how it will be implemented. He asked what the time frame of Amendment #5 was once the public hearings were concluded.

Mr. Bryson responded that the tentative plans were to bring it to the Council at its July 13-15 meeting in Wilmington, DE for action.

Mr. Wells responded that if Amendment #5 were passed at the July meeting, he thought that it would not be able to be implemented in time to help anybody in 1993 in the 4th quarter.

Mr. Bryson said that it would take 95 days, which would be mid-October, unless the Council asked for emergency action.

Mr. Wells stated that implementing Amendment #5 by emergency action might be something the Council needed to consider when they adopt the Amendment in July, in order for the fishermen to plan what they can do for the last quarter of 1993.

Capt. Barr commented that summer flounder was under the federal jurisdiction of 200 miles and that every citizen of the United States has a stake in the assets of the product. He said the Council had to be very careful how to start dividing up and favoring one area against another area, and one fisherman against another fisherman. He said the time had come for the jurisdictional question to be solved and that it had to be solved at the Council level.

Mr. Bryson responded that the Council could not have done a flounder plan without the states being involved because the majority of the landings were from state waters. The breakdown of landings are (1) internal waters, (2) 0-3 miles, or Territorial Sea, and (3) 3-200 miles, or EEZ with the majority of the fish being in internal and 0-3 miles.

Mr. Bruce Freeman, representing the State of New Jersey, spoke favorably towards the preferred alternative as written.

The hearing was concluded at approximately 7:54 pm.

There were 9 written questionnaires collected at the hearing. Of those, 3 supported the preferred alternative, 1 supported alternative #1 to take no action at this time, 3 supported alternative #2, and 2 supported no state control.

Washington, NC 3 June 1993

The hearing was called to order at 7:20 p.m. Hearing officer Dennis Spitsbergen presented the opening statement and remarks. John Bryson reviewed Amendment 5 for the attainments. He went over the alternatives, giving special care to make sure everybody understood the possible repercussions of alternative #2. Mr. Spitsbergen opened the hearing to public comment at 7:30 p.m.

Willie Etheridge asked "who asked for this to be done?" Mr. Spitsbergen answered that the fishermen and their wives have complained numerous times about weather conditions, etc. Mr. Bryson answered in more detail. Another individual wanted to know how the numbers were arrived at, to which Mr. Bryson explained.

James Fletcher wanted to know why, since this was a Mid-Atlantic Plan, that it had to affect the South Atlantic? Mr. Spitsbergen explained that, hopefully with the reauthorization of the Magnuson Act, we would probably be one Council. Mr. Fletcher also wanted to know who landed the most fluke? Mr. Spitsbergen answered that the South Atlantic did. According to Mr. Fletcher, the South Atlantic "always comes up with the short end of the stick." Mr. Spitsbergen explained that this was just a hearing to solicit public comments!

Again, Willie Etheridge wanted to know exactly who asked for this amendment? Mr. Bryson advised that the information would be on tape and we could get him it for him.

Ed Cross was upset because "nobody knew there was a hearing tonight." He said that everybody feels that Virginia is pushing very hard for this. He went over the numbers he received from Bill Hogarth. Mr. Cross stated, "I'm dead opposed to one pound of fish going to Virginia."

Captain Earl Barr spoke on behalf of the Wanchese Fish Company. He supports Amendment 5 as written because it takes nothing away from North Carolina. They are tired of being at risk trying to get their boats into Wanchese. He also said there should be a voting member on the Mid-Atlantic Council, and that these regulations are just putting everybody against each other. He stressed the need for better data. "If data is faulty, the quota is faulty."

James Fletcher said he doesn't understand why people don't listen to the fishermen. (He then gave a fishery history lesson beginning in 1935 regarding the 5" tail bag law.) He advocates putting in hatcheries. He further stated that the \$300 million spent annually on government employees salaries would serve better if put into hatcheries. At this point the recording machine was turned off for a brief period of time and Mr. Bryson and Mr. Fletcher had words regarding the above statement.

Tim Daniels of the Wanchese Fish Company supports the amendment, stating it's a good step in the right direction for the Mid-Atlantic Council.

Virgil Potter of the Potter Fish Company is against the amendment. He stated he's tired of hearing about the Oregon Inlet. He blames the problems on big boats, and does not want North Carolina to have to give up any quota.

Ed Cross believes people are lying about not being able to get into Oregon Inlet. He stated that the Plan hasn't been given enough time to be effective. (Mr. Cross also stated that he was an advisor at one time, and after having a conversation with Mr. Bryson about closing down the fishery, he resigned.)

Willie Etheridge supports Alternative #1. He says that the east coast of the US will only land half the flounder as in the past. This will cause a lot of hard feelings. How can North Carolina sit back and let this Plan happen without doing anything about it? He wanted to stress to the Mid-Atlantic Council ..."let's don't let big

companies eat up small companies ... let each state take care of itself." Mr. Bryson replied that it's a safety factor, therefore the Mid-Atlantic Council must look into this issue. He's opposed to this and still wants to know where the request came from. Mr. Bryson explained about the ASMFC, because 50% of the catch comes from state waters.

Ed Cross was still upset because people did not know about the hearing. Mr. Bryson explained that this was done in one month and that the proper format was used. Mr. Spitsbergen stated that a lot of people wanted this. Mr. Cross advised that he knew for a fact that the North Carolina Fisheries Commission voted this down ... "leave the Plan alone ... if it's wrong, we'll fix it."

Jerry Shill advised that he received his notice the first part of May, but does not feel it was circulated enough. He feels a notice should be sent to each permit holder. They oppose the transfer of quota. He advised that this issue almost split their association. He gave a lot of credit to Dennis Spitsbergen. He agreed that measures aren't given enough time to work. He stated that recreational almost exceeds commercial, and that there is not enough commercial members on each Council. "The government violated the law ... how can we expect the fishermen to put their trust in us?"

Birdie Potter is totally against this amendment. She wants to give nothing away from North Carolina.

The formal hearing ended at 8:35 p.m. There were 17 attendees.

