

**AMENDMENT 6 TO THE
FISHERY MANAGEMENT PLAN FOR THE
SUMMER FLOUNDER FISHERY**

September 1993

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

Draft adopted by MAFMC: 29 September 1993
Final adopted by MAFMC: 16 December 1993
Final approved by NOAA: 15 May 1994

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2. SUMMARY

This Amendment 6 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 3 to the FMP, as adopted by the Council and ASMFC and approved by the National Marine Fisheries Service (NMFS), contained the provision:

Only nets of at least the legal size would be allowed on otter trawl vessels fishing for summer flounder. Any combination of mesh or liners that effectively decreases the mesh below the minimum size is prohibited. Otter trawl vessels retaining 100 lbs or more of summer flounder between 1 May and 31 October or 200 lbs or more of summer flounder between 1 November and 30 April may not have any net, or any piece of net not meeting the minimum 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.

One purpose of this Amendment is to allow multiple nets on board even if the minimum mesh threshold is exceeded, as long as they are appropriately stowed.

The new language would read:

Otter trawl vessels retaining 100 lbs or more of summer flounder between 1 May and 31 October or 200 lbs or more of summer flounder between 1 November and 30 April and subject to the 5.5" minimum mesh (diamond mesh) or 6" minimum mesh (square mesh) regulation may not have available for immediate use any net, or any piece of net not meeting the minimum mesh size requirements, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(1) A net stowed below deck, provided:

- (i) It is located below the main working deck from which the net is deployed and retrieved;
- (ii) The towing wires, including the "leg" wires, are detached from the net;
- (iii) It is fan-folded (flaked) and bound around its circumference.

(2) A net stowed and lashed down on deck, provided:

- (i) It is fan-folded (flaked) and bound around its circumference;
- (ii) It is securely fastened to the deck or rail of the vessel; and
- (iii) The towing wires, including the leg wires, are detached from the net.

(3) A net that is on a reel and is covered and secured, provided:

- (i) The entire surface of the net is covered with canvas or other similar material that is securely bound;
- (ii) The towing wires, including the leg wires, are detached from the net; and
- (iii) The codend is removed from the net and stored below deck.

(4) Nets that are secured in a manner approved by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets and has published that alternative in the *Federal Register*.

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

The other purpose of this Amendment is to change the regulations timing requirements for setting the recreational measures regarding possession limit, size limit, and seasons to make these measures more responsive to the events in the most recent year.

The portion of the regulations dealing with setting the management measures is revised to allow the specifications to be set later in the year in order to make the management measures more responsive to the events in the previous year. Specifically, the timing provisions would be revised to require that the Regional Director publish the proposed commercial quota and other measures by 15 October and the proposed recreational measures by 15 February of the next year (the year for which the specifications are being proposed).

The Amendment also prohibits twisted mesh, authorizes an experimental fishery under certain conditions, makes the definition of a fish box consistent with that in the Northeast Multispecies FMP, and authorizes reporting of fish size frequencies rather than weights in the party and charter boat fishery.

3. TABLE OF CONTENTS

1. COVER SHEET	1
2. SUMMARY	3
3. TABLE OF CONTENTS	5
4. INTRODUCTION	
4.1. History of Development of the FMP	6
4.2. Problems for Resolution	7
4.3. Management Objectives	8
4.4. Management Unit	8
5. DESCRIPTION OF STOCKS	
5.1. Species and their Distribution	8
5.2. Abundance and Present Condition	8
5.3. Stock Characteristics and Ecological Relationships	8
5.4. Maximum Sustainable Yield	9
5.5. Probable Future Condition	9
6. DESCRIPTION OF HABITAT	
6.1. Habitat Description	9
6.2. Habitat Condition	9
6.3. General Causes of Pollution and Habitat Degradation	9
6.4. Habitat Protection Programs	9
6.5. Habitat Conservation and Restoration Recommendations	9
6.6. Habitat Research Needs	9
7. DESCRIPTION OF FISHING ACTIVITIES	
7.1. Domestic Commercial Fishery	9
7.2. Domestic Recreational Fishery	9
7.3. Foreign Fishing Activities	9
8. DESCRIPTION OF ECONOMIC CHARACTERISTICS OF THE FISHERY	
8.1. Commercial Fishery	9
8.2. Recreational Fishery	10
8.3. International Trade	10
9. FISHERY MANAGEMENT PROGRAM	
9.1. Management Measures	10
9.2. Analysis of Impacts of Adopted Management Measures	20
9.3. Relation of Recommended Measures to Existing Applicable Laws and Policies	24
9.4. Council Review and Monitoring	28
10. REFERENCES	29
11. TABLES AND FIGURES	31

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. REGULATIONS (blue paper)	R-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 was 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 was based on historical landings data which were under reported. Connecticut's quota was 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. Amendment 5 allowed States to transfer or combine the commercial quota.

4.2. PROBLEMS FOR RESOLUTION

4.2.1. One Mesh on Board

Amendments 2 and 3 to the FMP, as adopted by the Council and approved by the National Marine Fisheries Service (NMFS), established a minimum net mesh requirement after a specific threshold poundage of summer flounder has been caught and retained by a commercial vessel. Once this threshold has been met, only nets with the legal mesh may be on board the vessel.

Many fishermen, particularly those in what is known as the "mixed trawl fishery", contend that this one mesh on board provision presents a hardship to them. They report they operate in a largely opportunistic fishery, so they carry multiple nets in order to catch whatever species are present. Under the current FMP, if they catch the threshold quantity of summer flounder (100 or 200 pounds, depending on the season), they must return to the dock, offload all cod ends other than 5.5" diamond or 6" square and return to the fishing grounds (or offload the flounder).

4.2.2. Summer Flounder Specification Setting Schedule

The current FMP does not contain a schedule for setting the summer flounder management regime for a particular year, but the regulations require that the Regional Director submit proposed summer flounder specifications for the upcoming year by mid-September. Given that the recreational season currently closes on 30 September in most states, specifications for the upcoming year are to be proposed before the current fishery is completed. This results in the likelihood of proposals being advanced that might be more conservative than they need to be to allow for the uncertainty over what might happen later in the year.

If the schedule were changed to allow for use of the most recent data, such a conservative approach might not be necessary because the extent of uncertainties would be reduced. It could also reduce the chance of exceeding the fishing mortality goal if the catch in the recently completed season were greater than anticipated.

Additionally, the mid-September deadline does not allow adequate time for the overall summer flounder assessment and monitoring process to operate properly. The series of meetings required by this FMP must be preceded by a series of meeting to develop the necessary stock assessment and review that assessment for technical adequacy.

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 the current FMP.)

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 the current FMP.)

