AMENDMENT 10

TO THE

SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS

FISHERY MANAGEMENT PLAN

August 1997

Mid-Atlantic Fishery Management Council

and the

Atlantic States Marine Fisheries Commission,

in cooperation with the

National Marine Fisheries Service,

the

New England Fishery Management Council,

and the

South Atlantic Fishery Management Council

Draft adopted by MAFMC: 17 December 1996
Final adopted by MAFMC: 13 May 1997
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2. SUMMARY

This Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), prepared by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), is intended to manage the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended (MSFCMA). 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 10 proposes a number of changes to the summer flounder regulations implemented by Amendment 2 and later amendments to the Summer Flounder, Scup and Black Sea Bass FMP. Specifically this amendment does the following:

1. Requires a minimum mesh of 5.5" diamond (or 6.0" square) mesh in the body, extension, and codend portion of the net for otter trawl vessels retaining more than 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. This mesh regulation would become effective 6 months after the final regulations are published in the Federal Register;

2. Modifies the commercial minimum mesh regulations such that a minimum mesh size can be specified for any portion of the net;

3. Continues the moratorium on entry of additional commercial vessels into the summer flounder fishery;

4. Removes the requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit;

5. Modifies the vessel replacement criteria to allow for voluntary replacement of a vessel issued a moratorium permit and a one time vessel upgrade such that the horsepower does not increase by more than 20% and the length, gross registered tonnage, and net tonnage do not increase by more than 10%;

6. Implements a provision such that any state could be granted *de minimus* status if commercial summer flounder landings during the last preceding calendar year were less than 0.1 percent of the total coastwide quota; and

7. Prohibits transfer of summer flounder at sea.

Because this amendment has been prepared by both the Council and Commission, there are additional management measures in the amendment that will be implemented by the Commission as part of their interstate management process. Defined as compliance criteria, these management measures are not part of the federal regulatory process. These management measures are:

8. A requirement that states document all summer flounder commercial landings in their state that are not otherwise included in the federal monitoring of permit-holders;

9. An allowance for states to issue a special state permit for party/charter vessels to allow the possession of summer flounder parts smaller than the minimum size.

In addition, the document also reconsiders the commercial quota system implemented by Amendment 2.

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4. INTRODUCTION

4.1. DEVELOPMENT OF THE PLAN

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

It was decided that the initial plan would be prepared by the Commission. The Council arranged for NMFS to make some of the Council's programmatic grant funds available to finance preparation of the Commission 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 was based on the Commission management plan. 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. 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.

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 Commission Interstate Fishery Management Program Policy Board. Amendment 2 was a major amendment that contained a number of management measures including a commercial moratorium, commercial quotas, and recreational limits. 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 4 adjusted Connecticut's commercial landings of summer flounder and revised the state-specific shares of the coastwide commercial summer flounder quota as requested by the Commission. Amendment 5 allowed states to transfer or combine the commercial quota. Amendment 6 allowed multiple nets on board as long as they were properly stowed and changed the deadline for publishing the overall catch limits and commercial management measures to 15 October and the recreational management measures to 15 February. Amendment 7 revised the fishing mortality rate reduction schedule for summer flounder. Amendment 8 established management measures for scup (*Stenotomus chrysops*) and Amendment 9 established a management program for black sea bass (*Centropristis striata*).

This Amendment 10 proposes a number of changes to the summer flounder regulations implemented by Amendment 2 and later amendments to the Summer Flounder, Scup and Black Sea Bass FMP. Specifically this amendment would modify the commercial minimum mesh regulations, continue the moratorium on entry of additional commercial vessels, modify the vessel replacement criteria, remove provisions that pertain to the expiration of the moratorium permit, add a *de minimus* option for states, and prohibit transfer of summer flounder at sea.

Because this amendment has been prepared by both the Council and Commission, there are additional management measures in the amendment that will be implemented by the Commission as part of their interstate management process. Defined as compliance criteria, these management measures are not part of the federal regulatory process. These management measures include a requirement that states document all summer flounder commercial landings in their state and also allow a state to issue a special permit for party/charter vessels to allow the possession of summer flounder parts smaller than the minimum size.

In addition, the document reconsiders the commercial quota system implemented by Amendment 2. Amendment 2 presents a thorough analysis and discussion of the current state-by-state quota system including an analysis of the biological, social and economic impacts. An analysis of several alternatives to the current state-by-state quota system is presented in Appendix 1 of this document.

4.2. PROBLEMS FOR RESOLUTION

4.2.1. Commercial Quota System

The commercial quota for summer flounder is currently allocated to the states based on their share of the commercial landings from 1980 through 1989 (as revised). The states may combine or transfer their quotas with the approval of the NMFS Northeast Regional Administrator. Each state is responsible for managing its commercial quota.

NMFS has approved several different quota systems for species managed by the Council and Commission. A coastwide quota system for scup was approved in 1996 by NMFS and later modified by a regulatory amendment which was approved in 1997. As a result, the scup quota is currently allocated into three periods: two winter coastwide allocations and a summer state-by-state allocation. These three periods were chosen by the Council and Commission in recognition of the seasonal nature of the scup fishery, specifically changes in landing patterns by vessel size and gear type over the year.

The Council and Commission approved a state-by-state quota system for black sea bass that was subsequently disapproved by NMFS. The disapproval was based on the fact that Cape Hatteras separates two distinct stocks of black sea bass and a state quota share for North Carolina would have been problematic. As a result, a coastwide quota allocated into quarterly periods was adopted by the Council and Commission and approved by NMFS for black sea bass in 1996.

The state-by-state quota system for summer flounder has been in place since 1993. Over the years, many of the states have refined their management systems to allow for an equitable allocation of summer flounder to the fishermen that land summer flounder in their state. These systems account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them.

However, some participants, particularly in the New England states, have indicated that they are dissatisfied with the current system and would like to replace it with a coastwide allocation. These individuals indicate that the current system forces them to travel hundreds of miles to land summer flounder in other states with open fisheries and higher landing limits. As a result, they argue that there is a loss of revenue to the New England states and fishermen's lives and vessels are put at unnecessary risk due to the adverse conditions they might encounter. In addition, they also indicate that the state-by-state allocations have caused states to promote their own interests at the expense of cooperative interstate management of summer flounder. They also indicate that the state shares associated with the current system are unfair to New England fishermen because these small shares put them at a competitive disadvantage when fishing in federal waters alongside fishermen from other states. Finally, they argue that the current system is inequitable and discriminates between residents of different states because of the method used to determine the individual state shares.

A coastwide system could eliminate state allocation issues and provide for uniform landing limits along the coast. If properly designed, it could also streamline the management system and make availability

of summer flounder more predictable for fishermen and processors. However, the potential problems associated with a coastwide system may make it impractical. It will be difficult to design a system that provides for an equitable allocation of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. Uniform landing limits may not be suitable for all vessels or areas. The result could be a redistribution of the summer flounder catch geographically and between vessel types.

4.2.2. Minimum Mesh

Amendment 2 to the Summer Flounder FMP established a 13" TL commercial minimum fish size and a minimum mesh size of 5.5" diamond (6" square) for vessels retaining 100 lbs of summer flounder during the summer and 200 lbs during the winter months. The minimum mesh requirement currently applies to the codend of the net only for 75 continuous meshes forward of the terminus of the net or if the net is too short to meet this requirement, the terminal 1/3 of the net. Summer flounder fishermen currently may legally use any size mesh forward of the regulated portion of the net.

The minimum mesh and fish size regulations adopted in Amendment 2 were developed to reduce mortality of small summer flounder and to minimize waste. A 5.5" mesh retains about 70% of the 14" TL summer flounder that encounter the net. It was recognized that 5.5" mesh would also retain a portion of the 13" TL summer flounder encountered. The Council and Commission decided to reduce the minimum fish size to 13" TL to avoid the wasteful discard of any 13" to 14" TL fish retained in legal summer flounder nets.

These regulations were developed in the belief that fishermen would target 14" TL and larger summer flounder. However, since the implementation of mesh regulations in the summer flounder fishery anecdotal reports indicate that some fishermen have been circumventing the mesh regulations by using legal codends but constricting the net forward of the regulated portion of the net. Since meshes smaller than 5.5" are allowed forward of the regulated portion of the net, the escapement of summer flounder less than 14" TL may be greatly reduced. The result is that a higher proportion of 13" to 14" TL fish will be retained. Depending on the size of the meshes used in the body and extension, a significant portion of summer flounder less than 13" TL may be retained as well, many of which will not survive when discarded.

Poor compliance with mesh regulations will result in higher than predicted fishing mortality rates on sublegal summer flounder. As a result, the age distribution will not expand as quickly as expected and the rate of stock recovery will slow.

4.2.3. Moratorium on Entry

A moratorium on entry of additional vessels into the summer flounder commercial fishery was implemented with Amendment 2. The moratorium automatically expires in 1997. Given the large number of unemployed and underemployed fishing vessels in the northwest Atlantic and the overfished nature of the summer flounder resource, the moratorium should continue.

If the moratorium is allowed to lapse, the fishery will revert to open access and new vessels will enter the fishery. This would tend to dissipate any chances of profitability. More likely, the problems experienced by the existing participants in the fishery would increase in magnitude. All else equal, more fishermen would be attempting to catch the same quantity of fish, thereby increasing costs and decreasing income.

4.2.4. Vessel Replacement Criteria

The Summer Flounder FMP prohibits vessel replacement unless the vessel sinks, burns, or is declared unseaworthy by the Coast Guard. As such, the regulations do not allow for the voluntary replacement of vessels. In addition, replacement vessels must have the same or less gross registered tonnage and vessel registered length. The rule was implemented to prevent increases in fishing power.

The New England Council's Northeast Multispecies FMP also contains a vessel moratorium. The Multispecies FMP allows voluntary vessel replacement so long as the horsepower does not increase by more than 20% and the length, gross registered tonnage, and net tonnage do not increase by more than 10%.

The Multispecies FMP also provides that the moratorium permits on a given vessel may not be split onto two vessels. Many vessels are permitted under both FMPs. Therefore, if the owner of a vessel with multispecies and summer flounder permits wants to build a replacement under the Multispecies FMP rules, he would need to give up his summer flounder permit.

This problem also extends to moratorium permits issued for other species managed by Mid-Atlantic Council plans. For example, Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass FMP allows for voluntary replacement of a vessel with a black sea bass moratorium permit. The Mid-Atlantic Council and the New England Council, in cooperation with NMFS, are in the process of developing a scoping document that will contain a detailed explanation of the differences between these permits as well as possible solutions to make these FMPs more compatible in regard to vessel permitting.