PHONE 609-884-8426

FAX 609-898-0221

Axelsson & Johnson Fish Co., Inc.***Producer /Packer Fresh & Frozen Seafood***

P.O. BOX 180

993 OCEAN DRIVE • CAPE MAY, NJ 08204

May 28, 1993

Mid-Atlantic Fisheries Council
300 South New Street
Federal Building, Room 2115
Dover, DE 19901

RE: Summer Flounder
Amendment 5

Gentlemen:

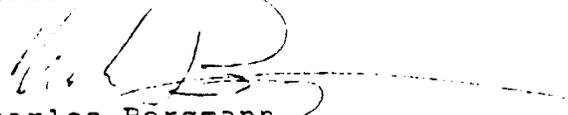
We believe Amendment 5 which allows states to transfer summer flounder commercial quota amongst themselves is a step in the right direction, but we feel it should be taken a step further. We feel there should not be any quota at all, but if there has to be a quota let it remain federally controlled.

With summer flounder being a mobile fishery, the vessels are forced to travel up and down the coast to catch their product. By having state quotas, the federal government is placing at risk the lives and property of the members of this fishery. This is done by restricting the ports to where these vessels may land their product. To protect both the inshore and offshore interests the federal quota could be divided into seasons to allow for the migration of fish from offshore to inshore and then out again.

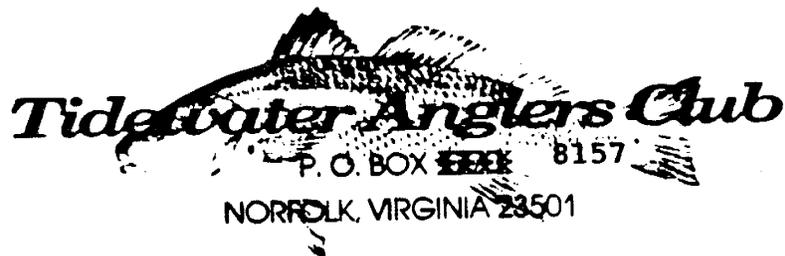
Thank you for taking the time to consider our views.

Very truly yours,

AXELSSON & JOHNSON FISH COMPANY, INC.



Charles Bergmann



Mr. John C. Bryson
 Executive Director
 Mid-Atlantic Fishery Management Council
 Room 2115, Federal Building
 300 South New Street
 Dover, Delaware 19901-6790

Dear Mr. Bryson,

I am writing you in regard to the transfer of commercial summer flounder quota between states. There has been a great deal of misinformation presented on this issue in order to justify transferring quota. I would like to provide you with some observations which might help clear up some of these misconceptions. My comments regard only the issue of landings in Virginia and North Carolina and should not be taken as representing the situation in other states.

Although nobody can give you absolute numbers on the amount of summer flounder landed throughout the 1980's by out-of-state vessels, it is common knowledge in Virginia that the majority of our trawl-caught summer flounder have been landed by out-of-state boats (primarily N.C. trawlers) since the mid-eighties and likely since 1979. The Virginia Marine Resources Commission conducted public hearings in January 1989 to solicit comments on banning trawling in state waters.

There was overwhelming, unrefuted testimony at these hearings that only about 20-30 trawlers out of over 100 licensed to fish in Virginia were actually Virginia-owned vessels. Non-residents were allowed to trawl in Virginia waters beginning in 1974, provided the vessels home state had a reciprocal agreement with Virginia and beginning in 1983 for vessels from any state. When Virginia opened the portion of its territorial sea adjacent to North Carolina in 1979, both trawl license sales and Virginia summer flounder landings rose dramatically (see enclosed VMRC fisheries management division evaluation). It was Virginia's inability to prohibit out-of-state vessels from catching the vast majority of its summer flounder throughout the eighties that led to the implementation of a total ban on trawling in 1989.

Anyone familiar with Virginia's current summer flounder trawl fishery will be able to confirm that there are only about half a dozen small trawlers (day-boats) left in the state. It should hardly come as a surprise that the majority of summer flounder landed in Virginia come off North Carolina vessels.

As to whether or not Oregon Inlet can be negotiated by trawlers, the majority of trawlers in the first quarter of 1993 were working off the Delaware Bay area, not off the Virginia-North Carolina line. The economic advantage of landing these vessels in Virginia, as opposed to in North Carolina, should be obvious. Coincidentally, when Virginia went to a 1500 pound trip limit on April 1, 1993 North Carolina landings rose from about 7,000 pounds per week to about 130,000 pounds per week at a time of year when this fishery typically declines.

I am not arguing that Oregon Inlet is not a dangerous seaway, only that it obviously can be traversed. Congress authorized installing jetties and dredging this Inlet in 1970. Somehow, North Carolina trawlers traversed that Inlet enough throughout the eighties to receive the largest summer flounder allocation on the east coast. Suddenly, when the quota goes into effect, the inlet can no longer be crossed.

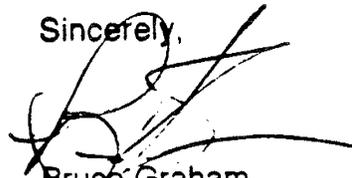
As to the emergency situations which were encountered that required vessels to land in other states: I only remember hearing of a few vessel emergencies throughout the first six weeks of the year in Virginia. When the quota was reached and the season was shut, there were **nine** emergencies in one week! Is anyone really dumb enough to believe this, too, is a coincidence? By the way, the rest of the trawlers just waited for Virginia's Marine Resources Commission to give them another 500,000 pounds so they could land, too.

Finally, perhaps we should consider the actual intent of the MAFMC summer flounder plan. The initial goal was to reduce fishing mortality by 47% in the first years of the plan's implementation. Virginia established quarterly quotas based on historical landings for each period. Summer flounder landings in Virginia for 1992 were over 5 million pounds. A reduction of about 50% from the 1992 landings would be required to meet the 2,670,000 pound quota assigned to Virginia for 1993. Virginia's initial closure on February 10, 1993 closed the fishery at just short of their assigned quota. It seems that common sense would have predicted a closure date of mid-February based on either the 1992 Virginia landings or the ten year average used in the MAFMC plan.

If the states are allowed to transfer quota among themselves, it can only be because the economic interests of a few large commercial fishing concerns have once again taken precedence over other considerations. At the very least, transfer of quota should **only** be allowed before a quarter begins. This would allow prior planning by individual fishermen and by management to ensure everyone has an equitable chance to fish. It should also greatly ease enforcement burdens since everyone would know the rules before the season starts.

Thank you for taking the time to read this letter. I truly believe if we put the resource ahead of all the special interests and stick as closely as possible to the summer flounder ~~plan~~ ^{PLAN} as written, everyone will benefit.