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 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 condition 3, a notarized statement 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 qualified 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 legally landed during the year prior to the one for which the permit is being applied (documented by sales records), principal State of landing, the home port of the vessel, and number of passengers the vessel may carry (for party and charter boats). Operators of commercial vessels must also supply information required to establish that the vessels qualify for a permit pursuant to the moratorium. The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

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

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

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

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

The Federal costs of implementing an annual permit system for the sale of summer flounder shall be charged to permit holders as authorized by section 303(b) (1) of the Magnuson Act. In establishing the annual fee, the Regional Director will ensure that the fee does not exceed the administrative costs incurred in issuing the permit, as required by section 304(d) of the Magnuson Act. Proper accounting for administrative costs may include labor costs (salary and benefits of permitting officers plus prorated share of secretarial support and

supervision at both the NMFS regional and headquarters levels), computer costs for creating and maintaining permit files (prorated capital costs, time share and expendable supplies), cost of forms and mailers (purchase, preparation, printing and reproduction), and postage costs for application forms and permits.

9.1.2.1.2. Dealer permits and fees

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

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

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

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

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

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

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

9.1.2.2. Summer Flounder FMP Monitoring Committee (This section is unchanged from the current FMP. However, the regulations contain dates on which the Regional Director must publish the proposed management measures and it is proposed that more responsive dates be adopted.)

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

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

to catch summer flounder to determine whether gear other than otter trawls needs to be regulated to help assure attainment of the fishing mortality rate target and propose such regulations as appropriate. The Council and ASMFC will receive the report of the Committee and make its recommendations to the Regional Director. The Regional Director will receive the report of the Council and ASMFC and publish his report in the *Federal Register* for public comment by the date specified in the regulations which provide States sufficient time to implement quotas and other management measures. Following the review period, the Regional Director will set the final quota and other management measure adjustments for the year.

In summary, the steps from the Monitoring Committee for 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 (This section is unchanged from the current FMP.)

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 commercial share of 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, may transfer or combine their summer flounder commercial quota between their States. These transfers do not permanently affect the State specific share of the coastwide quota that each State receives each year, i.e., the State-specific shares would remain fixed.

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

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

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

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

9.1.2.3.2. Commercial fish size limitations (This section is unchanged from the current FMP.)

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

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

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

9.1.2.3.3. Minimum mesh requirement

Vessels using otter trawls and possessing 100 lbs or more of summer flounder between 1 May and 31 October or 200 lbs or more 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 more stringent net mesh regulation, the State regulation would prevail.

States with minimum mesh regulations larger than those established in this FMP are encouraged to maintain them.

Otter trawl vessels retaining 100 lbs or more of summer flounder between 1 May and 31 October or 200 lbs or more of summer flounder between 1 November and 30 April and subject to the 5.5" minimum mesh (diamond mesh) or 6" minimum mesh (square mesh) regulation may not have available for immediate use any net, or any piece of net not meeting the minimum mesh size requirements, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(1) A net stowed below deck, provided:

- (i) it is located below the main working deck from which the net is deployed and retrieved;
- (ii) the towing wires, including the "leg" wires, are detached from the net; and
- (iii) it is fan-folded (flaked) and bound around its circumference.

(2) A net stowed and lashed down on deck, provided:

- (i) it is fan-folded (flaked) and bound around its circumference;
- (ii) it is securely fastened to the deck or rail of the vessel; and
- (iii) the towing wires, including the leg wires, are detached from the net.

(3) A net that is on a reel and is covered and secured, provided:

- (i) the entire surface of the net is covered with canvas or other similar material that is securely bound;
- (ii) the towing wires, including the leg wires, are detached from the net; and
- (iii) the codend is removed from the net and stored below deck.

(4) Nets that are secured in a manner approved by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets and has published that alternative in the *Federal Register*.

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

The owner or operator of a fishing vessel shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chaffing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present), consisting of line or rope no more than 2" in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net; and one rope no greater than 0.75 inches in diameter extending the length of the net from the belly to the terminus of the cod end along each of the following: the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50% of the entire regulated portion of the net which (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

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

offenses would be expunged from the record.

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

There are two exceptions to the minimum mesh rule:

1. Vessels fishing in the fly net fishery are exempt from the minimum mesh size requirement, provided that no other nets or netting with mesh smaller than 5.5 inches are on board. A fly net is a two seam otter trawl with the following configuration:

a. The net has large mesh webbing in the wings with a stretch mesh measure of 8" to 64".

b. The first body (belly) section of the net consists of 35 meshes or more of 8" (stretch mesh) webbing or larger.

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

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

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

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

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

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

9.1.2.4. Recreational Fishery Measures (This section is unchanged from the current FMP. However, the regulations contain dates on which the Regional Director must publish the proposed management measures and it is proposed that more responsive dates be adopted.)

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 recreational share of 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. Experimental Fishery

The Regional Director, in consultation with the Executive Director, may exempt any person or vessel from the requirements of this FMP for the conduct of experimental fishing beneficial to the management of the summer flounder resource or fishery.

The Regional Director may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

1. have a detrimental effect on the summer flounder resource and fishery or cause any quota to be exceeded; or
2. create significant enforcement problems.

Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

All experimental activities must be consistent with the fishing mortality rate reduction schedule in the FMP.

9.1.2.6. Enforcement recommendations

It is recommended that violators of the mesh regulations be severely punished. This is necessary to minimize abuses of the flexibility introduced into the management regime through Amendment 6. Examples of possible penalties include permit sanctions and requiring that offenders carry only legal mesh on board (that is, adhere to the rules prior to Amendment 6).

9.1.2.7. Other measures

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

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

The amount of summer flounder on board a vessel using small mesh trawl gear other than exempted gear may not equal 100 lbs or more between 1 May and 31 October or 200 lbs or more 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 100 lbs or more between 1 May and 31 October or 200 lbs or more 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 standard 100 pound tote has a liquid capacity of 18.2 gallons (70 liters), or a volume of not more than 4,320 cubic inches (2.5 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.

No vessel may use a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

No person may assault, resist, oppose, impede, harass, intimidate, or interfere with either a NMFS-approved observer aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this FMP.

9.1.3. Specification and Sources of Pertinent Fishery Data (This section is unchanged from the current FMP.)

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 boats with Federal permits issued pursuant to this FMP must submit logbooks monthly showing at least name and permit number of the vessel; total 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. A sample of party and charter boats may be required to report length frequencies of species caught for a sample of their trips.

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 1 January 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

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

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

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

Overfishing in the Summer Flounder FMP is defined as fishing in excess of the F_{max} level. F_{max} is a biological reference point that corresponds to the level of fishing mortality (F) that produces the maximum yield per recruit. Based on current resource condition, F_{max} is 0.23. That overfishing definition was approved by NMFS in Amendment 1 to the FMP. The Council's schedule to reduce overfishing is presented in section 9.2.2.1.

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

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

State and Federal cooperation increases the chances of reducing overfishing.

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

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

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

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

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

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.

Allowing multiple nets on board, if stowed properly, increases the FMP's consistency with this standard since it increases the flexibility of the FMP relative to the minimum mesh provision.