4.2.5. Expiration of Moratorium Permit

The regulations implemented by Amendment 2 allow vessels with documented landings of summer flounder for sale between 26 January 1985 and 26 January 1990 to qualify for a moratorium permit to land and sell summer flounder. The regulations also specify that if a commercial vessel fails to land any summer flounder within any 52 week period its moratorium permit expires.

This provision has been in effect since 1993. This provision was included in the FMP because of the liberal qualifications rules for the moratorium permit and the belief that a retirement provision was necessary to reduce harvesting capacity over time. However, this provision may force fishermen to participate in the fishery only to keep their eligibility, thereby increasing effort on an annual basis.

4.2.6. *De Minimus* Status for States

The Summer Flounder FMP is a joint plan prepared under both the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, and the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Under the ACFCMA, if a state does not implement measures required by an FMP, the Federal government may impose a moratorium on the landing of the species covered by the FMP in that state.

The Commission's Interstate Fisheries Management Program Charter defines *de minimus* as a situation in which, under existing conditions of the stock and scope of the fishery, conservation and enforcement actions taken by an individual state would be expected to contribute insignificantly to a coastwide conservation program required by an FMP or amendment. Commission FMP's commonly include *de minimus* provisions to relieve regulatory and monitoring burdens for states that meet predetermined conditions and follow a defined request process.

Several states (Maine, New Hampshire, Delaware) have small summer flounder commercial fisheries and receive small quota allocations that range from 0.04 to 0.0005 percent of the total coastwide allocation. These states are expected to manage a quota that ranges from several thousand to under 100 pounds annually. They are expected to comply with all monitoring and reporting provisions of the FMP. The issues are: should these states be required to implement the full array of management and monitoring measures for what is essentially a bycatch fishery, and should they be allocated a small but manageable quota poundage. There is little conservation benefit gained by requiring that these states implement all of the provisions of the plan regarding the commercial quota. However, the administrative burden of preparing regulations and monitoring the fishery could be quite high. Furthermore, allocating these states 0.1% of the coastwide quota poses no threat to the health of the stock, yet could reduce discards in the fishery.

4.2.7. Transfer of Summer Flounder at Sea

There are currently no regulations that prohibit the transfer of summer flounder at sea and the extent to which summer flounder are transferred at sea is unknown. However, such transfers would allow vessels to circumvent regulations such as trip limits and federal and/or state permit requirements thereby increasing effort in the summer flounder fishery and compromising the effects of the commercial moratorium and quota system.

4.2.8. State Landings

The Summer Flounder FMP specifies that all summer flounder landed and sold by commercial fishermen are to be counted against the quota. It also establishes reporting requirements for all dealers and processors issued federal permits. Although states are encouraged in Amendment 2 to implement equivalent fishery data collection systems, such data collection is not a requirement of the FMP. Further, states are not specifically required to report this information to the NMFS. As a result, although all summer flounder landed should be counted against the quota, states are not required to report landings from state permitted vessels or fishermen.

Most summer flounder landings are attributable to federally permitted vessels and sold to federally permitted dealers. However, vessels that land summer flounder harvested exclusively from state waters are not required to have federal permits, so therefore they are not required to file federal logbook reports. Similarly, dealers who purchase summer flounder caught in state waters by non-federally permitted vessels are not required to have federal dealer permits, so therefore they are not required to submit federal dealer reports. As a result, summer flounder landings could be underreported. However, it is difficult to estimate the extent of this underreporting largely because of the difficulties in determining the magnitude of an unreported, i.e. unknown quantity.

Most states have established permitting and reporting systems to account for and report landings of summer flounder by state permitted fishermen or vessels and purchases by state permitted dealers. Most provide this information to NMFS in some form at least annually. The states that have failed to report in the past are currently developing reporting systems and all states now intend to report their landings to the NMFS. However, states are not specifically required by the FMP to report their landings. Without specific compliance criteria requiring states to collect and report their landings, states are not obligated to do so. In some instances, state marine fisheries management agencies are prohibited from enacting rules or permitting and reporting requirements unless there is a Commission compliance criteria for the particular item. Additionally, with ever increasing budget cuts, states may find it difficult to justify continuing an activity that is not specifically and clearly required by a Commission FMP. Thus, without a specific compliance criteria, the level of reporting could actually decrease in the future.

4.2.9. Special Permits for Party/Charter Vessels

Party/Charter boat operators often include filleting as one of their services on a trip. Minimum size requirements can effectively prohibit such practices because the resulting fillets may not meet the minimum size requirement. Some states issue a fillet-at-sea permit to party and charter boats for many species, but current summer flounder regulations do not allow filleting at sea. In the summer flounder fishery, the operator must fillet on shore, thus increasing the time needed between trips and decreasing the total trips that may be taken. If boats discontinue the service, they may find it difficult to book trips. Also, patrons often become impatient at dockside after a day on the water and are unwilling to wait the hour or so it may take until the mate can find the time to fillet their catch. Instead, they may discard the fish thereby adding to the waste in the fishery.

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.

4.5. MANAGEMENT STRATEGY

Overfishing for the summer flounder 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 analysis, F_{max} is 0.24.

Amendment 2 to the Summer Flounder FMP established a fishing mortality reduction strategy that set a target fishing mortality rate of 0.53 for 1993-1995 and 0.23 in 1996 and beyond. This fishing mortality rate reduction schedule was developed by the Council and Commission after lengthy deliberations that occurred during the development of Amendment 2. The Council and Commission choose this strategy as an appropriate reduction strategy that would balance effective reductions in fishing mortality with the short term economic burdens placed on the participants in the fishery.

Because of the amount of time and effort invested in the development of the original fishing mortality rate reduction schedule, the Council and Commission were very concerned about modifying the schedule. As a policy, the Council and Commission do not believe that long term rate reduction schedules should be changed from one year to the next. However, after careful consideration, the Council and Commission proposed a slight modification to the rate reduction schedule to alleviate the short term economic burden associated with a reduction to F_{max} (0.23) in 1996. This change, incorporated into Amendment 7, established a target fishing mortality rate of 0.3 in 1997 and F_{max} in 1998 and beyond.

If the target F of 0.24 (F_{max}) is reached in 1998, overfishing of the summer flounder resource will cease. However, the stock will not be rebuilt. If the stock is fished at F_{max} over the long term, yield per recruit calculations indicate that even with low levels of recruitment (33 million recruits per year), spawning stock biomass could reach levels of 170 million pounds with associated sustained yields from the stock of over 40 million pounds per year. The spawning stock biomass estimated for 1996 by the last assessment was about 38.4 million pounds. In addition, under equilibrium conditions at F_{max}, at least 85% of the spawning stock biomass would be expected to be age 2 and older. In 1996, the age structure of the spawning stock was still truncated with only 34% of the biomass at ages 2 and older. Given these considerations, the fishery would have to be constrained to the F_{max} level of fishing mortality for a number of years before the stock was considered rebuilt. In addition, once the stock has rebuilt, and is no longer considered overfished, a target fishing mortality rate of F_{max} would maximize the yield from the stock on an annual basis.

5. DESCRIPTION OF THE STOCK

5.1. SPECIES DISTRIBUTION

The distribution of summer flounder is fully described in section 5.1 of Amendment 2. There is no additional information available to modify this section at this time.

5.2. ABUNDANCE AND PRESENT CONDITION

The summer flounder stock is assessed annually as part of the Stock Assessment Workshop process. The most recent assessment, completed in August 1997, indicates that the summer flounder stock is at a medium level of historical (1968-1996) abundance and is over-exploited. The fishing mortality rate estimated for 1996 was 1.0 (an exploitation rate of 58%). This estimate of fishing mortality is above the overfishing definition (F_{max} =0.24) but below the peak fishing mortality rate estimated for 1992 (2.1)

Spawning stock biomass was estimated at 38.4 million pounds in 1996, the highest level since 1983 and substantially larger than the 11.6 million pounds estimated for 1989. Not only has stock size increased but the age structure of the spawning stock has begun to expand with 34% of the biomass age 2 and older in 1996. In 1992, only 17% was this age or older.

Recruitment to the stock has generally improved in recent years. The 1994 and 1995 year classes were average and above average, respectively. However, the 1996 year class may be the smallest since the poor year class of 1988.

5.3. STOCK CHARACTERISTICS AND ECOLOGICAL RELATIONSHIPS

The stock characteristics and ecological relationships of summer flounder are fully described in section 5.3 of Amendment 2. Additional information is available on age distribution of the catch, mortality, and yield per recruit.

In the most recent summer flounder assessment, commercial landings and discard at age and recreational landings and discards at age were summed to provide a total fishery catch at age matrix for 1982-1996. The catch at age data indicates that the percentage of age-3 and older fish in the total catch has increased in recent years from 3% in 1993, 6% in 1994, 9% in 1995 to 11% in 1996. This increase in larger fish in the catch indicates that some stock rebuilding is occurring.

The most recent assessment indicates that the fishing mortality rates on the fully recruited age 2 and older summer flounder ranged between 1.0-2.1 (58-82% exploitation rate) from 1982-1996. The fishing mortality rate peaked in 1992 at 2.1 and then declined to 1.2 in 1994, 1.1 in 1995, and 1.0 in 1996. In addition, the assessment indicates that fishing mortality rates on age 0 and age 1 fish declined by over 50% in 1995 and 1996 relative to the 1994 values. In fact, the mortality estimates in 1995 and 1996 for these age groups were the lowest in the time series, 1982-1996.

A revised yield per recruit analysis was conducted for the most recent assessment that reflected recent conditions in the fishery. The analysis indicated that F_{max} was 0.242, a slight change from the previous estimate of 0.23.

5.4. MAXIMUM SUSTAINABLE YIELD

Maximum sustainable yield for summer flounder is described in section 5.4 of Amendment 2. There is no additional information available to modify this section at this time.

5.5. PROBABLE FUTURE CONDITION

The latest assessment indicates that good recruitment and reduced exploitation of the 1994 and 1995 year classes is sustaining the summer flounder fishery and contributing to stock rebuilding. The results of the assessment indicate that the stock is slowly rebuilding with increased abundance of age 2 and older summer flounder in the population.

Short term projection results indicate that the stock will continue to rebuild at current stock productivity levels. Assuming that the quota is not exceeded in 1997, and the target fishing mortality is achieved in 1998, spawning stock biomass could reach levels of 79.6 million pounds in 1998, about

double the value estimated for 1983, the highest value in the time series 1982-1996. Medium-term projection results, which incorporate current patterns of recruitment, growth and maturity, indicate that if the target F of 0.24 is achieved each year, landings could reach levels of 40.8 to 42.8 million pounds per year during the years 2004-2006. Spawning stock biomass estimates could range from 178.8 to 186.0 million pounds during this same period. However, because medium term projections do not incorporate potential density dependent effects as the stock rebuilds these results should be viewed with caution.