Sincerely,



Bruce Graham
Board of Directors
& 200 members since 1942

VIRGINIA'S WEEKLY 1st QUARTER FLOUNDER LANDINGS

Reporting Period	Pounds Landed	Total pounds to Date	Average lbs./day (total)	Avg. lbs. this week
1/1/93-				
1/9/93	94,979	94,979	10,553	10,553
1/10/93-				
1/16/93	185,061	280,040	17,502	26,437
1/17/93-				
1/23/93	242,926	522,966	22,738	34,704
1/24/93-				
1/30/93	376,868	899,834	29,994	53,838
2/1/93-				
2/6/93	44,898#	944,732	26,243	6,414#
2/7/93-				
2/13/93	101,413	1,046,145	24,329	14,488
2/14/93-				
2/20/93	37,999*	1,084,144	21,683	5,428*
2/21/93-				
2/27/93	172,229	1,256,373	22,042	24,604
2/28/93-				
3/6/93	53,664#	1,310,037	20,469	7,666#
3/7/93-				
3/13/93	174,892	1,479,782	20,842	24,984
3/14/93-				
3/20/93	70,514	1,551,020	19,885	10,073
3/21/93-				
3/27/93	61,606	1,612,626	18,972	8,801
3/28/93-				
3/31/93	148,218	1,777,856	19,976	37,055

Note: January totals have been completed and late landings have added as of 3/11/92.

Closures announced while this data was being taken.

* denotes period when 1st quarter quota was closed. Landings from 2/14/93-2/20/93 were from individually permitted N.C. boats that were counted against VA's quota.

First quarter quota originally 1,092,110 pounds. Closure of first quarter quota was announced on 2/4/93 with an effective date of 2/10/93. Commission voted on 2/23/92 to transfer 500,000 pounds of fourth quarter quota to first quarter so boats could keep working. Closure for the extended quota was announced tentatively on 3/5/93 and officially on 3/8/93 for a closure date of 3/15/93 based on average landings per day for the year. Fishery reopened on 3/15/93 when landings fell short of projection. Total pounds to date landed may be higher than the previous week's total + that week's landings due to late reporting of earlier landings. Total landings for the first quarter will likely increase from the 1,777,856 pounds reported as of 4/9/93 for the same reason.

FISHERIES MANAGEMENT DIVISION EVALUATION, 12/06/88

DISCUSSION: Trawling in Virginia's Territorial Sea.

BACKGROUND: We have a considerable amount of material for you on this issue, much of which is attached. A more detailed presentation can be made at your meeting if desired.

The following historical information may be of interest:

Prior to 1974: Trawling prohibited except in area from Cape Charles to Maryland line and only during the months of June, July, and August. Non-residents prohibited from trawling.

1974: Non-residents permitted to trawl provided reciprocal agreement with non-resident state exists.

1979: Trawling areas expanded to include the following: (a) Cape Charles to Maryland line - November through August (b) 36°40'N latitude south to North Carolina line at any time; (c) Cape Henry south to 36°40'N between October 1 and May 1.

1983: Non-residents of any state allowed to trawl.

Over the above time frame the number of trawlers fishing in the 3 mile limit has changed substantially. Prior to 1979, less than 20 trawl boats worked the 3 mile area. In 1979, license sales increased to over 50 and by 1984 to 115. Last year about 106 licenses were sold with non-residents accounting for 74% of the license sales.

Much of the information we have provides insight to what has happened to the inshore fisheries as a result of trawling in the 3 mile limit. The data center around 1979 when the expansion in the trawl fishery occurred. Since 1979 offshore harvest has increased by 46 percent while inshore landings of finfish have declined by 49 percent. Clearly there is some connection but we cannot say that the two are entirely the consequence of

the other. Nevertheless the decline in inshore finfish landings is very highly correlated with the increase in license sales since 1979.

Equally disturbing is the decline in catch per unit effort within the trawl fleet. Even though the number of trawlers has increased substantially the average catch per boat has decreased. This is the result of poor stock status (flounder) and of overfishing.

Flounder is the primary species targeted by the trawlers. We already know through the discussion of the previous 3 months that the flounder stocks are in poor shape. VIMS has indicated that the 1988 recruitment is non-existent. Last year, 23 percent of all the flounder landed in the state were taken by trawlers in the three mile limit. The three mile limit is the migratory path for these fish out of the Bay in the fall. Results of a flounder tagging study conducted by VIMS at our request indicates that 51.4 percent of the flounder tag returns to date occur from the Virginia/North Carolina coast. Clearly the 3 mile limit is where the fish are susceptible to harvest or overharvest.

Many of the Atlantic Coastal states provide some regulation of trawling in their 3 mile limit. Delaware and Maryland prohibit all trawling; others provide for spawning area closures and time and area restrictions.