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. Enforcement implications of allowing multiple nets on board

The change to the FMP to allow cod ends with any mesh on board after the threshold retention levels have been met should have a positive enforcement impact relative to the current FMP, which allows only legal mesh cod ends on board once the thresholds are met.

With the current FMP, an enforcement officer must measure every cod end on board to assure that no cod ends are smaller than legal once he/she has determined that the threshold quantity of summer flounder is on board. The measurements must be adequate to determine if each cod end measures 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. The measuring protocol in the current regulations states:

"(d) Mesh-size measurement. Mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurement of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net."

This means taking 20 measurements and calculating their average for every cod end on board. This may be relatively simple for the cod end that is in use. However, measuring any additional nets could be difficult because of where they are stowed and because of their size.

With the Amendment, the enforcement officer must measure only the cod end in use. For the remainder of the nets and cod ends on board, he must only determine if they are stowed in accordance with the regulations. This should take less time than carrying out the net mesh protocol for every cod end that may be on board.

9.2.2.2. Conservation implications of noncompliance

The conservation issue associated with noncompliance relates to what net fishermen might use as a liner in a legal cod end. Sea sampling data show that the use of liners, particularly in the offshore exempted fishery (where they are legal), is not unusual. The question of liners relative to this amendment is whether there is a

detectable difference in the retention characteristics of a legal cod end with another legal cod end as a liner versus a legal cod end with a small mesh cod end as a liner.

The only relevant study available to the Council (Gillikin *et al.* 1981) indicates that there is no escapement of fish 13" total length or larger for a mesh less than 4". This is attributable to the growth rate of the summer flounder relative to the location and season of the commercial fishery. While small summer flounder exist in the estuarine nursery areas in the summer, by the time they migrate offshore to the fishing grounds in the fall they are large enough that they will be retained in nets 4" and smaller.

Sea sampling data indicate that most net liners are 3" or smaller, so, based on Gillikin *et al.* 1981, all summer flounder would be caught and retained or discarded, based on fish size and where the catch stood relative to the large mesh threshold.

Under the current FMP, with only 5.5" or 6.0" cod ends (diamond or square, respectively) legally on board after the minimum poundage threshold is met, legal cod ends have reportedly been used as liners for other legal cod ends. With such an arrangement, the mesh would likely be aligned randomly, creating randomly sized holes. While those holes could be as large as 5.5" diamond or 6" square, the likelihood is that the meshes will not align perfectly and the holes will be less than 4.0", thus allowing no escapement.

9.2.2.3. Specification schedule change

The current regulations (§625.20) provide that the Regional Director will publish in the *Federal Register* a proposed rule on or before 15 September to implement the measures for the upcoming year as recommended by the Council and Commission. It is proposed that the commercial measures be published by 15 October and the recreational measures (possession limit, size limit, and season) be published by 15 February.

This change will allow additional time for setting the overall poundage catch limit based on the fishing mortality reduction goal for the year and the stock assessment. It would postpone the conversion of that quantity into the possession limit, size limit, and season for the upcoming year until the data for the current year have been analyzed, thus assuring that the measures for the new year are as responsive as possible to conditions in the fishery.

The negative impact to this change involves the time that many of the States need to implement regulations. It may be that some of the States could not respond to changes within the schedule proposed.

If the schedule cannot be changed because of the State scheduling problems, then it must be realized that the recreational measures must be set conservatively to assure the fishing mortality reduction target is met based on incomplete data for the current year.

9.2.2.4. Prices to consumers

Amendment 6 should have no effect on prices to consumers.

9.2.2.5. 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.

9.2.2.6. Fishery impact statement

This Amendment will allow more flexibility to the fishermen, particularly those engaged in what is known as the "mixed trawl fishery". While the Council is just beginning a project to characterize this fishery, in general it is considered to be an opportunistic fishery that catches whatever fish are available, with no specific target species. The vessels, therefore, carry multiple cod ends, and deploy whatever is appropriate for the species encountered. Under the current Summer Flounder FMP they would be required to return to the dock and unload

all nets except 5.5" diamond or 6" square after retaining the threshold quantity of summer flounder (100 lbs or more of summer flounder between 1 May and 31 October or 200 lbs or more of summer flounder between 1 November and 30 April).

The number of vessels in the mixed trawl fishery is unknown. However, it is generally believed to involve some of the vessels from Rhode Island, New York, and New Jersey. There were 1,774 vessels with principal ports of landing in Maine through North Carolina with permits issued under the Summer Flounder FMP as of 24 March 1993 (Table 2). Of those, only 35 had Summer Flounder FMP permits only. Vessels with principal ports of landing in the same States with permits under the Summer Flounder and Mackerel, Squid, and Butterfish (MSB) and Northeast Multispecies FMPs totalled 1,549. The difference between the two totals are vessels with Summer Flounder FMP permits and some combination of MSB, Northeast Multispecies, and Atlantic Sea Scallop FMP permits. For the three States with some vessels potentially in the mixed trawl fishery, the counts are:

	Number of Vessels	Number of Crew	Summer Flounder Only	Summer Flounder MSB + Multispecies
RI	195	675	7	169
NY	250	715	6	214
NJ	205	886	14	166
Total	650	2,276	27	549

Clearly, just because a vessel has a permit under a particular FMP does not guarantee that the vessel is landing fish managed under that FMP. Fishermen get permits so any bycatch may be legal. They get permits so that they may not be eliminated under a future entry limitation program. However, available information on the mixed trawl fishery suggests that summer flounder, *Loligo* squid, butterfish, and silver hake (all managed under the three FMPs identified above) are landed in that fishery. It seems reasonable, therefore, to infer that a substantial number of vessels might benefit from the provisions of Amendment 6.

9.3. RELATION OF RECOMMENDED MEASURES TO EXISTING APPLICABLE LAWS AND POLICIES (This section is unchanged from the current FMP.)

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 3). 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 4). An investigation of the causes of sea turtle (loggerhead and some Ridley) mortality in Chesapeake Bay indicated pound nets accounted for about 19% of the deaths (Musick *et al.* 1985). Other identifiable causes accounted for 11% of the mortalities with the cause of death undetermined for the remaining 70%.

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

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

Information regarding the level of turtle mortalities in Virginia and North Carolina comes from stranding data.

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

Between 26 November and 7 December 1990, 54 sea turtles, including at least 8 endangered Kemp's Ridleys, stranded on North Carolina beaches (North Carolina officials estimate that 53 loggerhead, 1 Kemp's Ridley, and 1 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 5) and stranding data (Figure 3), indicated that the conflict between sea turtles and the fishery occurs annually in the late fall/winter summer flounder fishery in North Carolina. The Draft Biological Opinion resulting from the reinitiated consultation concluded that continued unrestricted operation of this fishery would be likely jeopardize the continued existence of the endangered Kemp's ridley sea turtle population. Implementation of the reasonable and prudent alternatives discussed above is necessary to allow activities conducted under the Summer Flounder FMP to continue in compliance with the Endangered Species Act.