6. DESCRIPTION OF HABITAT

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

The distribution, habitat requirements and habitat of summer flounder is fully described in section 6.1 of Amendment 2. There is no additional information available to modify this section at the present time.

6.2. HABITAT CONDITION

Habitat condition is fully described in section 6.2 of Amendment 2. There is no additional information available to modify this section at the present time.

6.3. GENERAL CAUSES OF POLLUTION AND HABITAT DEGRADATION

Causes of pollution and habitat degradation are fully described in section 6.3 of Amendment 2.There is no additional information available to modify this section at the present time.

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

These programs are fully described in section 6.4 of Amendment 2. There is no additional information available to modify this section at the present time.

6.5. HABITAT PRESERVATION, PROTECTION AND RESTORATION RECOMMENDATIONS

These recommendations are fully described in section 6.5 of Amendment 2. There is no additional information available to modify this section at the present time.

6.6. HABITAT RESEARCH NEEDS

These research needs are fully described in section 6.6 of Amendment 2. There is no additional information available to modify this section at the present time.

7. DESCRIPTION OF FISHING ACTIVITIES

7.1. DOMESTIC COMMERCIAL FISHERY

The commercial fishery for summer flounder is fully described in section 7.1 of Amendment 2. In recent years, the commercial fishery has been managed under a quota system. In 1993, the first year that a coastwide quota was implemented, commercial landings were 12.6 million pounds, slightly in excess of the quota of 12.35 million pounds. Commercial landings in 1994 and 1995, were 14.5 and 15.4 million pounds, respectively. In 1996, landings declined to 12.7 million pounds which were about 14% in excess of the initial quota of 11.11 million pounds for that year. Relative to previous years, commercial landings in 1993, 1994, 1995 and 1996 were less than the 16.6 million pounds landed in 1992, the year before quota implementation, but were substantially larger than the 9.3 million pounds landed in 1990.

Beginning in 1993, the states have used trip limits and seasonal allocations to manage the quotas allocated to their state. The quotas are different for each state and the seasonal distribution of the quota and trip limits vary from state to state as well. As the result of these trip limits and seasonal allocations, landings have shifted from the last quarter to the first quarter of the year in more recent years. For example, in 1996, 63.2% of the landings occurred in the first quarter of the year compared to 30.5% in 1992. However, the percent of landings in the second and third quarters were about the same for both years. In 1992, 10.6% and 20.6% of the landings occurred in the second and third quarters, respectively, compared to 11.6% and 18.9% in 1996.

7.2. DOMESTIC RECREATIONAL FISHERY

The recreational fishery for summer flounder is fully described in section 7.2 of Amendment 2. Recreational catch and landings have fluctuated since Amendment 2 regulations were implemented in 1993. Landings increased to 8.83 million pounds in 1993 from the 1992 level of 7.148 million pounds. In 1994, recreational landings increased again to 9.3 million pounds and then declined to 5.5 million pounds in 1995. In 1996, landings were 10.4 million pounds.

7.3. FOREIGN FISHING ACTIVITIES

Foreign fishing activities for summer flounder are described in section 7.3 of Amendment 2. There is no additional information available to modify this section at the present time.

8. ECONOMIC CHARACTERISTICS OF THE FISHERY

8.1. COMMERCIAL FISHERY

A detailed description of the economic aspects of the commercial was presented in section 8.1 of Amendment 2. Since 1993 the commercial fishery has been managed under a quota system. The value of commercial landings of summer flounder in 1993 were estimated at $19.1 million. In 1994 and 1995 commercial exvessel value increased to $24.0 and $28.3 million, respectively. Estimated exvessel value for 1996 was $20.8 million. Adjusted average prices (1996 dollars) for summer flounder increased from $1.57 per pound in 1993 to $1.63 per pound in 1996, and ranged from $1.57 to $1.89 for the 1993-1996 period. In general, summer flounder landings for small tonnage vessels are higher in the summer months, while landings for large tonnage vessels are higher in the winter months. Monthly price fluctuations are evident. On average, higher prices tend to occur during the summer months. This price fluctuation is likely associated with supply responses.

8.2. RECREATIONAL FISHERY

The recreational fishery for summer flounder is fully described in section 8.2 of Amendment 2. Summer flounder continues to be an important component of the recreational fishery. Estimation of primary species sought as reported by anglers in recent intercept surveys indicates that summer flounder has increased in importance in the North Atlantic and South Atlantic subregions, while decreasing in the South Atlantic subregion. The number of respondents indicating their preference for this species in the North Atlantic and Mid-Atlantic subregions have increased by 3.54% and 3.02%, respectively, from 1991 to 1996. The recent increase in preference of summer flounder will result in an increase in the overall importance or economic activity associated with this species in those regions.

8.3. INTERNATIONAL TRADE

The international trade for summer flounder is fully described in section 8.3 of Amendment 2. Japan continue to be the most important export market for summer flounder. However, exports of summer flounder are difficult to determine. This is due to the fact that summer flounder gets lumped under a variety of export codes and it is impossible to identify in the U.S. export data (B. Ross pers. comm. 1997). Fresh whole U.S. fluke or summer flounder (*Paralichthys dentatus*) is generally exported to Japan for raw (sashimi) consumption. Fresh U.S. summer flounder is used as a substitute for Japanese

"hirame" (bastard halibut -- *Paralichthys olivaceus*), and normally imported whole fresh and sold through seafood auction markets to restaurants. While U.S. summer flounder is well established in some major action markets, daily prices may fluctuate depending on the total quantity of domestic and imported hirame (including U.S. summer flounder) delivered to auction on a given day. Depending on quality, auction prices for fresh U.S. summer flounder vary from around 1,000 to 3,000 yen/kilo ($4.33 to 12.00/lb at 105 yen/$ 1.00) depending on size, quality and market conditions (B. Ross pers. comm. 1996).

9. FISHERY MANAGEMENT PROGRAM

9.1. MEASURES TO ATTAIN MANAGEMENT OBJECTIVES

9.1.1. 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" diamond (or 6.0" square) minimum mesh, inside measure, applied throughout the body, extension(s) and codend of the net. These mesh regulations would become effective 6 months after the final regulations are published in the Federal Register.

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 amendment 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" diamond (or 6.0" square) minimum 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 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 Administrator, provided that the Regional Administrator 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" 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" diameter extending the length of the net from the belly to the terminus of the codend 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 easily be double bagged or used as liners illegally. 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 mesh size in subsequent years could apply to any portion of the entire net including the wings, body, extension(s), or codend. The minimum net mesh size could be changed annually, if appropriate, following the Summer Flounder FMP Monitoring Committee process set forth in 50 CFR 648. The Council and Commission would recommend to the Regional Administrator an implementation date for any modification to the minimum mesh regulations to account for the availability of net building materials.

Based on the recommendations of the Summer Flounder Monitoring Committee and Council, the Regional Administrator, 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" 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 codend, which generally has a webbing of 2" (stretch mesh).

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

2. Vessels fishing for summer flounder in the EEZ (taking and retaining more than 200 lbs of summer flounder) east of the line described below from 1 November through 30 April and not using at least a 5.5" diamond (6.0" square) minimum mesh 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 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 Administrator 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 Administrator may rescind the exemption.

9.1.2. Commercial Moratorium

There will be a continuation of the 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 qualified for a moratorium permit to land and sell summer flounder under the moratorium program developed in Amendment 2. In addition, vessel owners had until November 30, 1993 to apply for a permit.

This Amendment would extend that moratorium until modified by a future Amendment. Under the moratorium, vessels and moratorium permits together may be bought and sold. Permits may not be combined to create larger replacement vessels. The moratorium may be terminated or replaced at any time by FMP amendment establishing an alternative limited entry system.

9.1.3. Vessel Replacement Criteria

Vessels with moratorium permits could be replaced by another vessel and the permit transferred to the new vessel. The replacement vessel can be upgraded if it meets the following criteria:

1. The replacement vessel's horsepower may be increased only once. Such an increase may not exceed 20% of the horsepower of the vessel initially issued the moratorium permit as of 13 May 1997.

2. The vessel's length, GRT, and NT may be increased only once. Any increase in any of these three specifications of vessel size may not exceed 10% of the respective specification of the vessel initially issued a moratorium permit as of 13 May 1997. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

9.1.4. Expiration of the Moratorium Permit

The requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit would be deleted from the regulations. As

such, the measures pertaining to the expiration of the moratorium permit would be the following. Permits expire: (1) when the owner or operator retires the vessel from the fishery, or (2) on 31 December of each year, or (3) when the ownership of the vessel changes. However, the Regional Administrator 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 Administrator.

9.1.5. *De Minimus* Status for States

Any state in which commercial summer flounder landings during the last preceding calendar year for which data are available were less than 0.1 percent of the total coastwide quota for that year could be granted *de minimus* status for the summer flounder commercial fishery by NMFS and Commission upon the annual recommendation of the Council and Commission, by way of a formal written request from the state and subsequent review and recommendation of the Summer Flounder Monitoring Committee. The following conditions would apply:

(1) The *de minimus* status will be valid only for that year for which the specifications are in effect, and will be effective upon filing by the NMFS of the final specifications for the commercial summer flounder fishery with the Office of the Federal Register.

(2) The total quota allocated to each *de minimus* state will be set equal to 0.1 percent of the total yearly allocation, and will be subtracted from the coastwide quota before the remainder is allocated to the other states.

(3) In applying for *de minimus* status, a state must show that it has implemented reasonable steps to prevent landings from exceeding its *de minimus* allocation.

9.1.6. Commercial Quota System

The quota system specified in Amendment 2 and modified by Amendment 4 would not change. Specifically, the coastwide commercial quota is currently allocated to the states based on their share of the commercial landings from 1980 through 1989 (as revised). The states may combine or transfer their quotas with the approval of the NMFS Northeast Regional Administrator. Each state is responsible for managing its commercial quota.

9.1.7. Transfer of Summer Flounder at Sea

Vessels issued a summer flounder moratorium permit would be prohibited from transferring or attempting to transfer any summer flounder from one vessel to another vessel. Transfer means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel. The Commission, as part of their interstate management process, would require that vessels licensed by a state be prohibited from transferring or attempting to transfer any summer flounder from one vessel to another vessel.