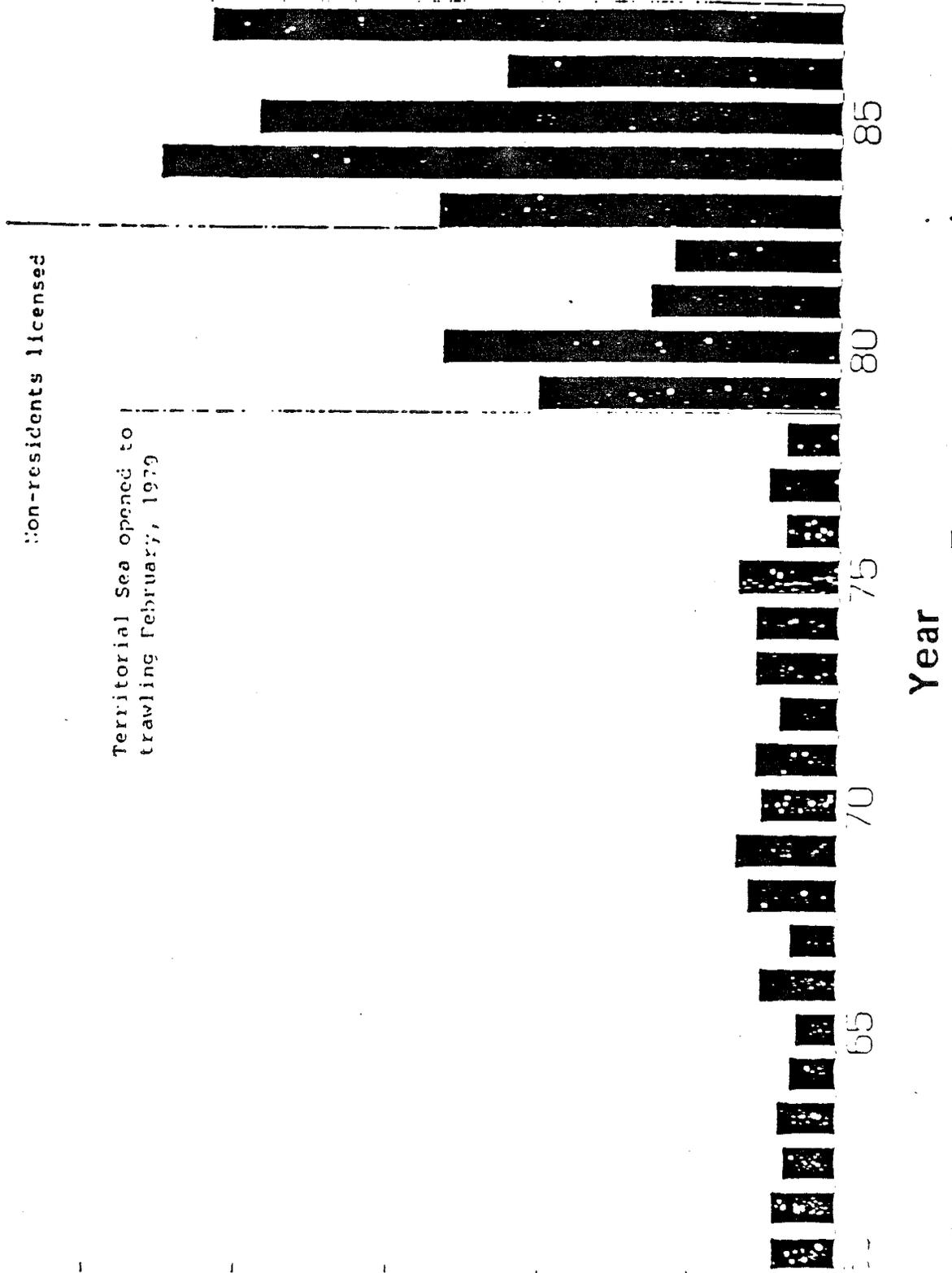
ISSUES:

This will likely be one of the most contentious issues to come before you. While I believe that many of the inshore commercial fishermen support prohibiting trawling in the three mile limit they will be reluctant to speak publicly on the issue. Thus opinions on the issue will give the appearance of the usual recreational - commercial split. In fact, this has already occurred with the Fisheries Management Advisory Committee (FMAC). Individuals on the Committee, who supported the prohibition during the flounder hearings, are now silent on the issue. The FMAC has voted not to support prohibition of trawling.

RECOMMENDATION: Staff believes there is sufficient information available to warrant a further investigation into this issue and thus supports the initiation of the public hearing process.