To be consistent with the Biological Opinion issued for this FMP (Amendment 2), fishermen conducting activities regulated under this management plan must comply with any regulations published by NMFS implementing sea turtle conservation measures including mandatory limited tow times, observer coverage, and the use of Turtle Excluder Devices in bottom trawls participating in the winter fishery for summer flounder in waters from Cape Charles, Virginia, to the southern border of North Carolina. This issue is also addressed directly in section 9.1.2.5 of this FMP.

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

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

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

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

The most recent ESA Section 7 Consultation (19 October 1993) states, with regard to the sea turtle conservation measures thus far implemented, "Regardless of the quota established, therefore, these measures should minimize the incidental take of sea turtles in this fishery" (Roe pers. comm.). It further states "In summary, current fishing practices under the Summer Flounder FMP do not affect sea turtles in any manner

not already considered in the formal consultations conducted for this FMP."

9.3.3.2. Marine Sanctuaries

There are two national marine sanctuaries in the area covered by the FMP: the *Monitor* National Marine Sanctuary off North Carolina, and the Stellwagen Bank National Marine Sanctuary off Massachusetts.

The *Monitor* National Marine Sanctuary was designated on 30 January 1975, under Title III of the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA). Implementing regulations (15 CFR 924) 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 Service (NOS) charts by the caption "protected area." This minimizes the potential for damage to the Sanctuary by fishing operations.

NOAA/NOS issued a proposed rule on 8 February 1991 (56 FR 5282) proposing designation under MPRSA of the Stellwagen Bank National Marine Sanctuary, in Federal waters between Cape Cod and Cape Ann, Massachusetts. On 4 November 1992, the Sanctuary was Congressionally designated. Implementing regulations (15 CFR 940) will become effective following Congressional review. Commercial fishing is not specifically regulated by Stellwagen Bank regulations.

Details on sanctuary regulations may be obtained from the Chief, Sanctuaries and Reserves Division (SSMC4) Office of Ocean and Coastal Resource Management, NOAA, 1305 East-West Highway, Silver Spring, MD 20910.

9.3.3.3. Indian treaty fishing rights

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

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

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

Approximately 70% of the commercial fishery occurs in the EEZ (Table 3). While the fishery varies among the States and targets on the concentrations of fish as they move inshore in the spring and offshore in the fall, the offshore winter fishery targets on large concentrations of fish that are overwintering along the shelf edge. Offshore (depths up to 500 ft.) areas (section 5.1), where overwintering occurs, and where spawning occurs in the spring, are areas where significant potential conflicts between this resource and offshore energy resources may occur.

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

9.3.3.5. Vessel Safety

Section 303(a)(6) of the MFCMA requires that FMPs consider access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety

of vessels. The proposed management measures of this FMP do not limit the times or places when or where vessels may fish. Therefore, the Council has concluded that the proposed FMP will not impact or effect the safety of vessels fishing in this fishery.

9.3.4. State, Local, and Other Applicable Law and Policies

9.3.4.1. State management activities

State regulations for summer flounder are summarized in Table 6.

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.

As of the date of this document (20 December 1993) Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, and North Carolina all concurred with the Council's determination. Maryland had not responded.

9.4. COUNCIL REVIEW AND MONITORING OF THE FMP (This section is unchanged from the current FMP.)

9.4.1. Monitoring

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

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

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

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

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

10. REFERENCES

- Bellmund, S. A., J. A. Musick, R. C. Klinger, R. A. Byles, J. A. Keinath, and D. E. Barnard. 1987. Ecology of sea turtles in Virginia. Unpub. Spec. Sci. Rep. 119 submitted to NMFS, NE Region. VIMS, Gloucester Pt., VA. 48 p.
- Cole, R. 1990. Personal communication. DE Dept. of Nat. Res. and Env. Control., Dover, DE.
- Connecticut Department of Environmental Protection memo. 6 November 1992.
- Gillikin, J.W., Jr., B.F. Holland, Jr., and R. O. Guthrie. 1981. Net mesh selectivity in North Carolina's winter trawl fishery. North Carolina Dept. Nat. Res. D Commun. Dev., Div. Mar. Fish., Spec. Sci. Rpe. 37, 69 p.
- Honey, K. 1990. Personal communication. ME Dept. of Mar. Res., West Boothbay Harbor, ME.
- Joseph, E. 1988. Personal communication. South Atlantic Fishery Management Council.
- Lutcavage, M. and J. A. Musick. 1985. Aspects of biology of sea turtles in Virginia. Copeia 1985(2): 449-456.
- Marshall, D. 1988. Personal communication. New England Fishery Management Council.
- McCoy, E.G. 1990. Personal communication. NC Dept. of Nat. Res. and Comm. Dev., Moorehead City, NC.
- Mid-Atlantic Fishery Management Council (MAFMC). 1988. Fishery management plan for the summer flounder fishery. Dover, DE.
- McKiernan, D. J. 1990. Personal communication. Massachusetts Div. of Mar. Fish. Boston, MA.
- Musick, J. A., R. A. Byles, R. E. Klinger, and S. A. Bellmund. 1985. Mortality and behavior of sea turtles in the Chesapeake Bay. NOAA, NMFS Contract NA80FA00004. VIMS, Gloucester Point, VA. 52

p.

Nelson, J.I. 1990. Personal communication. NH Fish and Game Dept., Durham, NH.

Roe, R. 1993. Personal communication. NMFS NERO, Gloucester, MA.

Roe, R. 1993. Personal communication. Memo of 19 October 1993. NMFS NERO, Gloucester, MA.

Scarlett, P.G. 1990. Personal communication. NJ Dept. of Env. Prot. Trenton, NJ.

Simpson, D. G. 1990. Personal communication. CT Dept. of Env. Prot., Waterford, CT.

Sisson, R.T. 1990. Personal communication. RI Div. of Fish and Wildlife. Wakefield, RI.

Spier, H. 1990. Personal communication. MD Dept. of Nat. Res. Annapolis, MD.

University of Rhode Island. 1982. A characterization of marine mammals and turtles in the Mid- and North Atlantic areas of the US outer continental shelf. Final Report. Prepared for USDI under contract #AA551-CT8-48.

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

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

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

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. NMFS Permit File Data
(Vessels with Commercial Summer Flounder Permits as of 3/24/93)**

State of <u>Principal Port</u>	Number of <u>Vessels</u>	Number <u>of Crew</u>	Gross <u>Tonnage</u>	<u>Counts of Permit Combinations</u>	
				Summ. Fl. <u>Only</u>	Summ. Fl + SMB <u>+ Multi Species</u>
ME	103	299	3693	0	91
NH	38	103	454	0	34
MA	675	2884	46943	2	607
RI	195	675	12001	7	169
CT	29	95	1691	1	24
NY	250	715	8790	6	214
PA	5	35	566	0	5
NJ	205	886	14537	14	166
DE	7	20	294	1	4
MD	14	48	1005	0	12
VA	119	820	13770	1	110
NC	<u>134</u>	<u>570</u>	<u>13402</u>	<u>3</u>	<u>113</u>
Total	1774	7150	117146	35	1549

Outside Management Unit

State of <u>Principal Port</u>	Number of <u>Vessels</u>	Number <u>of Crew</u>	Gross <u>Tonnage</u>	<u>Counts of Permit Combinations</u>	
				Summ. Fl. <u>Only</u>	Summ. Fl + SMB <u>+ Multi Species</u>
FL	8	41	579	1	7
LA	1	5	101	0	1
MS	1	8	196	0	1
PR	1	3	44	0	1
AK	<u>1</u>	<u>10</u>	<u>176</u>	<u>0</u>	<u>0</u>
Total	12	67	1096	1	10

Source: NMFS permit file data.