9.1.8. State Landings

The Commission, as part of their interstate management process, will require that states document all summer flounder commercial landings in their state that are not otherwise included in the federal monitoring of permit-holders. This would be done through a vessel and dealer reporting system. The landings information will be forwarded to the NMFS on a regular basis so that it can be included in quota reporting. The states are to consult with NMFS when developing a monitoring and reporting system to determine appropriate reporting intervals and to avoid duplication with the federal system.

9.1.9. Special Permits for Party/Charter Vessels

The Commission, as part of their interstate management process, will allow states to issue a permit

which would allow filleting of summer flounder at sea and possession of body parts smaller than the minimum size for party/charter vessels. The permit would require that no parts or carcasses are discarded overboard, no carcasses are mutilated to the extent that length and species cannot be determined, all carcasses would be retained until the vessel has docked at the end of a trip and provided adequate access to law enforcement personnel, and carcasses from a previous trip would be discarded prior to commencing a subsequent trip. The permit should be revoked in the event the permit holder is found guilty of violating minimum fish size restrictions. The federal regulations would be similar to those implemented for black sea bass, i.e., party or charter vessels possessing valid state permits authorizing filleting of summer flounder at sea may possess fillets smaller than the minimum size if the skin remains on the fillet and all other state requirements are complied with.

States choosing to issue a fillet-at-sea permit for summer flounder must submit their proposed permit requirements to the Commission Plan Review Team in a written request for approval. The Plan Review Team will review the request to determine if the permit requirements meet the above criteria. The Plan Review Team will then make a recommendation to the Summer Flounder Management Board that the request either does or does not meet the requirements. The Management Board will then review the request and consider the recommendation of the Plan Review Team and the proposed permit requirements. The Management Board must then approve or deny the proposal by specific motion. If a state issues a fillet-at-sea permit that does not meet the specified requirements that state may be found out of compliance with the Summer Flounder FMP.

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 MSFCMA 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 how the proposed management measures in Amendment 10 meet the national standards.

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

This amendment would revise the mesh regulations for summer flounder by regulating the entire net. The intent of the new requirement is to improve enforcement and compliance with the minimum mesh regulation. Increased compliance with the mesh regulation should reduce mortality on immature summer flounder. In addition, by delaying age at entry into the fishery, the spawning stock biomass will rebuild at a faster rate which will enhance stock rebuilding.

This amendment would continue the moratorium on entry to the summer flounder fishery and delete the provision forcing fishermen to land summer flounder in order to maintain their permit. This will prevent additional effort into the summer flounder fishery which in turn will help achieve optimum yield.

This amendment would also implement measures to require all states to document all summer flounder landings, prohibit the transfer of summer flounder at sea, and allow states to be eligible for *de minimus* status. In conjunction with the current state-by-state quota system, these measures will improve the effectiveness of quotas in controlling fishing mortality and reducing overfishing which in turn will allow for higher optimum yields.

The fillet-at-sea permit would have no effect on fishing mortality rates since the permits would simply allow the filleting of fish that were equal to or larger than the minimum size limits.

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

This amendment 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 amendment. This species should be reviewed annually by the NEFSC 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 management unit for this amendment is summer flounder throughout their range in the Atlantic ocean 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.

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

Summer flounder migrate inshore in the spring and offshore in the fall. These seasonal migrations lead to seasonal fisheries. Once the decision was made to use an annual quota as one of the tools to manage the commercial fishery, it became important to adopt measures to ensure that the fishermen from one state could not take the entire quota before fishermen from other states had an opportunity to participate in the fishery. Early in the planning process it became apparent that it would be extremely difficult, if not impossible, to prevent overfishing without the use of an overall quota. The states quickly realized that overall or regional quotas could work to the detriment of a particular state and/or region, and therefore requested that the Council and Commission consider state-by-state quotas. In developing state quotas, the Council and Commission reviewed the history of the fishery and recommended a ten-year time frame as the appropriate historic data upon which quotas would be based. This was discussed thoroughly by the states and while efforts were made to shorten the period to as little as three years, it was quickly realized that short term variations in landings did occur and quotas based on a short time series would penalize one segment of the fishery while granting others what was considered an excessive share. The states, through the Commission, approved the ten year time period and the method of allocating the quota. Thus, the formula for establishing the percent share of the annual quota for each state is the same. It is based on the states percentage of overall landings during the agreed upon period.

In choosing historical catch as a basis of allocation, and by virtue of acceptance by the states of the time frame and the resulting percent of allocations, National standard 4A, the "fair and equitable to all such fishermen" test, has been met. Since the quota is based on stock size and will be determined annually to assure that the target mortality rate is not exceeded, National Standard 4B is met. In order to assure that 4C is fully met, any state or states not in compliance with the quota, that is, those states which exceed the allocated amount, must be prevented from taking additional summer flounder or an excessive share will be realized by the residents of that state, unfairly penalizing the other participants in the fishery. This obligation is met since the Regional Administrator can close a state to further landings of summer flounder by federal permit holders once a quota is reached and, in addition, the Commission requires, as part of their interstate management process, that states have the ability to close when their commercial quota is reached.

The mesh requirements, extension of the commercial moratorium, vessel replacement criteria, deletion of the 52-week landing requirement for the moratorium permit, the requirement that states document landings, *de minimus* regulations, the prohibition on the transfer of summer flounder at sea, and the fillet-at-sea permits all apply coastwide. As such, these regulations will not discriminate between residents of different states as they will apply throughout the management unit.

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 implemented by the Amendments to the Summer Flounder, Scup and Black Sea Bass FMP are 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 management measures proposed in Amendment 10 place no restrictions on processing, or marketing and no unnecessary restrictions on the use of efficient techniques of harvesting.

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 the Commission. The current state-by-state quota system allows the states to manage their quota to equitably allocate their state shares to the different fishermen that land summer flounder in their state while at the same time meeting the restrictions imposed by the coastwide plan. The mesh requirements can be changed annually to account for variations in stock dynamics or fishermen behavior. The moratorium, if continued, could be replaced by an alternative limited entry system if the condition of the resource and the dynamics of the fishery change. The proposed vessel replacement criteria would allow a fishermen to determine when a vessel should be replaced and whether vessel size should increase to account for changes in the fishery. In addition, deleting the requirement that forces fishermen to land summer flounder in order to retain their moratorium permit, would allow fishermen to decide if and when to fish for summer flounder. Allowing a state to be declared *de minimus* in regard to the quota recognizes that landings vary among the states and these state have had limited summer flounder landings.

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 the Commission. The provisions of this Amendment have been adopted by the Commission.

9.2.1.8. Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfishing stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The socioeconomic characteristics of the various ports and communities along the Atlantic Coast that depend on the summer flounder fisheries were described and assessed by McCay *et al.* (1993) and Finlayson and McCay (1994). According to the 1992 landings statistics, summer flounder is of major importance commercial industry in many of the ports that were analyzed. Given the degree of port reliance on summer flounder, it can be expected that the proposed regulatory measure will have a positive impact the communities and local economies of these ports.

The proposed amendment will decrease the likelihood that the summer flounder mesh regulations are

circumvented since the minimum mesh provisions will apply to the entire net and not just the codend. This will have a positive impact on the majority of fishermen who have been abiding by the regulations and may have been placed at a competitive disadvantage to those who have not.

The continuation of the moratorium will prevent additional overcapitalization and the deletion of the requirement to land summer flounder during a 52 week period will reduce effort in the fishery. The regulations pertaining to the quota, in conjunction with the current state-by-state quota system, which include the documentation of all state landings, the *de minimus* option for states, and the prohibition on transfer of summer flounder at sea, will increase the effectiveness of the quota system in reducing fishing mortality and rebuilding the stock. The vessel replacement regulations will allow for voluntary replacement and a one-time vessel upgrade. As such, commercial fishermen can decide when to replace a vessel to allow for more efficient fishing operations. In addition, the special permits for party/charter vessels to fillet summer flounder at sea will allow some of these vessels to be more efficient in their operations. As a result, all of these regulations will provide positive benefits to the ports and communities who depend in part on summer flounder for employment and income.

9.2.1.9. Conservation and management measures shall, to the extend practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

This amendment would revise the mesh regulations for summer flounder by regulating the entire net. The intent of the new requirement is to improve enforcement and compliance with the minimum mesh regulation. The proposed amendment will decrease the likelihood that the summer flounder mesh regulations are circumvented. Increased compliance with the mesh regulation should reduce mortality on immature summer flounder thus minimizing the bycatch and discard of sublegal summer flounder.

This amendment will prohibit new entry into the summer flounder fishery which is already severely overcapitalized. The current summer flounder fleet is capable of taking the entire annual quota in less than 12 months. If this fishery were to revert to open access, it is likely that a flood of speculative entry into the fishery would occur thus worsening the overcapitalization problem. In an attempt to spread the quota throughout the year, it is likely that the states would be forced to reduce the amount that could be landed by each vessel by reducing trip limits for summer flounder. This could increase the amount of high grading and discarding in the fishery due to the more restrictive trip limits. The extension of the moratorium would prevent this from occurring.

This amendment would remove the requirement that a vessel with a permit must land summer flounder at some point during a 52-week period. As such, bycatch would be minimized since fishermen would not be forced to fish simply to retain the permit.

The other management measures proposed in this amendment were evaluated relative to this national standard and were determined not to have any effect on bycatch.

9.2.1.10. Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The proposed amendment will have a positive effect on safety at sea. Since enforcement of the mesh regulations will be made easier, fishermen will have greater assurance that everyone involved in the fishery is abiding by the mesh regulations. This should decrease the likelihood that fishermen will engage in behavior that could be dangerous because they feel they are placed at a competitive disadvantage by those who circumvent the mesh regulations.

This amendment will prohibit new entry into the summer flounder fishery which is already severely overcapitalized. The current summer flounder fleet is capable of taking the entire annual quota in less than 12 months. If this fishery were to revert to open access, it is likely that a flood of speculative entry into the fishery would occur thus worsening the overcapitalization problem. The fishery would likely become an intense derby style fishery with the associated unsafe behavior displayed by fishermen at sea as they attempt to catch some portion of the quota before the fishery is closed. The

continuation of the moratorium will help prevent derby style fisheries by maintaining a cap on effort and thus will have a positive effect on safety at sea.

This amendment will modify the vessel replacement criteria to allow fishermen to replace their vessels voluntarily. This will promote safety at sea since fishermen will not have to wait until a vessel is declared unseaworthy before it can be replaced. In addition, removing the requirement that a vessel with a permit must land summer flounder at some point during a 52-week period would have a positive effect on safety at sea. Fishermen would not be forced to fish simply to retain the permit.

The other management measures proposed in this amendment were evaluated relative to this national standard and were determined not to have any effect on safety at sea.