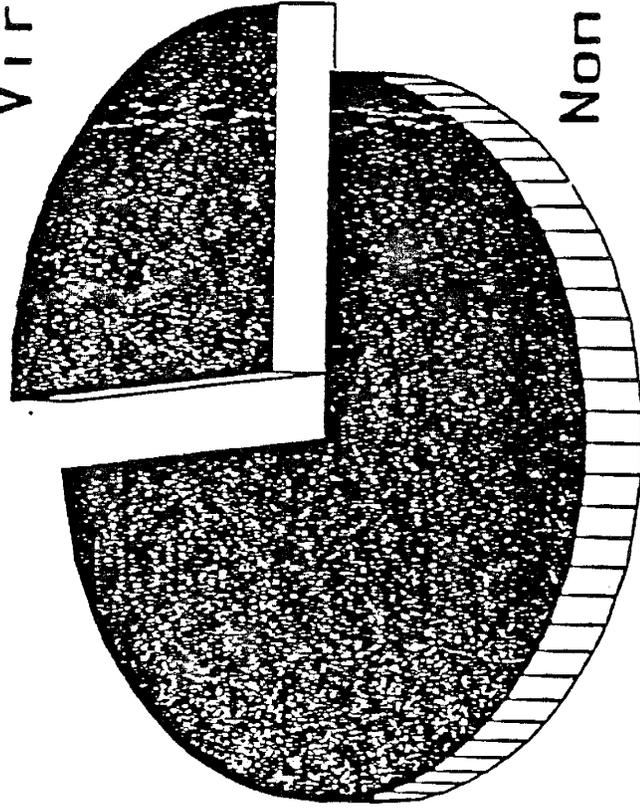
Historical Trawl License Sales

1960-1987



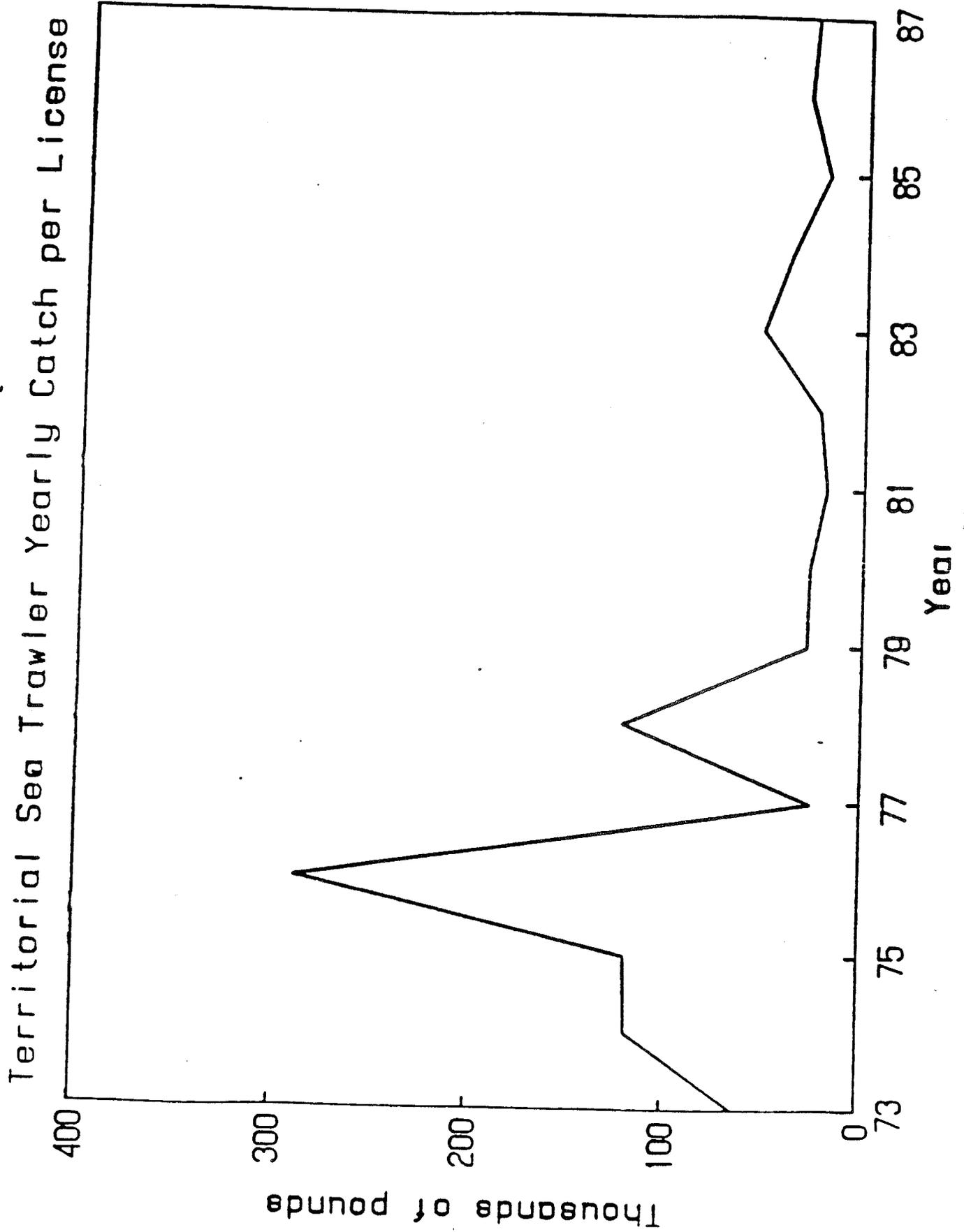
1987 Trawl License Sales

Virginia residents (26%)

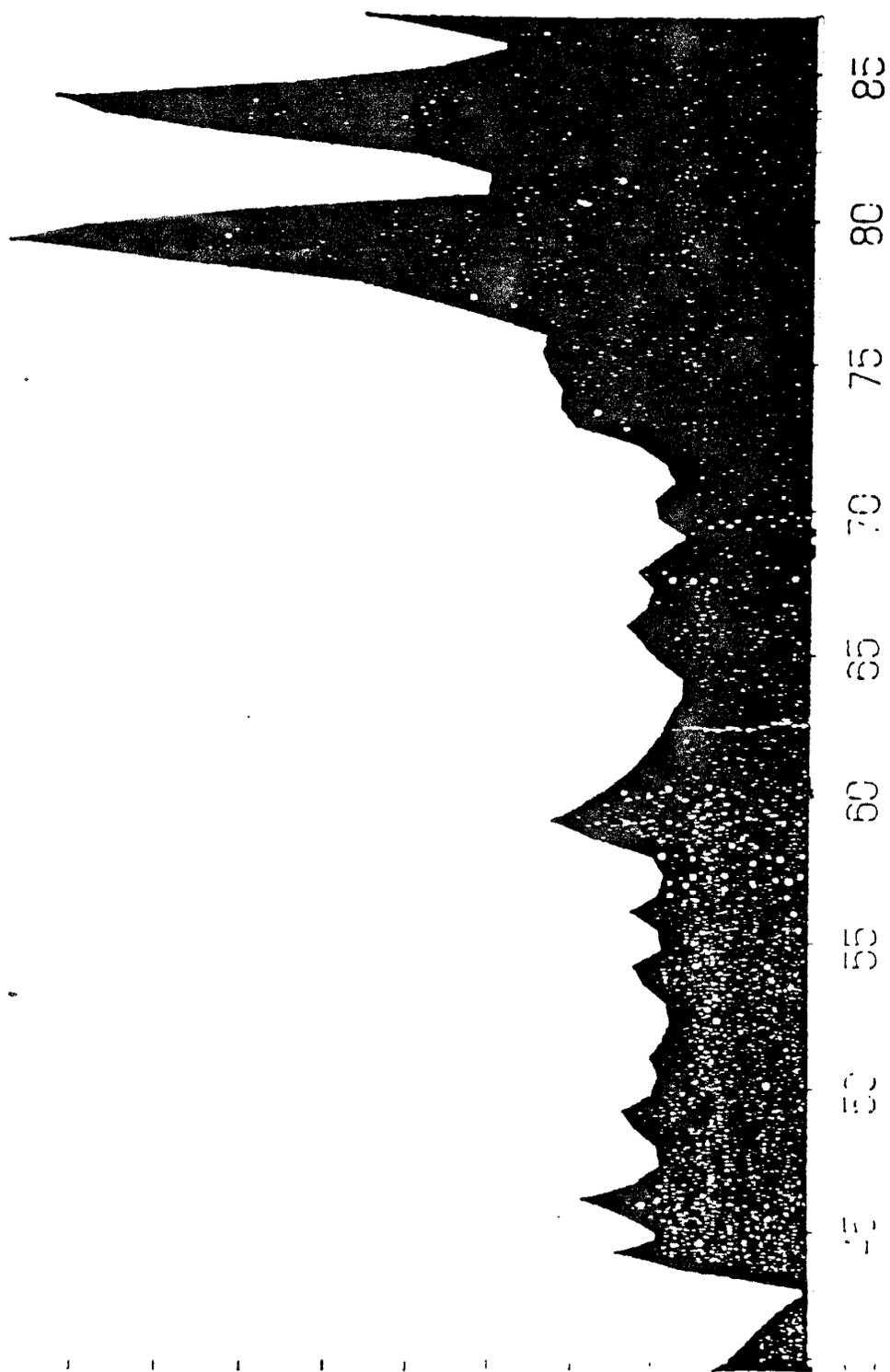


Non-residents (74%)

License Impact



STANDARD FOR 1940-1957



STANDARD FOR 1940-1957. ESTIMATED FROM DATA OF BUREAU OF FISHERIES, LANDINGS FOR VIRGINIA, 1940-1957. SOURCE: BUREAU OF FISHERIES, LANDINGS FOR VIRGINIA, 1940-1957. ESTIMATED FROM DATA OF BUREAU OF FISHERIES, LANDINGS FOR VIRGINIA, 1940-1957.