Table 3. 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 4. Summer Flounder Commercial Landings by State and Gear, 1980-89 Combined

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

* = less than 0.05 %

Source: Unpublished NMFS General Canvass data.

Table 5. 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 kempi* (Kemp's ridley turtle), Cc = *Caretta caretta* (loggerhead turtle).
 Source: North Carolina Division of Marine Fisheries, unpublished data.

Table 6. 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.

FALL
 LOGGERHEAD
 N = 325

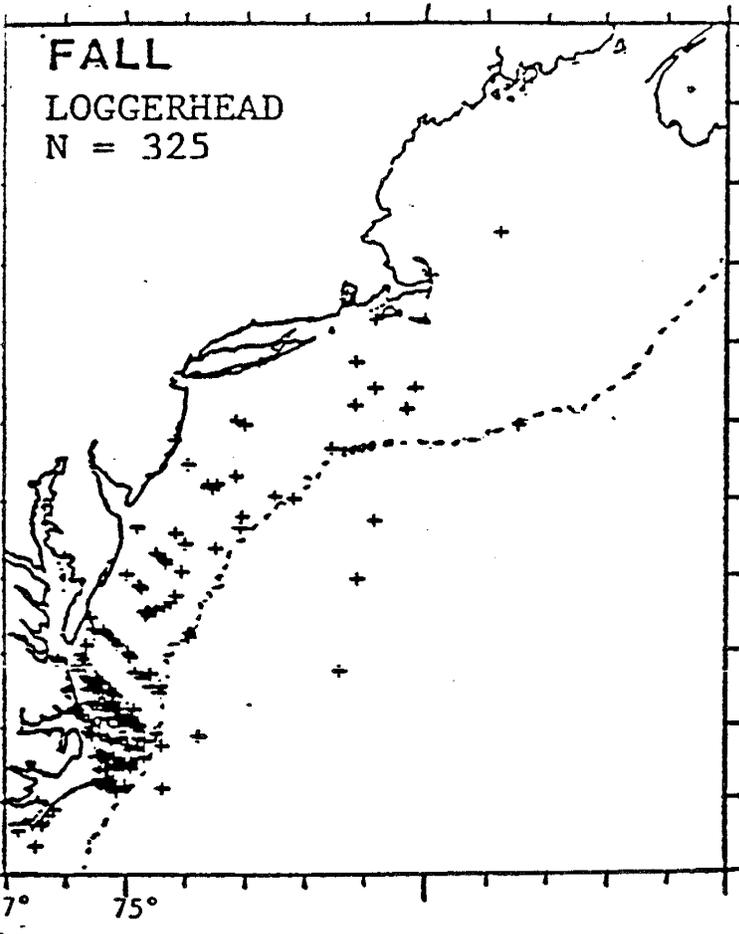
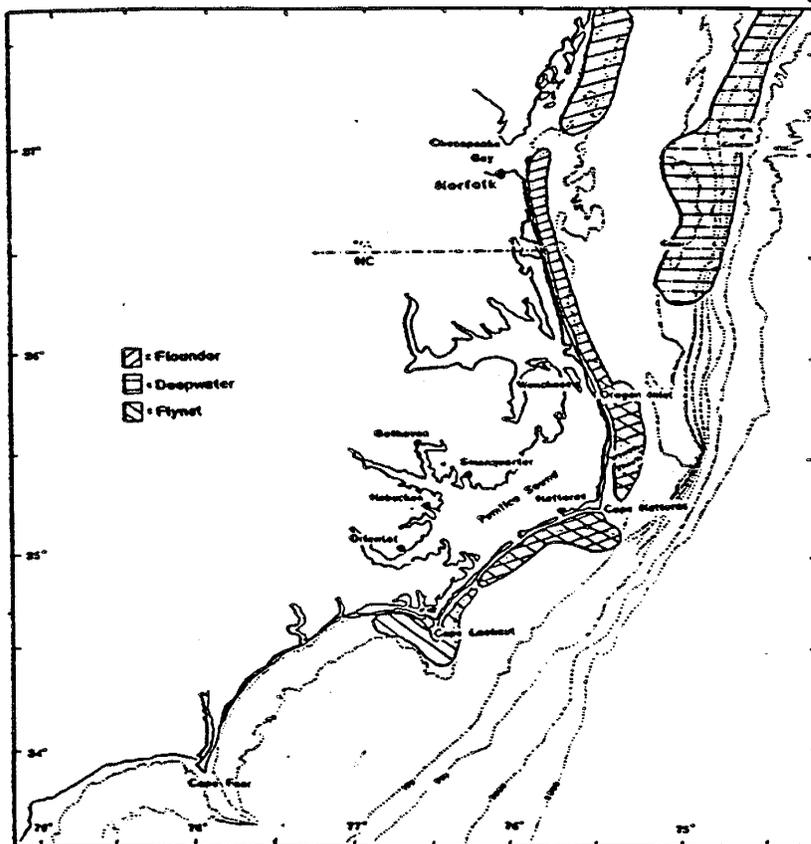
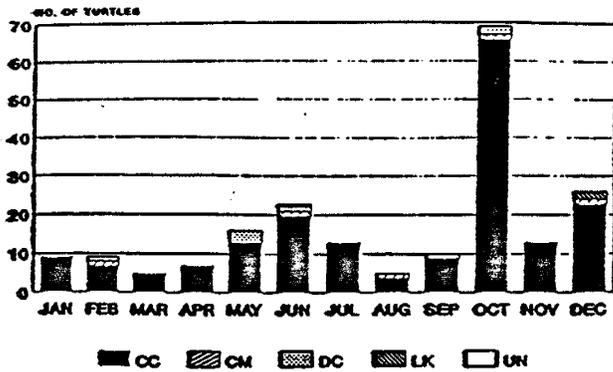


FIGURE 1 : Fall (Sept.22-
 Dec.21) distribution of
 loggerhead sea turtles. From
 CeTAP, 1982.