9.2.2. Costs and Benefits of the Preferred Alternative

9.2.2.1. Minimum Mesh

The minimum mesh and fish size regulations originally adopted in Amendment 2 were developed to reduce mortality of small summer flounder and to minimize waste. A 5.5" mesh retains about 70% of the 14" TL summer flounder that encounter the net. During the development of Amendment 2 it was recognized that 5.5" mesh would also retain a portion of the 13" TL summer flounder that encountered the net. The Council and Commission decided to reduce the minimum fish size to 13" TL to avoid the wasteful discard of any 13 to 14" TL fish retained in legal summer flounder nets.

These regulations were developed in the belief that fishermen would target 14" TL and larger summer flounder. However, since the implementation of mesh regulations in the summer flounder fishery, anecdotal reports indicate that fishermen have been circumventing the mesh regulations by using legal codends but constricting the net forward of the regulated portion of the net. Since meshes smaller than 5.5" are currently allowed forward of the regulated portion of the net, the escapement of summer flounder less than 14" TL may be greatly reduced. The result is that a higher proportion of 13 to 14" TL fish will be retained by the net. Depending on the size of the meshes used in the body and extension, a significant portion of summer flounder less than 13" TL may be retained as well, many of which will not survive when discarded. Mesh selectivity data (Gillikin *et al.* 1981) indicate that there is no escapement of fish 13" TL or larger for a mesh less than 4". Although mesh selectivity data for summer flounder are based on studies done with codends, it is probable that retention levels for a given mesh size would be similar in other portions of the net.

Poor compliance with mesh regulations will result in higher than expected fishing mortality rates on sublegal summer flounder. As a result, the age distribution may not expand as quickly as expected and the rate of stock recovery will slow.

The requirement of 5.5" mesh in the body, extension(s), and codend portions of the net will decrease the use of small mesh by improving compliance with the mesh regulations. The change to the FMP to require the minimum mesh throughout these portions of the net should have a positive enforcement impact relative to the current FMP, which applies only to the codend. Enhanced enforcement and compliance with the mesh regulation will result in reduced mortality on immature summer flounder and reduce the discard of fish below the minimum legal size. Reduced mortality on small summer flounder will increase the contribution of incoming year classes to the spawning stock biomass which will enhance stock rebuilding.

This amendment will allow the Council and Commission to recommend changes in mesh size for any portion of the trawl net. These recommendations will result from the Summer Flounder FMP Monitoring Committee process that is conducted each year. This flexibility will allow for modifications in mesh size that are responsive to changes in stock dynamics and/or fishermen behavior.

This amendment would allow the Council and Commission to recommend to the Regional Administrator a delay in implementation of any changes in the mesh provisions. In general, once an FMP or an

amendment is approved by NMFS, the regulations become effective 1 to 2 months after approval. However, this may not allow enough time for net manufacturers to obtain the appropriate webbing and construct the nets. In addition, fishermen need time to obtain the nets and rig their vessels.

The proposed mesh regulation of 5.5" mesh in the body, extension(s), and codend portions of the net would become effective 6 months after the final regulations were published in the Federal Register. Based on an informal survey of 4 net manufacturers conducted by Council staff, 5.5 inch webbing to build trawl net bodies is not currently available in quantities necessary to provide nets for the entire summer flounder fleet. Net manufacturers in Rhode Island and New Jersey indicated that at least 3 to 6 months would be required to order 5.5" twine and build the new nets. However, the Wanchese Fish Company in North Carolina indicated that they had more than enough twine to supply the North Carolina summer flounder trawl fleet if the whole net mesh requirement was put in place (J. Daniels pers. comm.). Thus, although enough net material is available in some localized areas, the shortage of 5.5" twine could require that implementation of the net regulation be delayed for 6 months.

The costs associated with gear conversion would vary for inshore and offshore vessels. More specifically these costs would vary according to the various features that can be incorporated into the gear and the horsepower (hp) or size of the fishing vessel. For vessels operating in the inshore fishery (assume 250 hp) a 5.5" diamond mesh in the body, extension and codend would cost approximately $775. For vessels operating in the offshore fishery (assume 670 hp) a 5.5" diamond mesh in the body, extension and codend would cost approximately $1,354 (M. O'Rourke pers. comm.). These costs are considered direct costs associated with the required gear conversion. Any gear replacement costs for those vessels that participate in the summer flounder fishery and need to comply with the mesh size criteria described in this section would be incurred in year one (1998) of the implementation of this management action. Currently, 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 fish only with a 5.5" minimum diamond, or a 6.0" minimum square mesh codend. Because otter trawl vessels harvesting summer flounder at the above specified threshold levels already posses the minimum size required codend, then the costs attributed to the mesh size restriction described in this document would be lower for these vessels.

Permit data files from the NMFS indicate that as of 29 October 1996, there were 1,063 commercial vessels holding summer flounder permits. Of these vessels, 620 (58%) also hold Multispecies Days-at-Sea (Individual or Fleet) permits. All these vessels must fish with a minimum mesh size of 6.0" when fishing under a Multispecies Days at Sea in the SNE or GOM/GB regulated mesh areas. Vessels fishing in the Mid-Atlantic regulated mesh area are subject to the summer flounder minimum mesh size, which is currently 5.5" (S. Murphy pers. comm.). Given the number of commercial vessels holding summer flounder permits that also hold Multispecies "Days-at-Sea" permits, it is expected that approximately 42% of the vessels (1,063 - 620) participating in the summer flounder fishery would be affected by this management alternative.

Summer flounder are part of an overall mixed bottom trawl fishery that generally includes: *Loligo*, scup, butterfish, black sea bass, whiting, other flat fishes and other species. It is likely that some fishermen will experience a change in the size of marketable, bycatch species caught as a result of the implementation of this alternative. The degree to which changes in the size composition of marketable species harvested as a bycatch with summer flounder will depend on fishing practices (e.g., season, area, etc.), the selection characteristics of a 5.5" diamond (6" square) mesh for the particular species landed with summer flounder and the degree to which fishermen are following the minimum mesh size regulations adopted in Amendment 2. Specific information to address this issue is not available. Therefore, changes in revenues cannot be determined. However, it can be expected that because there is a price differential for the species caught as a bycatch with summer flounder, then revenues from those species will increase due to price increases from harvesting larger fish. Therefore, any loss in annual gross revenues from the decrease in the harvesting of small fish as a consequence of the implementation of this alternative will be compensated due to the increase in revenues due to price differentials.

9.2.2.2. Commercial Moratorium

Amendment 2 to the FMP for the summer flounder fishery established a moratorium on entry of additional commercial vessels into the summer flounder fishery in the EEZ for 5 years. The summer flounder moratorium expires in 1997 unless extended by plan amendment. Given the pressure that exits in most of the major fisheries in the Atlantic coast, the expiration of the summer flounder moratorium on entry will allow fishermen that have traditionally participated in other fisheries to fish for summer flounder in order to alleviate some of the economic adversities they are currently facing. According to NMFS data permit files (29 October 1996) there were 1,063 vessels holding summer flounder moratorium permits. The same data file indicates that 4,088 vessels hold Multispecies, Scallop, and Squid, Atlantic Mackerel and Butterfish (SMB) permits. One thousand fifty one vessels of the 4,088 vessels holding Multispecies, Scallop, and SMB permits also hold Summer flounder moratorium permits. This indicates that 3,037 additional vessels could potentially apply for a summer flounder permit and participate in the fishery if the moratorium is allowed to expire. If this were to occur, the number of participants in the summer flounder fishery could potentially increase four fold relative to the 1996 level.

In addition, there was a moratorium permit application deadline of November 30, 1993. As of mid-April, 1997, approximately 290 applications were received too late to be considered for the moratorium permit. If the moratorium expired, it is probable that these vessels, some of which are probably included in the 3,037 vessels noted above, would enter the fishery.

The current summer flounder fleet is capable of taking the quota in total. An increase in the number of vessels in the summer flounder fishery would have adverse economic impacts. Summer flounder gross revenues per vessel would, on average, decrease and overcapitalization would be intensified. According to unpublished NMFS weighout data (Maine-Virginia) 832 known vessels landed summer flounder in 1994; 52 (6.25%) were tonnage class I (vessels less than 5 GRTs), 255 (30.65%) were tonnage class II (vessels 5-50 GRTs), 371 (44.59%) were tonnage class III (vessels 51-150 GRTs), and 154 (18.51%) were tonnage class IV (vessels greater than 151 GRTs). On average summer flounder accounted for 11.63% of the total gross revenue (based on weighout data of all species landed with summer flounder) for the vessels that landed summer flounder in 1994. The percentage of total gross revenues derived from summer flounder by vessel's tonnage class were 12.30% for tonnage class I, 17.49% for tonnage class II, 17.57% for tonnage class III, and 3.74% for tonnage class IV. These percentages indicate that summer flounder gross revenues as a percentage of the total gross revenues for vessels that participated in the summer flounder fishery in 1994 were significant for tonnage class II and III vessels, and moderate for tonnage class I vessels.

A potential increase in the number of participants in the summer flounder fishery would cause economic hardship for the summer flounder vessels that have traditionally participated in the fishery. The extent of the economic pressure would depend on the ability of the vessels that currently fish for summer flounder to compete in other fisheries. Taking into consideration the overall level of competition for the existing fishery resources of the Atlantic coast, it is likely that the number of alternatives for those vessels would be very small. Therefore, the expiration of the summer flounder moratorium permit would have negative economic impacts for vessels currently participating in the fishery. Assuming the degree of vessel participation in the summer flounder fishery in 1994, it would be expected that vessels of tonnage class II and III would likely be affected the most from the expiration of the summer flounder moratorium permit. These tonnage class vessels represented over 75% of the total number of vessels that landed summer flounder in 1994.

9.2.2.3. Vessel Replacement Criteria

Vessels with moratorium permits could be replaced by another vessel and the permit transferred to the new vessel. The replacement vessel can be upgraded such that the vessel's horsepower may not exceed 20% of the horsepower of the replaced vessel and the vessel's length, GRT, and NT may not exceed 10% of the respective specification of the replaced vessel.

This regulation would make vessel replacement criteria in the summer flounder fishery identical to those specified in the Northeast Multispecies FMP for vessel replacement. Permit data files from the NMFS indicate that as of 29 October 1996, 58% of the vessels holding summer flounder permits also hold Multispecies Days-at-Sea (Individual or Fleet) permits. If the vessel replacement criteria for summer flounder was not changed, the holder of a Northeast Multispecies Permit and a Summer Flounder Permit would have been restricted to the summer flounder regulations (i.e., no voluntary replacement and no upgrade) when a vessel was replaced.