1987 Trawl License Sales by State of Residence

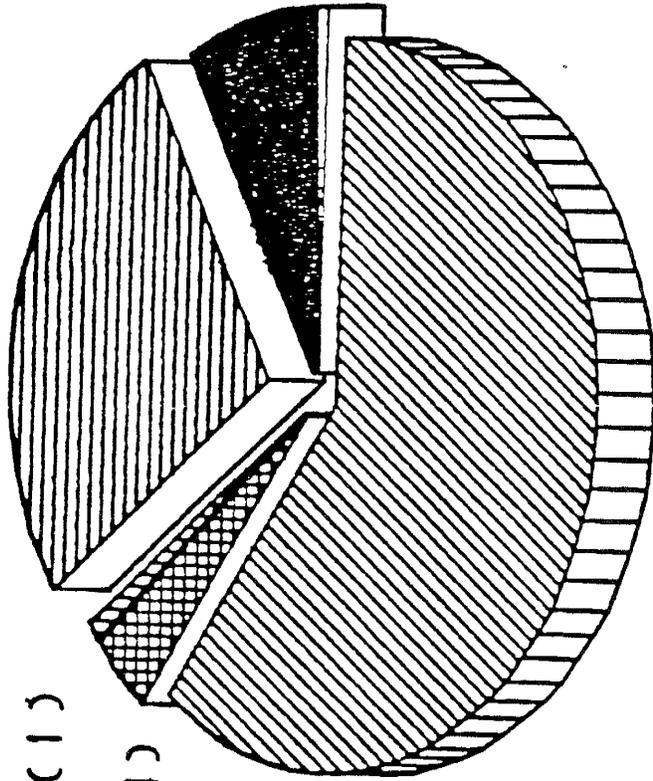
Virginia (28)

Massachusetts (1)

Maryland (4)

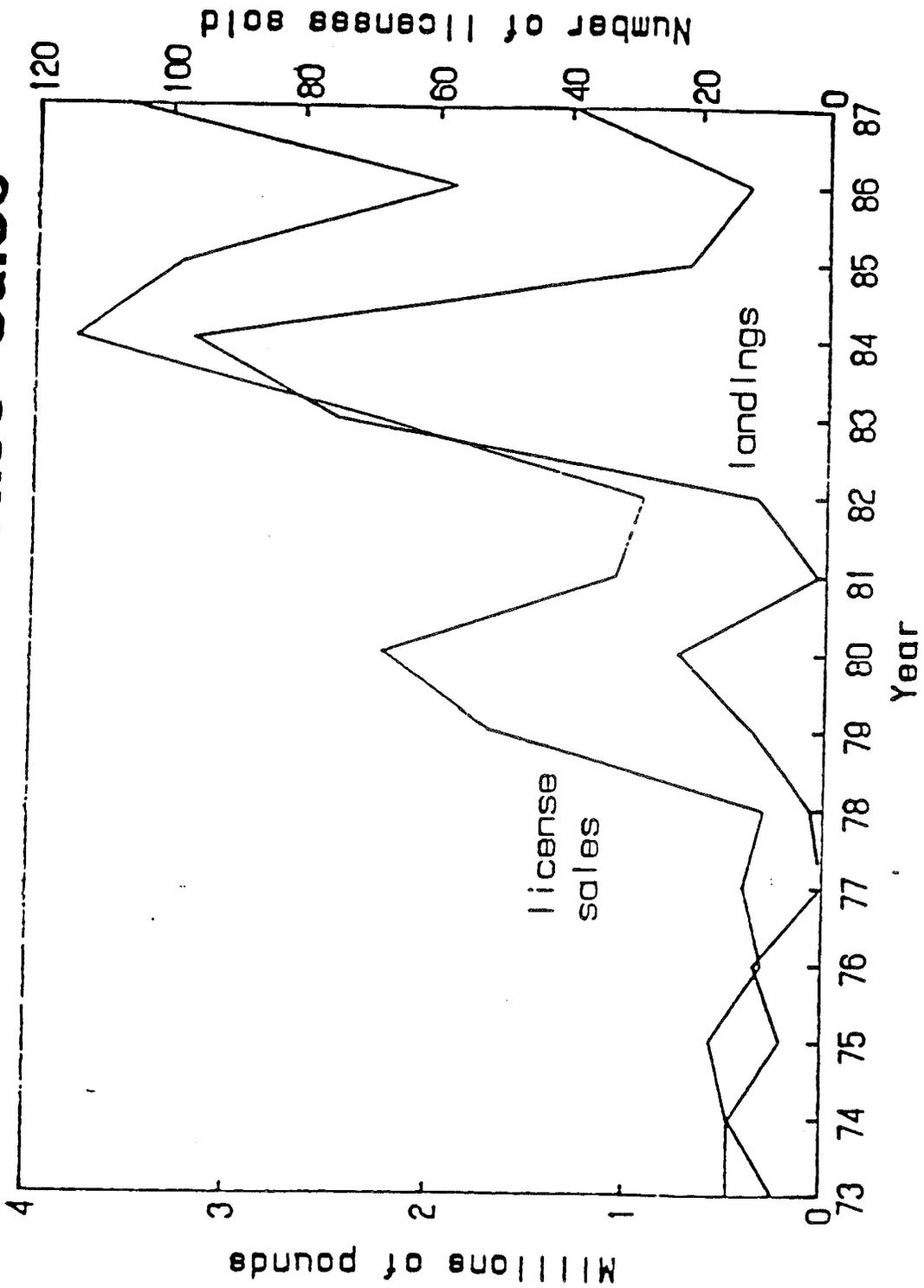
New Jersey (8)

Florida (1)



North Carolina (64)