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

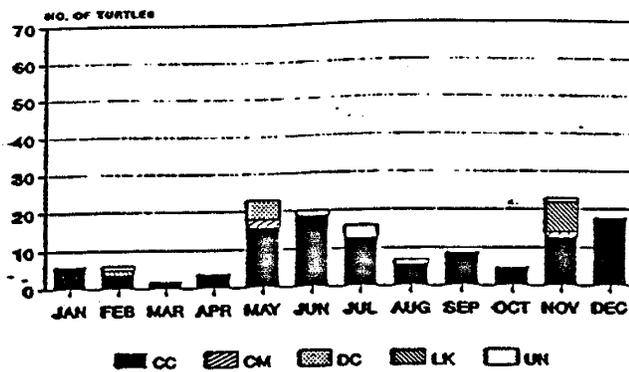


NORTH CAROLINA SEA TURTLE STRANDINGS, 1985



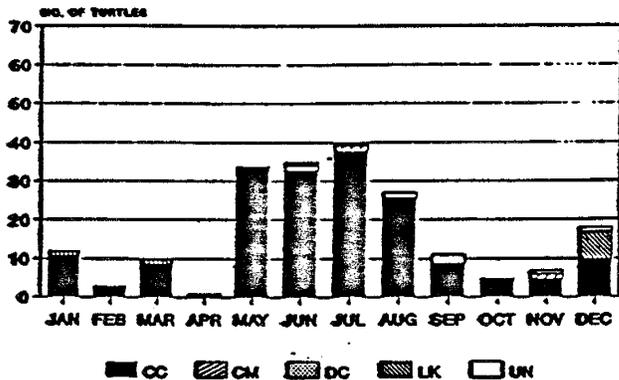
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NORTH CAROLINA SEA TURTLE STRANDINGS, 1986



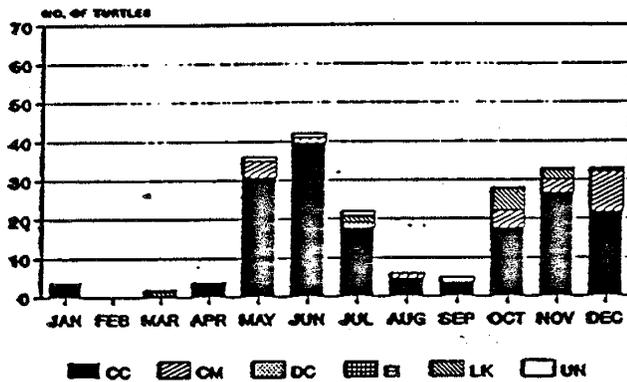
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NORTH CAROLINA SEA TURTLE STRANDINGS, 1987



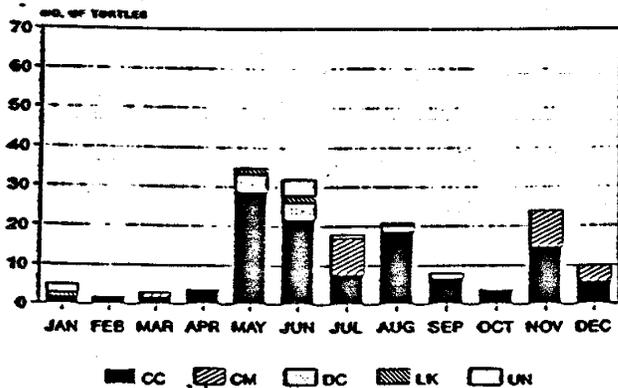
for '87 - 203

NORTH CAROLINA SEA TURTLE STRANDINGS, 1988



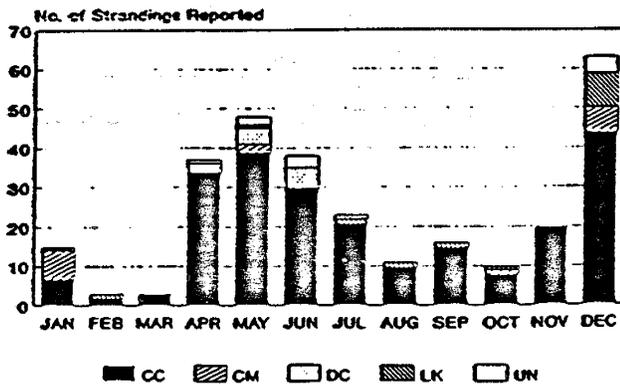
for '88 - 215

NORTH CAROLINA SEA TURTLE STRANDINGS, 1989



for '89 - 066

NORTH CAROLINA Sea Turtle Strandings, 1990



for '90 - 267

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

APPENDIX 1. ALTERNATIVES TO THE AMENDMENT

1. TAKE NO ACTION AT THIS TIME

1.1. Description

This would mean that vessels could only have a legal mesh net on board if they exceeded the threshold and were not in one of the exempted fisheries. It would also mean that the summer flounder management measures would be proposed in September.

1.2. Evaluation

The "No Action" alternative would not solve the problems identified in section 4.

Fishermen retaining more than the threshold levels of summer flounder would be required to have only nets with the legal mesh on board. Therefore, if they had small mesh on board, they would need to return to the dock to unload the summer flounder or unload the small mesh nets. This would present a problem for vessels in the mixed trawl fishery. These fishermen report that they carry multiple nets because they fish for species of opportunity and requiring them to return to port to change nets imposes a hardship on them.

No change in the management measure setting schedule may result in decisions being made on incomplete data (although it would meet the Magnuson Act test of best available data) because of the timing of the assessment and monitoring process, the recreational season and the availability of the Marine Recreational Statistics Survey data.

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

1.2. Description of User Groups

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

1.3. Problems Addressed by Amendment 6

The problems to be addressed are discussed in Section 4.2 of Amendment 6.

1.4. Management Objectives

The objectives of Amendment 6 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 6

The management measures are presented in Section 9.1 of Amendment 6. Other alternatives are presented in Appendix 1 to Amendment 6.

2. REGULATORY IMPACT ANALYSIS

The impacts of the management measures are presented in Section 9.2 of Amendment 6. Other alternatives are evaluated in Appendix 1 to Amendment 6.

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 6 are discussed in section 9.2.

3.3. Benefit - Cost Conclusion

The benefits and costs of Amendment 6 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 6 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 6.

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 6 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 6 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 6 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 allowed for the transfer or combination of the commercial summer flounder quota between States. Amendment 6 addresses the problems discussed in Section 4.2 of the Amendment.

2. PURPOSE OF AND NEED FOR ACTION

The problems to be addressed in Amendment 6 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 6. Other alternatives are presented in Appendix 1 to Amendment 6.

6. ENVIRONMENTAL IMPACTS

The impacts of adopted management measures are presented in Section 9.2 of Amendment 6. Other alternatives are evaluated in Appendix 1 to Amendment 6.

This action should have no impact on other fisheries because the ability of the fishermen to carry multiple nets after the retention quantities have been met 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 6. Other alternatives are evaluated in Appendix 1 to Amendment 6.

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 6. Other alternatives are evaluated in Appendix 1 to Amendment 6.