Since the vessel replacement criteria for the Northeast Multispecies FMP took effect in May 1994, 109 vessels (D. Gouveia pers. comm.), or 6% of the permitted vessels, have applied for transfer of permits or replacement of vessels. If this measure is approved, there is no indication of how many summer flounder permitted vessels will employ the vessel replacement criteria as a way to increase either their length, GRT, NT or horsepower. However, based on the percentage of vessels transferred or replaced in the Northeast Multispecies fishery, it may be expected that approximately 64 vessels may be replaced in a four year period in the summer flounder fishery. Even if all these vessels were to be increased in length, GRT, NT, and horsepower as allowed in this alternative, the fishing power of the fleet as a whole would not significantly increase.

This alternative would allow for the vessel replacement criteria to be identical in the Summer Flounder and Northeast Multispecies FMPs. Furthermore, this alternative would allow for aging vessels or engines (as determined by the owner) to be replaced when they become inefficient or increasingly unsafe. In addition, this measure is expected to improve vessel replacement monitoring by the NMFS and reduce management costs due to standardization between FMPs.

9.2.2.4. Expiration of the Moratorium Permit

The requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit would be deleted from the regulations. This regulation, which has been in effect since 1993, has not resulted in the loss of any summer flounder permits. However, this requirement could force vessel owners to fish for summer flounder simply to maintain the permit and, as such, result in an increase in fishing effort. Thus, deleting this requirement could allow for a decrease in potential fishing effort each year.

9.2.2.5. *De Minimus* Status for States

Under the current FMP, several states receive less than 0.1% of the coastwide summer flounder quota, resulting in allocations of only 51 to 5,284 pounds in 1997. However, these states are expected to comply with all provisions of the FMP. The administrative burden of implementing a real-time quota monitoring system far exceeds the economic value of the fishery in these states. Allowing them a small allocation of 0.1% is of no conservation risk to the stock as a whole. However, if regulatory demands become so great that the state is forced to prohibit commercial landings of summer flounder, the few fish that are currently landed could be tossed overboard as discards.

Based on 1996 landings and quota data, Maine, New Hampshire, and Delaware could qualify for *de minimus* status using the 0.1% or less criteria. New Hampshire, which received an allocation of 51 pounds in 1996, currently prohibits commercial landings of summer flounder. Allowing a *de minimus* classification would allow bycatch landings of summer flounder in New Hampshire.

Under the current FMP, the states of Maine, New Hampshire, and Delaware in aggregate receive 0.066% of the coastwide quota, which amounted to 7,312 pounds in 1996. The remaining states received 99.934% of the coastwide quota. If, instead, the three eligible states claimed *de minimus* status in 1996 and were allocated 0.1% of the coastwide quota, they would have each been allocated 11,111 pounds. All three would have accounted for 33,333 pounds, or 0.3% of the coastwide quota, and the remaining 99.7% would have been allocated to the other states. The net loss of 0.234% (0.3 - 0.066) or 26,021 pounds in 1996 would have reduced the quota in North Carolina, which receives the highest percentage, by 7,140 out of 3,049,589 pounds and in Maryland, which receives the smallest

share greater than 0.1%, by 520 out of 226,570 pounds. Overall, each state would be giving up 0.029% of its quota if all three eligible states were declared *de minimus.*

Allowing qualifying states to claim *de minimus* status would relieve them of an excessive monitoring burden for essentially a bycatch fishery, and would provide them with a small, but more manageable quota. In the case of New Hampshire, it could allow bycatch to be landed rather than discarded. In the case of Delaware, it could allow them to maintain their current strict restrictions on fishing in state waters rather than ultimately prohibiting all landings of summer flounder to avoid exceeding a quota of approximately a thousand pounds. Since summer flounder are a bycatch fishery to Delaware inshore gill net fishermen, these fish would still be caught and killed. Unfortunately, rather than be sold for income, they would be needlessly discarded.

Requiring an annual request by the state and review by the Monitoring Committee would assure that if landings increased in a *de minimus* state, they would be required to comply with all quota management and reporting provisions the following year. An annual landings and regulatory report is already required by the Commission, so the reporting requirements will not increase. Requiring *de minimus* states to close their fishery if their allocation is landed would prevent a sudden increase in landings.

9.2.2.6. Commercial Quota System

Amendment 2 presents a thorough analysis and discussion of the current state-by-state quota system including an analysis of the biological, social and economic impacts as well as how the current system complies with the National Standards. An analysis of several alternatives to the current state-by-state quota system is presented in Appendix 1 of this document.

After careful consideration of the public comments and after additional debate, the Council and Commission decided to retain the current state-by-state quota system. The state-by-state quota system has been in place since 1993. Over the years, many of the states have refined their management systems to allow for an equitable allocation of summer flounder to the fishermen that land summer flounder in their state. These systems account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them.

The Council and Commission considered two coastwide alternatives to the current state-by-state quota system. These coastwide systems would have had associated coastwide quotas in the winter or over the entire year. The Council and Commission determined that a coastwide quota during the winter or over the entire year may not provide the same level of equity or flexibility to summer flounder fishermen as the current state-by-state system. The Council and Commission determined that it would be difficult to design a coastwide system that was better than the current state-by-state system, i.e., one that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. They noted that the uniform landing limits associated with a coastwide system may not be suitable for all vessels, gears or areas along the coast.

In addition, the Council and Commission thought that if any of the alternatives to the current system were carried out, it would create derby-style-fishing and/or early closure of the fishery during the coastwide periods. As a result, the Council and Commission were concerned that the alternatives to the current state-by-state system would decrease annual gross revenues and net benefits in the short and long-term for many fishery participants. Furthermore, they noted that the alternatives to the state-by-state commercial quota system evaluated in this amendment would require a graduated system of landing limits that would demand extensive administrative effort and cost associated with the notice to federal permit holders.

9.2.2.7. Transfer of Summer Flounder at Sea

Currently, there are regulations that prohibit vessels with multispecies or scallop permits from transferring any fish (including summer flounder) at sea. These regulations also specify that a vessel cannot transfer any species managed under the Northeast Multispecies FMP. The extent to which

summer flounder are transferred at sea is unknown. However, such transfers would allow vessels to circumvent regulations such as trip limits and federal and/or state permit requirements thereby increasing effort in the summer flounder fishery. For example, if a fishing vessel lacks a state landing permit, it could transfer its catch at sea to a vessel that does have such a permit. This would circumvent state landing laws and allow the state's quota to be filled more rapidly than anticipated, to the detriment of legitimately licensed vessels. In addition, if a vessel lacks a federal moratorium permit, it could transfer its catch of summer flounder to a federally permitted vessel. This would circumvent federal law and diminish the effectiveness of the commercial moratorium.

9.2.2.8. State Landings

The summer flounder quota applies to all summer flounder landed for sale, regardless of the place of harvest. A significant portion of the summer flounder fishery occurs in state waters. For example, in 1995, 32% of all summer flounder landings were reported as harvested in state waters (0 to 3 miles). Further, 22% of all landings were harvested by gear likely to be deployed in state waters, such as pound nets, traps and pots, gill nets, seines, and spears. These landings can be attributed to both federally permitted vessels and state permitted vessels and fishermen. If a state does not require reporting by the state permit holders, then the actual landings in state waters may be underestimated.

While most states require that fishermen report landings from state waters, not all states provide this data to the NMFS. Those that provide landings information do so voluntarily. Requiring reporting of landings from state waters will ensure that all states collect the information, and provide it to NMFS. This will make evaluation of landings equal in all states and increase the accuracy of the quota management system. While the Magnuson-Stevens Act does not allow the NMFS to require reporting of fish landings from state waters, the Commission can establish such requirements under the Atlantic Coastal Act. Establishment of compliance criteria by the Commission will ensure that all states report their landings, both now and in the future.

States would be expected to develop a vessel or dealer reporting system for summer flounder landings from state waters and to provide landings information to the NMFS. They would need to cooperate with the NMFS to prevent double counting of any landings. Some states currently require that all fishermen submit NMFS landings reports for summer flounder landings directly to the NMFS, regardless of whether the fish were landed in the EEZ or in state waters. Such a system decreases both the paperwork required and the chance of duplicate reporting.

Implementation of this regulation will ensure that all legal and reported summer flounder landings are counted against the quota. This will prevent states from landing more than their quota through failing to document landings from state waters by non-federally permitted vessels.

These measures will affect any state between Maine and North Carolina that does not currently require documentation of all landings or does not report such data to the NMFS. Currently, all states require a commercial permit to land or sell as well as reporting of landings by all vessels fishing in state waters. Therefore, the regulations will impact states that do not provide that data to the NMFS. The regulations will also prevent any state from discontinuing their state water reporting systems.

9.2.2.9. Special Permits for Party/Charter Vessels

Under the current regulations, filleting at sea is not allowed if the resultant body parts will be smaller than the minimum size. Summer flounder party and charter boats could be placed at a competitive disadvantage if they are not allowed to provide filleting services. Furthermore, if they are forced to fillet at the dock, they may be forced to make fewer trips.

Most states currently prohibit all filleting at sea, while others allow it under certain circumstances. New Jersey allows filleting at sea by party and charter boat operations if they have a state issued permit. Implementing this regulation, and requiring a state permit, allows each state to decide whether to allow the practice or not. The state can then weigh the benefit of filleting at sea to their party/charter fleet

against the burden of implementing and enforcing a permit system.

The permits would be issued by the state, reviewed and approved by the Commission, and recognized by NMFS in the EEZ. A similar provision was approved in Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass FMP.

This measure would impact any states deciding to allow a fillet-at-sea permit for summer flounder. The state would be expected to impose the restrictions and requirements noted above. As an additional measure, states could establish a minimum fillet length requirement to help ensure that fishermen comply with the minimum size. Research necessary to determine appropriate minimum fillet sizes should be conducted by any state considering this measure.

9.2.3. Administrative, enforcement, and information costs

The cost of enforcing the proposed minimum mesh requirement equals the value of the additional capital and labor resources required to expand current enforcement efforts to encompass the new regulations. Since minimum mesh size regulations for summer flounder are currently enforced coastwide, the additional cost to existing dockside and at sea enforcement due to the proposed minimum mesh requirement should be minimal.

The deletion of the regulation dealing with the expiration of the moratorium permit would allow fishermen to maintain their summer flounder permits even if they do not land summer flounder during a 52 week period. Therefore, fishermen that were forced to land marginal quantities of summer flounder in order to maintain their permits will not have to do so in the future. Therefore, administrative costs associated with the processing of such landing information would decrease.