Summer Flounder Trawl Landings Territorial Sea Versus Trawl License Sales



Summer Flounder - Trawl

Year	Total VA		Percent of Total VA		Total VA		Percent of Total VA		Total VA		Percent of Total VA	
	Summer Landings	Territorial Sea Landings	Summer Landings	Territorial Sea Landings	Summer Landings	Territorial Sea Landings	Summer Landings	Territorial Sea Landings	Summer Landings	Territorial Sea Landings	Summer Landings	Territorial Sea Landings
73	3,231,515	263,260	7	2,770,255	86	262,793	9	262,793	99	262,793	8	262,793
74	3,111,119	472,099	15	2,639,020	86	468,678	17	468,678	99	468,678	15	468,678
75	3,417,263	226,430	7	2,943,653	86	210,253	7	210,253	95	210,253	6	210,253
76	3,303,202	342,202	10	2,961,000	87	341,663	12	341,663	99	341,663	10	341,663
77	4,539,616	7,000	4	4,136,583	91	345	<<1	345	5	345	<<1	345
78	5,940,369	64,364	1	5,333,493	90	62,267	1	62,267	97	62,267	1	62,267
79	10,018,738	364,868	4	9,198,295	92	364,861	4	364,861	100	364,861	4	364,861
80	8,505,584	744,399	9	7,727,316	91	744,015	10	744,015	100	744,015	9	744,015
81	3,651,018	41,882	2	3,072,283	84	37,161	1	37,161	89	37,161	1	37,161
82	4,331,269	353,129	8	4,006,501	94	353,129	9	353,129	100	353,129	8	353,129
83	8,133,712	2,408,281	31	7,741,850	95	2,404,272	32	2,404,272	99	2,404,272	31	2,404,272
84	9,672,771	3,220,207	33	9,118,019	94	3,210,110	35	3,210,110	99	3,210,110	31	3,210,110
85	5,056,967	712,498	14	4,620,002	92	711,715	15	711,715	99	711,715	14	711,715
86	3,712,301	404,603	11	3,418,753	92	404,256	15	404,256	100	404,256	11	404,256
87	5,750,221	1,321,576	23	5,263,660	91	1,320,120	25	1,320,120	99	1,320,120	23	1,320,120

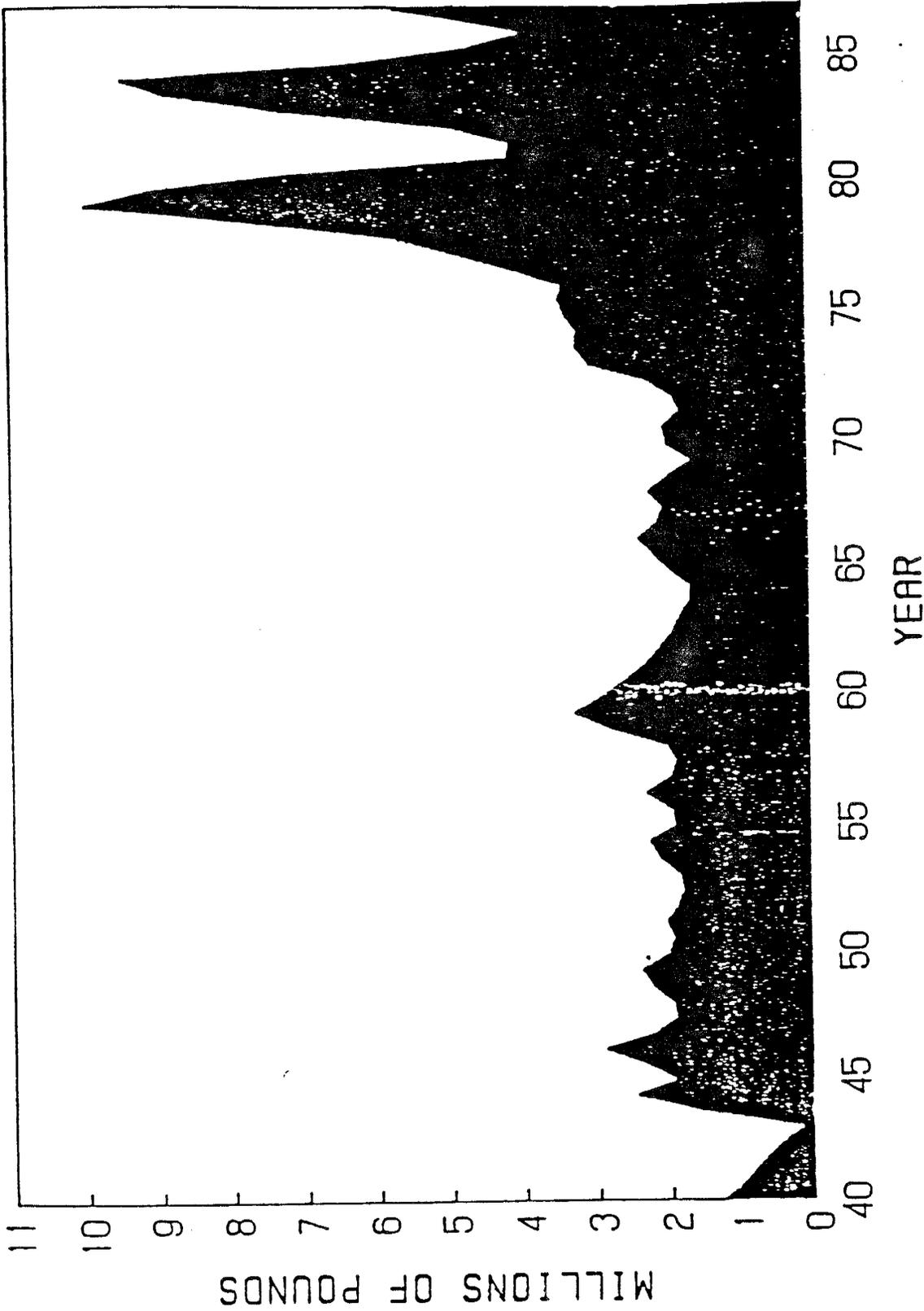


Figure 1. Historical commercial summer flounder landings for Virginia, 1940-1987. Source: 1940-1972, NMFS; 1973-1987, VMRC. Landings for 1940-1957 include all commercial flounder species.

Table 3. Historical summer flounder landings (in pounds only) by gear type for Virginia, 1973-1987. Percentage of total yearly landings contributed by that gear type is presented in parentheses.