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 6 (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 6 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 6 might affect the coastal zone and was consistent. For Pennsylvania, the evaluation was that Amendment 6 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 Jack Dunnigan (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 Technical 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 FMP AMENDMENT 6 PUBLIC HEARINGS

3 November 1993 - Danfords Inn, Port Jefferson, NJ

Hearing Officer Gordon Colvin convened the hearing at 8:20 p.m. with opening comments. David Keifer presented the draft Amendment 6.

Jim O'Malley (East Coast Fisheries) said that he appreciates the Council working with them. He added that they will be pushing for straight twine as soon as they get away from the one mesh on board problem.

Dennis Kanyuk (fishermen from NY representing various organizations) Thanked Council for management of summer flounder. He will support Amendment 6 only if it gives fishermen flexibility without hurting fluke fishery. He feels they need equal increases in both recreational and commercial. He stated that he wanted 10" in the beginning but settled for 6". He sees effective fishery management as a compromise.

Charlie Bergman (Axelsson & Johnson) stated that he supports the Amendment.

The hearing was closed at 8:31 p.m.

8 November 1993 - Holiday Inn, Toms River, NJ

Hearing Officer Tom McVey opened the hearing at 7:05 P.M. Hannah Goodale represented the National Marine Fisheries Service (NMFS). Ten members of the public were present.

Mr. Keifer presented Amendment 6.

Joseph Branin, Belford Seafood Coop, stated that Amendment 6 will help fishermen.

Bob Peru supported Amendment 6, but said commercial fishermen have an unfair advantage. He requested that the summer flounder recreational possession limit be dropped.

Don Bassman stated that the summer flounder catch data are bad and requested that the Council not lower the possession limit to 5 summer flounder.

George Bachert said there should be no possession limit.

Charles Bergman (Axelsson & Johnson) stated that Amendment 6 was positive. Commercial fishermen need more than one net on board.

The hearing was closed at 7:30 P.M.

9 November 1993 - Days Inn, New Bedford, MA

No hearing officer was present. Dr. Chris Moore opened the hearing at 7:28 P.M. Kathy Collins served as recording secretary. Eight members of the public were present.

Dr. Moore presented Amendment 6.

Elsie Souza (Representative Barney Frank's Office) requested that the industry's needs and wants be met.

Howard Nickerson (Offshore Mariners Assn) questioned what good is a 100 pound limit if he cannot land it in MA. He said that it is not fair that boats come to MA to unload and take up the MA quota. He also asked if the stowing of gear had been discussed with the Coast Guard.

Judith Ramos (Offshore Mariners Assn) explained that an amendment that allowed multiple nets on board would make small mesh sets more accessible for use by some fishermen to catch fluke and this could cause many fines and sanctions against fishermen.

One gentleman stated that the 1994 quota needs to be fair for MA so they do not get cut off in the middle of the season. He asked what happens when states do not fill their quota.

Dr. Moore explained that states can transfer to other states. He said that if a state goes over their quota, that amount comes off of next years quota.

Another gentleman suggested setting aside an "emergency" quota in case they run out then they can use what is set aside.

The hearing was closed at 8:00 p.m.

10 November 1993 - Dutch Inn, Galilee, RI

Hearing Officer Dick Allen opened the hearing at 7:10 P.M. Dick Sisson from the State of RI was present. Dr. Chris Moore and Kathy Collins were present from the Council staff. Twenty-one members of the public were present.

Dr. Moore presented Amendment 6.

Bruce Bannick asked why they were allowing small mesh on board and what was requiring the change.

Dr. Moore explained that East Coast Fisheries requested this change.

Peter Barbera supported the preferred alternative. He stated that it would be a hardship to have only one gear on board. He added that by keeping nets on the dock, and not properly stowed, they could be stolen. He thanked the Council for their cooperation.

Jim O'Malley presented a statement for Attorney Dennis Nixon. (Attachment)

Jake Dykstra (Point Judith Fishermen's Coop) stated that he is in favor of Amendment 6. He thanked the Council for listening and proposing the Amendment.

A gentleman named Joel supported Amendment 6. He suggested that anyone that catches fluke and sells them should be considered a commercial fishermen.

David Dowdell (Davrod Corp.) supported Amendment 6. He stated that it may help reduce effort. He said that it gives the capability of switching to another fishery.

Harold Loftes supported Amendment 6. He agreed with the statements Mr. O'Malley and Mr. Dowdell made. He said that most people follow the law and if they are allowed freedom they will follow the laws better than if they were boxed up. He said that if they were boxed up they would want to break the law.

Greg Huba supported Amendment 6.

Bruce Bannick opposed Amendment 6. He said that if they allow any mesh on board, why call it a large mesh fishery? He said that there would have to be much more enforcement at sea.

Donald Fox stated that there is only so much enforceability. He said that every law is only as enforceable as we make it.

Mike Doyle said he thinks it could be enforceable by air. He also said that it is easy to check tally

sheets at the dock.

One gentleman said that any boat that exceeds the threshold beyond the exemption line should have a type of flag to identify what they are fishing for. He also added that fishermen using a 5.5" twine have more problems with violations. He added that problems are going to be everywhere.

Peter Barbera stated that the industry wants enforcement. He added that if it takes more boats for enforcement then the government should get them.

Bruce Bannick stated that the Plan allows for enforcement problems, ones that are not going to be solved.

Jim O'Malley (East Coast Fisheries Foundation) submitted a statement. (Attachment)

The hearing was closed at 8:05 p.m.

10 November 1993 - Holiday Inn, Washington, NC

Hearing Officer Dennis Spitsbergen opened the hearing at 7:10 p.m. and read opening remarks. David Keifer and Joanna Davis of Council staff were present. Public attendance were Hannah Goodale representing NMFS, Billy Carl Tillett and his brother from Wanchese, NC, and Billy and Janice Smith from Atlantic, NC.

David Keifer presented Amendment 6.

Billy Tillett asked that the Amendment/Summary be interpreted into laymen's language. Mr. Keifer did this. All four in attendance basically supported the Amendment. Mr. Tillett asked if the Amendment could be requested on an economic emergency basis. Mr. Spitsbergen advised that he would raise the question before Council.

There were other general comments made among the four, but nothing specifically regarding Amendment 6.

Mr. Spitsbergen closed the hearing at 7:40 p.m.

15 November 1993 - Cape May Courthouse Extension Office, NJ

No hearing officer was present. David Keifer opened the hearing at 7:05 P.M. Kathy Collins served as recording secretary. Ten members of the public were present.

Mr. Keifer presented Amendment 6.

Jim Harris asked if they were allowed a combination of mesh and liners and if you have a 5" net can you have a 5" patch webbing?

Mr. Keifer explained that they could have them as long as they were properly stowed and it was obvious that you were not using them as liner. He added that you can not fish with your small mesh once you have your 100 or 200 pounds of fluke but you can have it on board as long as it is properly stowed.

Mr. Harris stated that he supported Amendment 6.