The alternative dealing with the vessel replacement criteria would allow vessels with moratorium permits to be replaced by another vessel and the permit transferred to the new vessel. This regulation would make vessel replacement criteria in the summer flounder fishery identical to those specified in the Northeast Multispecies FMP for vessel replacement. The NMFS has in place an administrative program that handles vessel replacement. Since the vessel replacement criteria for the Northeast Multispecies FMP took effect in May 1994, 109 vessels (D. Gouveia pers. comm.), or 6% of the permitted vessels, have applied for transfer of permits or replacement of vessels. If this measure is approved, there is no indication of how many summer flounder permitted vessels will employ the vessel replacement criteria as a way to increase either their length, GRT, NT or horsepower. However, based on the percentage of vessels transferred or replaced in the Northeast Multispecies fishery, it may be expected that approximately 64 vessels may be replaced in a four year period in the summer flounder fishery. It is expected that the time needed to review a complete submission for vessel replacement (e.g., fishery managers, attorneys, etc.) would be approximately half an hour (D. Gouveia pers. comm.). Therefore, it is estimated that if approximately 64 vessels may be replaced in a four year period in the summer flounder fishery, the total administrative cost would be approximately $1,056 (employing an administrative cost of $33/hour). As such, the added administrative cost to the NMFS as the result of the implementation of this alternative is expected to be minimal.

Because this amendment has been prepared by both the Council and Commission, there are additional management measures in the amendment that will be implemented by the Commission as part of their interstate management process. Defined as compliance criteria, these management measures are not part of the federal regulatory process. These management measures include a requirement that states document all summer flounder commercial landings in their state and also allow a state to issue a special permit for party/charter vessels to allow the possession of summer flounder parts smaller than the minimum size.

None of the other proposed alternatives are expected to change current administrative, enforcement, and information costs.

9.2.4. Prices to consumers

Recent upward trends in the real price per pound of commercially caught summer flounder indicate that the demand and/or supply factors may be shifting. Adjusted average prices (1996 dollars) for summer flounder increased from $1.57 per pound in 1993 to $1.63 per pound in 1996, and ranged from $1.57 to $1.89 for the 1993-1996 period.

It is expected that the potential reduction in landings of small flounder (14" TL) attributed to this amendment will not significantly increase overall exvessel summer flounder prices. Currently, there is a 14" TL minimum size limit in the fishery, and the proportion of 14" TL summer flounder landed is small. Future increases in summer flounder supply due to reduction in mortality of small summer flounder, higher harvest weight, and stock stability, should maintain the consumer summer flounder price level (assuming everything else constant).

The quantity and value of imports must be considered when the impact of an amendment is considered. Flatfish imports into the US in 1995 totalled 87 million pounds, valued at $209 million, for an average of $2.41/lb. In 1996, an estimated 13 million pounds of summer flounder were landed at an exvessel value of $21 million. It seems clear that shortfalls in the market place, within limits, will likely be meet through imports.

9.2.5. Redistribution of costs

The Amendment 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.

9.2.6. Fishery impact statement

In order to identify the ports important to fisheries managed by the Mid-Atlantic Council and to identify the fisheries important to those ports, the Council retained Dr. Bonnie J. McCay of Rutgers University to prepare a background document (McCay *et al.* 1993). The research covered ports from Chatham, Massachusetts, to Wanchese, North Carolina. McCay *et al.* (1993) is largely based on two data sources. Landing statistics are from the National Marine Fisheries Service. Information about the ports is from interviews with key informants. The quality of the port descriptions, therefore, depends on the information supplied by the informants. The following port descriptions are taken from McCay *et al.* (1993). The port descriptions are brief summaries of the material in McCay *et al.* (1993) and readers with questions are encouraged to obtain the original document.

<u>Chatham, Massachusetts</u>

The total landed value of fish in Chatham in 1992 was around $11 million. Groundfish and shellfish -- bay scallops, quahogs, and mussels-- accounted for over 80% of the landed value.

Pound nets and fish pots or traps accounted for only 4.6% of the total landed value of species in Chatham in 1992. Summer flounder accounted for 2.4% of the catch in fish pots in 1992.

<u>New Bedford, Massachusetts</u>

In 1991, New Bedford had the highest landings value of any port in the United States. In 1992, the total value landed in New Bedford was over $150 million of which 60% came from sea scallops. In addition, to scallops, yellowtail flounder, winter flounder, cod and other groundfish make up the bulk of landings in New Bedford. Summer flounder comprised a minor component of the catch in New Bedford, accounting for 1.2% of the landed value in 1992.

Newport, Rhode Island

The total value of landings in Newport for 1992 was $14.5 million. Lobster ranked first, accounting for 44% of landed value. Summer flounder ranked fourth in importance behind lobster, sea scallops and monkfish.

Other Washington County Communities, RI (including Quonset Point)

The value of the landings at Other Washington County communities including Quonset Point in 1992 was around $20 million.

Other Washington County communities (including Quonset Point) are engaged in both traditional and innovative fisheries. Processing facilities for squid in the region have resulted in the dominance of both *Loligo* and *Illex* squid in terms of landed value, but lobster and bay quahogging and oystering remain important, as well as other inshore activities such as eel potting, trapping striped bass, and an unusual spearfishery for tautog (blackfish). There is some handlining for bluefin tuna and trolling for inshore species such as striped bass and summer flounder as well as yellowfin tuna.

Atlantic mackerel, butterfish, scup, summer flounder, and angler are among the top ten species landed by value, and they figure importantly in the catch of the otter trawl vessels. Virtually all of the angler, butterfish, weakfish, Atlantic mackerel, and squid landed here are brought in by draggers. The gillnet fishery for cod and tautog includes a small amount of angler and Atlantic mackerel. The fish pots are predominantly for scup, but some black sea bass, summer flounder, bluefish, and *Loligo* squid are caught in them too.

Point Judith, RI

The total value of fish landed in Point Judith in 1992 was $36.5 million. The top ten species by percent landed value in 1992 were lobster, *Loligo* squid, angler, summer flounder (8.3%) , scup, butterfish, winter flounder, yellowtail, and cod.

Point Judith has a large fleet of trawlers, gillnetters, and lobster boats. While estimates vary, approximately 200 commercial boats dock in Point Judith, including 80 trawlers, 30 gillnetters, and 100 or so lobster boats.

One informant described Point Judith boats as diverse in their approach to the fisheries, as opposed to New Bedford boats which only go after groundfish. Point Judith boats which are freezer boats which only target fish for frozen markets -- the squids, butterfish, and mackerel. The diverse approach to fisheries combined with full-time experienced fishermen means the fishermen are fishing year round even if they may switch fisheries and boats during the year.

Stonington, Connecticut

The Long Island sound and its estuaries and rivers are the major foci of Connecticut fisheries. There is a small traditional haul seine fishery for alewives and other fishes (unspecified, for "industrial" uses). Dip-nets are used for blue crabs (and a few alewives). Drift gillnets are used for menhaden, bluefish, weakfish, black sea bass, alewife, atlantic mackerel, and other species. There is a specialized drift gillnet fishery for American shad. Quahogs (hard clams) are very important, and over 70% of Connecticut's landed value comes from oysters cultivated in Long Island Sound. Second to oysters are lobsters, most of which are caught inshore, in the sound. Third in value is a mixed species otter trawl fishery, most of which is based in the port of Stonington.

Stonington is the primary port in Connecticut. The main fishing fleet is out of Stonington. Stonington is the only off-shore port with a fleet consisting of trawlers, lobster boats, ocean scallopers. Fishermen are mostly going for groundfish such as cod, haddock, and flounder (winter and summer).

The major species of fish caught in Stonington are flounder, summer flounder, squid, whiting and some codfish during the winter months. In 1992, summer flounder accounted for 6.5% of the total value landed in Stonington. Over the five year period 1988-1993, the fishermen have caught an increasing number of monkfish. The three large scallop boats have landed the majority of the monkfish.

Montauk Area, New York

The Montauk area ports (Montauk, Shinnecock/Hampton Bay, Greenport) had a total of $28 million in fish and shellfish landings in 1992. Summer flounder ranked seventh in value in 1992, accounting for 5.5% of the total.

Montauk, NY

The major fisheries of Montauk, in terms of percentage of landed value, are tilefish longlining, pelagic longlining for swordfish and tunas, and finfish dragging (40%), tilefish longlining (23%) and pelagic longlining (swordfish and tunas) (18.3%). The large pelagics fishery also involved the use of drift gillnets and handlines in 1992. Summer flounder ranked third by value in the landings by draggers in 1992.

Shinnecock/Hampton Bays, NY

This discussion treats Shinnecock and Hampton Bays as one and the same. Otter trawlers accounted for 66% of the landed value in these ports in 1992. Summer flounder accounted for 3.1% of the landed value in 1992, almost all were landed by trawlers (95%).

Greenport, NY

Bottom draggers accounted for 60% of the landed value in Greenport in 1992. Major species caught (percent total landed value): lobster, 28.05% and *Loligo* squid, 13.32%. Summer flounder ranked fifth by value in 1992, accounting for 6.5% of the total value landed.

Freeport/Brooklyn area, NY

The total value of all species landed in the Freeport/Brooklyn area in 1992 was about $4 million. The most important fisheries in terms of landed value are surf clam (45%), *Loligo* squid (13%), summer flounder (11%), scup (10%), and lobster (6%). Butterfish accounted for 0.52% and mackerel 0.31%.

Bottom otter trawlers (48%) and surf clam dredges (45%) accounted for the majority of the landed value of species in the Freeport/Brooklyn area in 1992.

Belford, NJ

The total landed value for Belford in 1992 was about $9.2 million. In recent years ocean quahog vessels have moved to the port of Belford, with the result that the landed value for the port is now dominated by ocean quahogs (32% in 1992). Excluding ocean quahogs from the data, lobster is the most valuable (46% of landed value in 1992), followed by blue crab, summer flounder, menhaden, silver hake, and *Loligo* squid. Excluding ocean quahogs from the data, summer flounder accounted for 7.6% of the 1992 landed value.

Otter trawl landings accounted for 19% of the total landed value (the value would be higher if ocean quahog dredges were not included). The species composition of otter trawl catches varied seasonally and over the years. In 1992 it was dominated by summer flounder (26%), silver hake (22.5%), and *Loligo* squid (14%), winter flounder (11%), and scup (9.3%).

Point Pleasant, NJ

The town of Point Pleasant is located at the mouth of the Manasquan inlet in Ocean County. The town's economy is geared towards the summer tourist and recreational economy. The commercial, party/charter boat, and recreational fishing industries are very important to the local economy, employing many of the local residents and supporting many related industries such as seafood markets, restaurants, marine supply houses, welders and salvage, and many of the tourist oriented industries.