Year	Haul Seine	Otter Trawl	Pound Net	Staked Gill Net	Drift Gill Net	Hand Line	Other	Total
1973	13,342 (<1)	2,770,255 (86)	419,137 (13)	203 (<1)	2,757 (<1)	1,953 (<1)	23,868 (1)	3,231,515
1974	4,696 (<1)	2,688,857 (86)	397,243 (13)	271 (<1)	1,347 (<1)	616 (<1)	18,089 (1)	3,111,119
1975	18,746 (1)	2,945,663 (86)	399,033 (12)	1,740 (<1)	11,217 (<1)	1,852 (<1)	38,992 (1)	3,417,243
1976	7,688 (<1)	2,880,663 (87)	286,007 (9)	2,321 (<1)	1,140 (<1)	106 (<1)	125,277 (4)	3,303,202
1977	24,047 (1)	4,136,583 (91)	239,010 (5)	20,329 (<1)	389 (<1)	4,601 (<1)	114,657 (3)	4,539,616
1978	6,816 (<1)	5,353,493 (90)	397,645 (7)	572 (<1)	8,127 (<1)	954 (<1)	172,762 (3)	5,940,369
1979	13,803 (<1)	9,199,421 (92)	381,809 (4)	756 (<1)	8,858 (<1)	170 (<1)	413,921 (4)	10,018,738
1980	11,069 (<1)	7,728,328 (91)	462,867 (5)	2,613 (<1)	14,895 (<1)	1,544 (<1)	282,268 (3)	8,503,584
1981	8,398 (<1)	3,072,263 (84)	386,592 (10)	11 (<1)	8,234 (<1)	470 (<1)	175,050 (5)	3,651,018
1982	6,979 (<1)	4,084,501 (94)	101,600 (2)	120 (<1)	1,614 (<1)	11,542 (<1)	124,913 (3)	4,331,269
1983	6,265 (<1)	7,741,890 (95)	259,163 (3)	1,035 (<1)	6,433 (<1)	144 (<1)	118,772 (1)	8,133,712
1984	4,102 (<1)	9,118,019 (94)	385,535 (4)	1,246 (<1)	17,036 (<1)	190 (<1)	146,645 (1)	9,672,771
1985	4,644 (<1)	4,620,002 (92)	203,835 (4)	137 (<1)	8,387 (<1)	211 (<1)	199,751 (4)	5,036,967
1986	2,174 (<1)	3,418,753 (92)	100,745 (3)	1,674 (<1)	1,285 (<1)	173 (<1)	187,497 (5)	3,712,301
1987	2,135 (<1)	5,245,660 (91)	170,283 (3)	3,653 (<1)	3,620 (<1)	907 (<1)	323,963 (6)	5,750,221

Source: VMRC.

APPENDIX 5. QUESTIONNAIRE RESPONSES AND RESPONSES TO WRITTEN COMMENTS

Questionnaires soliciting opinions on the preferred alternative for Amendment 5 and the two non-preferred alternatives were available at all of the hearings. Only persons attending the Fairhaven, MA, Ronkonkoma, NY, and Norfolk, VA, hearings completed and handed in questionnaires. The responses were:

	<u>Fairhaven, MA</u>	<u>Ronkonkoma, NY</u>	<u>Norfolk, VA</u>	<u>Total</u>
Preferred alternative	2	-	3	5
Alternative 1 (no action)	-	-	1	1
Alternative 2	-	2	3	5
No State quotas	-	-	2	2
Total	2	2	9	13

Two letters were received by the Council on Amendment 5.

The New England Fishery Management Council's Groundfish Oversight Committee with 18 Council members voting as a committee of the whole unanimously supported amendment 5 to the Summer Flounder FMP provided quota transfers between States are made on an annual basis. To allow transfers only annually would eliminate much of the flexibility that Amendment 5 is designed to add to the summer flounder management regime.

The East Coast Fisheries Association supported Amendment 5. They suggested that "commercial landings" as used in 9.1.2.3.1 be used rather than "summer flounder sold" as used in §625.20 in the Draft Proposed Regulations with reference to which summer flounder count against the commercial quota.

APPENDIX 6. 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 allow two or more states, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine their summer flounder commercial quota between their states.

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 modified the state-specific shares which allocated the coastwide quota to the States. Amendment 5 is designed to make one revision to Amendment 2.

Amendment 2 to the FMP, as adopted by the Council and ASMFC and approved by the National Marine Fisheries Service (NMFS), established a coastwide quota to manage the commercial fishery. The quota was allocated to the states based on shares derived from a State's percentage of commercial landings for the period 1980-89. In 1993, the first year the quota was implemented, fishermen from States who had traditionally landed summer flounder in their home ports, changed their fishing patterns and landed summer flounder in other States. In addition, in several instances, vessels fishing for summer flounder encountered emergency situations which forced them to offload in States that were not their point of destination. In both situations, the amount of summer flounder quota available to fishermen who traditionally used the ports in their home State was reduced. The purpose of this amendment is to resolve these problems by allowing two or more States, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine their summer flounder commercial quota between their States.

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. The letters with these determinations were mailed to the States along with a copy of the hearing draft

of the FMP on 26 April 1993. Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, and North Carolina concurred with the Council's assessment as of 2 August 1993.

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(f) is added to read as follows:

§625.20 Catch quotas and other restrictions.

* * * * *

(f) Quota transfers and combinations. Any state implementing a state commercial quota for summer flounder may apply to the Regional Director to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may apply to the Regional Director to combine their quotas, or part of their quotas, into an overall regional quota. Applications for transfer or combination of commercial quotas for summer flounder must be in writing and signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The application must certify that all pertinent state requirements have been met. Any transfer or combination made pursuant to this paragraph is valid only for the calendar year in which it is made and does not alter any state's percentage share of the overall quota specified in paragraph (d) of this section.

(1) Within ten working days following receipt of an application, the Regional Director must notify the appropriate state officials of the disposition of the request. The Regional Director will consider the following criteria in the evaluation of requests to transfer or combine quota.

- (i) the transfer or combination will not preclude the overall annual quota from being fully harvested;
- (ii) the transfer addresses an unforeseen variation or contingency in the fishery;
- (iii) the transfer is consistent with the objectives of the FMP and Magnuson Act.

(2) The transfer or combination of quota will be effective upon filing with the Office of the Federal Register.

(3) A state may not submit a request to transfer or combine quota if a request to which it is party is pending before the Regional Director. It may submit a new request when it receives notice that the Regional

Director has disapproved the previous request or when the transfer or combination of quota has been filed at the Federal Register.

(4) If states combine quota and there is a quota overage for the states involved in the combination of quota, at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year.

* * * * *

APPENDIX 7. 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.