Rick Hoff (Carlson Seafood) asked if a boat goes out 8 or 10 hours off shore and there is a net properly stowed for porgies and he is fishing for flounder, he gets over the 100 pounds and comes across another species he wants to try for, is there any way to call in and tell them where you are in order to be allowed to fish for another species? This is just something to look at and to give another option.

Mr. Keifer explained as a practicable matter, the concern is that if you were allowed to switch back to a small mesh net, who is to say that if the Coast Guard comes aboard, you have not been fishing for flounder with a small mesh all along.

Mr. Harris asked if you could go scup fishing with a fly net then go fishing for summer flounder.

Mr. Keifer replied that you cannot go from a large mesh to a small mesh fishery but you can go from a small mesh to a large mesh fishery.

One gentleman stated that they were all for Amendment 6 but they did not want to be eliminated from their livelihood.

Mr. Harris suggested being able take the trip line out where it would not be ready to use, and the net would be wrapped and bound in canvas, so that way it would not be as much work if they needed to use the net.

Kenneth Hand suggested making up cod ends that have metal clip stamps (4 of them on one bag) for 5.5" bags. He said to have it so that anyone caught using any other bag for that fishery be fined or lose their permit. They better have the clip on the bag to fish for fluke. This would give them one chance. He added to let them keep what they catch. If we are going to live with a 5.5" bag, let the Federal people issue the metal stamps. If this is made a big deal for the people who get caught, nobody will do it.

One gentleman said that if everyone used a 5.5" bag, there would not have to be a quota in a couple of years. That would cure bringing the species back.

Doug Wilson said that it would help enforcement. He said that if you are caught with a liner, you would be finished.

Mr. Hoff said that you should be able to keep what you catch because whatever is pushed out is going to die anyway.

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

APPENDIX 5. QUESTIONNAIRE RESPONSES AND RESPONSES TO WRITTEN COMMENTS

Questionnaires soliciting opinions on the preferred alternative for Amendment 6 and the non-preferred alternative were available at all of the hearings. The responses were:

	<u>New Bedford,</u> <u>MA</u>	<u>Galilee,</u> <u>RI</u>	<u>Pt. Jefferson,</u> <u>NY</u>	<u>Toms River,</u> <u>NJ</u>	<u>Cape May,</u> <u>NJ</u>	<u>Washington,</u> <u>NC</u>	<u>Total</u>
Preferred alternative	1	8	-	2	7	18	
Alternative 1 (no action)	-	-	-	-	-	-	
Total	1	8	-	2	7	18	

The Council received three public comment letters on Amendment 6.

Martin Fish Company, Ocean City, MD, opposed Amendment 6 and recommended the FMP not be changed to allow multiple nets.

The Seafarers International Union supported the preferred alternative in Amendment 6.

The Offshore Mariners' Association, Inc., of New Bedford, MA, stated that their members were fishing and they did not have time to prepare comments and would subsequently submit comments on Amendment 6, which were not received during the comment period. The Association has been added to the Council's mailing list to assure notice in the future.

APPENDIX 6. REGULATIONS

PART 625 -- SUMMER FLOUNDER FISHERY

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

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

2. Section 625.8, paragraphs (a)(6), (a)(7), and (c)(9) are revised and a new paragraph (e) is added to read as follows:

§625.8 Prohibitions.

(a) * * *

(6) Fish with or possess nets or netting that do not meet the minimum mesh requirement or that are modified, obstructed or constricted, if subject to the minimum mesh requirement, unless the nets or netting are stowed in accordance with §625.24(f);

(7) Fish with or possess nets or netting that do not meet the minimum mesh requirement or that are modified, obstructed or constricted if fishing with an exempted net described in §625.24 unless the nets or netting are stowed in accordance with §625.24(f);

* * * * *

(c) * * *

(9) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion or refusal of reasonable assistance an observer or sea sampler conducting his or her duties aboard a vessel; or

* * * * *

(e) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to §625.28 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

3. Section 625.20, paragraph (c) is revised to read as follows:

§625.20 Catch quotas and other restrictions.

* * * * *

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the applicable fishing mortality rate specified in paragraph (a) of this section is not exceeded. The Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director with respect to the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. Included in the recommendation will be supporting documents as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish in the FEDERAL REGISTER a proposed rule on or before October 15th to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery and will publish in

the FEDERAL REGISTER a proposed rule on or before February 15th to implement additional management measures for the recreational fishery, if he determines that these measures are necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. After considering public comment on a proposed rule, the Regional Director will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded.

4. Section 625.24, paragraph (c) is removed and paragraphs (d) and (e) are redesignated as paragraphs (c) and (d) and new paragraphs (e) and (f) are added to read as follows:

§625.24 Gear Restrictions.

* * * * *

(e) Mesh obstruction or constriction.

(1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (d) of this section, if it obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(f) *Stowage of nets.* Otter trawl vessels retaining 100 pounds (45.3 kg) or more of summer flounder from May 1 through October 31 or 200 pounds (90.6 kg) or more of summer flounder from November 1 through April 30 that are subject to the minimum mesh size may not have "available for immediate use" any net, or any piece of net, not meeting the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(1) A net stowed below deck, provided:

- (i) It is located below the main working deck from which the net is deployed and retrieved;
- (ii) The towing wires, including the "leg" wires, are detached from the net;
- (iii) It is fan-folded (flaked) and bound around its circumference.

(2) A net stowed and lashed down on deck, provided:

- (i) It is fan-folded (flaked) and bound around its circumference;
- (ii) It is securely fastened to the deck or rail of the vessel; and
- (iii) The towing wires, including the leg wires, are detached from the net.

(3) A net that is on a reel and is covered and secured, provided:

- (i) The entire surface of the net is covered with canvas or other similar material that is securely bound;
- (ii) The towing wires, including the leg wires, are detached from the net; and
- (iii) The codend is removed from the net and stored below deck.

(4) Nets that are secured in a manner approved by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets and has published that alternative in the *Federal Register*.

5. Section 625.25, paragraph (d) is revised to read as follows:

§625.25 Possession limit.

* * * * *

(d) Owners and operators of otter trawler vessels issued a permit under §625.4, that fish with, or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with §625.24(f) may not retain 100 pounds (45.3 kg) or more of summer flounder from May 1 through October 31 or 200 pounds (90.6 kg) or more of summer flounder from November 1 through April 30. Summer flounder on board these vessels shall be stored, so as to be readily available for inspection, in standard 100-pound (45.3kg) totes or fish boxes having a liquid capacity of 18.2 gallons (70 liters), or a volume of not more than 4,320 cubic inches (2.5 cubic feet or 70.79 cubic cm).

6. Section 625.28 is added to read as follows:

§625.28 Experimental fishery.

(a) The Regional Director, in consultation with the Executive Director of the Council, may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the summer flounder resource or fishery.

(b) The Regional Director may not grant such exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

- (1) have a detrimental effect on the summer flounder resource and fishery; or
- (2) cause any quota to be exceeded; or
- (3) create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

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.