In 1992 bottom fish otter trawl accounted for 15.73% of the total landed value for the Point Pleasant area. Major species caught include *Loligo* squid (50%), silver hake (21%), summer flounder (8%), and scup (4%).

Barnegat Light/Long Beach Island, NJ

The community of Barnegat Light is located on Long Beach Island, a barrier island along the New Jersey shore. The island up to and including Barnegat Light is intensely developed with summer and beach/boarding houses, and much of the community is heavily geared toward the summer beach economy. During the winter, Barnegat Light's economy slows significantly, and one of the major forms of employment becomes commercial fishing. It hires 150 people working on docks and is one of the biggest income generating businesses on the island during the winter.

The larger region, including Barnegat Bay ports, had landings worth about $32 million in 1992. Major species, by percent of the landed value (excluding surf clams and ocean quahogs) were: sea scallops (28%), hard clams (17%), swordfish (13%), tuna (17%), and tilefish (8%). Summer flounder accounted for 0.1% of the total landed value.

Cape May, NJ

Cape May is the most southerly town in New Jersey. The town is noted for its tourist and beach economy during the summer. While there are marinas in the town, there is little conflict for space with the commercial fishermen because the commercial docks are separated from the rest of the community. Along one stretch of road lies most of the commercial fishing docks in the town. These include a surf clam dock and three commercial finfish docks.

For the Cape May/Wildwood area, the entire landed value for 1992 was about $37 million. Cape May landed about $30.4 million, Wildwood landed $4.5 million, and other ports in the Cape May area landed $2.3 million. Major species landed include sea scallops (28%), ocean quahog (11%), *Illex* squid (10%), *Loligo* squid (9%), and surf clams (8%). Summer flounder ranked sixth in terms of landed value in 1992, accounting for 7.6% of the total.

Together with bottom sea scallop trawling, bottom fish otter trawling accounts for 39.33% of the total landed value of the Cape May/Wildwood area. Major species caught by bottom fish otter trawl are *Illex* squid, *Loligo* squid, summer flounder, and scup.

Other ports in this area include Cold Spring Harbor, near Cape May, and Sea Isle City, to the north. There are now two tilefish boats, two fish trap (pot) boats and one dragger working out of Sea Isle City, and tilefish and black sea bass are the species targeted.

Tilefish are not landed, except in Sea Isle City. Scup are targeted by draggers. Black sea bass are caught by pot boats and some draggers. Summer flounder are targeted by draggers. Dogfish are caught by gillnetters in November, December and in the spring at which time they switch from the spiny dogfish to the smooth dogfish. Draggers target dogfish in the early winter months. Some draggers may just catch them if they happen to run into them. Atlantic mackerel are targeted by draggers in the winter. *Loligo* squid is almost a year round fishery for draggers. But they may be going for either squid on a trip. *Illex* squid is caught by draggers from May to October. Butterfish are a bycatch of squid and are rarely targeted. Gillnetters catch weakfish but there aren't many doing this

any more because of state regulations. Draggers also target weakfish. Bluefish are caught by gillnetters and they are a bycatch for draggers.

Atlantic City, NJ

Atlantic City's port is primarily clam boats. However it also has four boats potting for black sea bass year round. These are small boats between 34 and 40 ft. They could sea bass pot year round but the catch is higher from the spring to late fall. There is some gillnetting here for weakfish and bluefish in the spring and fall, but this is decreasing.

Shark River, NJ

Shark River, in Monmouth County, is a small port dominated by charter and party boats and private recreational boats. It has also been an important lobstering port and has had some gillnetting and dragging, as well.

Highlands & Atlantic Highlands, NJ

These Monmouth County ports are close to Sandy Hook; Atlantic Highlands is a sports fishing center. Highlands has sports fishing but also a small amount of lobstering and other fishing and -- together with Seabright -- an important bay fishery for hard clam sand soft clams.

Port Norris & other Cumberland County ports, NJ

Port Norris and other Cumberland County ports fringe the Delaware Bay and were traditionally the center of oystering. Oystering is negligible because of oyster diseases. Gillnetting and sports fishing for weakfish, summer flounder and other species, as well as blue crab potting, are becoming very important.

Ocean City, Maryland

Ocean City is the primary port for ocean fishing vessels in Maryland. Its boats are primarily smaller boats; they are either inshore boats or small trawler, day boats. Its harbor area is directly west of the inlet at the southern end of the city and is one and a quarter miles from the ocean.

The total landed value of fish and shellfish in Ocean City and environs in 1992 was about $8 million. The surf clam and ocean quahog fishery represented 62% of that total. Summer flounder (5%), black sea bass (5%), and butterfish (0.35%) are important to the fisheries. As elsewhere in the region, the actual number of species landed and sold is extremely high (about 70 species).

After the clam dredge, the most important gear type in terms of landed value was the pelagic longline (12.35%), closely followed by the otter trawl dragger (11.9%).

The trawlers (there are about six to ten of them here) are the larger boats of the port, ranging in size from 62 feet and 32 tons to 73 feet and 103 tons. None of the boats in Ocean City have refrigerated sea water. They chill the fish in ice salt water in barrels on the deck. The Ocean City draggers take a large variety of finfishes, topped by summer flounder (50%) and spiny dogfish (27.6%) in 1992. Horseshoe crabs make up an unusually large component of this catch, followed closely by weakfish. Black sea bass, butterfish, scup, *Loligo* squid, and Atlantic mackerel are of some importance.

Hampton Roads/Hampton, Virginia

Ninety-five different species were landed in the Hampton Roads area in 1992. Sea scallops (63%) and summer flounder (17%) were the two most important species in the Hampton Roads area in terms of landed value in 1992. Substantial quantities of *Loligo*, *Illex*, and mackerel were landed, but the quantities may not be reported because of data confidentiality constraints. Butterfish accounted for

0.03% of the value in 1992.

Scallop dredges (54%) and otter trawlers (20%) are the most important gear types in terms of landed value in Hampton Roads.

Wanchese, North Carolina

Wanchese is located on the southern end of Roanoke Island in North Carolina. Wanchese has traditionally been a fishing community with commercial fishing operations since the late 1800's. Many of the current residents of Wanchese are descendants of people who settled here in the late 1600's and early 1700's.

Wanchese is bounded on three sides by estuarine waters and is twenty minutes (by boat) from Oregon Inlet. Thus it is a convenient location for inshore and offshore boats. However, Oregon Inlet is sometimes impassable for the larger trawler boats and many of these boats from Wanchese will stay in Hampton, Virginia or New Bedford, Massachusetts during the winter months. Wanchese is also the site of the Wanchese Seafood Industrial Park (WSIP) which was developed in the 1970s to be a major site for seafood processing activities. However, because of the uncertain nature of Oregon Inlet and the general decline in fisheries since the 1970s, very few businesses actually operate at the WSIP.

The total landed value for the following species was $4,763,534 in 1992 (USDC 1993): summer flounder, black sea bass, Atlantic mackerel, scup, weakfish, squids, tilefish, sharks/dogfish uncl., butterfish, bluefish, and whiting. Of these species, 45.03% of the landed value comes from gill netters and 34.05% of the landed value is from draggers. Pound netters bring in 13.5% of the landed value; handliners bring 5.43%; haul seiners bring 1.78%; trollers bring 0.07%; and less than 0.01% of the total landed value comes from crab pots. Summer flounder accounted for 40.8% of the total landed value in Wanchese in 1992.

Summary

The socioeconomic characteristics of the various ports and communities along the Atlantic Coast that depend on the summer flounder fisheries were described and assessed by McCay *et al.* (1993). According to the 1992 landings statistics, summer flounder is important to the commercial fishing industry in many of the ports that were analyzed. Given the degree of port reliance on summer flounder, it is expected that the proposed regulatory measure will have a positive impact on the communities and local economies of these ports.

The proposed amendment will decrease the likelihood that the summer flounder mesh regulations are circumvented because the minimum mesh will apply to the entire net. This will have a positive impact on the majority of fishermen who have been abiding by the regulations and may have been placed at a competitive disadvantage to those who have not.

The continuation of the moratorium will prevent additional overcapitalization and the deletion of the requirement to land summer flounder during a 52 week period will reduce effort in the fishery. The regulations pertaining to the quota, which include the documentation of all state landings, the *de minimus* option for states, and the prohibition on transfer of summer flounder at sea, in conjunction with the current state-by-state quota system, will increase the effectiveness of the quota system in reducing fishing mortality and rebuilding the stock. The vessel replacement regulations will allow for voluntary replacement and a one-time vessel upgrade. As such, commercial fishermen can decide when to replace a vessel to allow for more efficient fishing operations. In addition, the special permits for party/charter vessels to fillet summer flounder at sea will allow some of these vessels to be more efficient in their operations. As a result, all of these regulations will provide positive benefits to the ports and communities who depend in part on summer flounder for employment and income.

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

(This section is unchanged from the current FMP except as noted below.)

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

9.3.4.1. State management activities

The Commission has established compliance criteria as a part of their interstate management process. The Commission requires that states adopt the following measures in regard to summer flounder:

- Commercial and recreational minimum size provisions
- Recreational possession limit and seasonal closures
- Commercial minimum mesh and threshold provisions
- Commercial fishery closure ability
- States must submit an annual quota management plan

Compliance with Commission management plans is reviewed annually by the Management Board and Plan Review Team through a process outlined in the Interstate Fisheries Management Program (ISFMP) Charter. Each year, the Plan Review Team prepares an FMP status report that documents landings and compliance for each state. If a state is out of compliance with a required management measure the Team forwards a recommendation of non-compliance to the Management Board. The Board then reviews the recommendations of the Plan Review Team and, if it determines a state is out of compliance, forwards a recommendation of non-compliance to the ISFMP Policy Board. The Policy Board considers the recommendation and makes a final compliance determination.

Compliance with the Commission's Summer Flounder FMP was last reviewed by the ISFMP Policy Board in May 1997. Based on that review, all states are currently in compliance with the FMP.

The Commission has approved Amendment 10 to the Summer Flounder FMP. Amendment 10 adds additional management measures as compliance criteria for the states. The states must be in compliance with the following criteria by January 1, 1998:

- States must document, through a vessel and dealer reporting system, all landings in their state that are not otherwise included in the federal monitoring of permit holders, and they must provide this information to the National Marine Fisheries Service for quota monitoring.

- States must implement the 5.5" diamond (6.0" square) minimum mesh provisions detailed in this amendment for trawl nets.

- States must prohibit the transfer of summer flounder from one vessel to another.

Amendment 10 also allows states to request *de minimus* status and outlines a procedure for review and determination of *de minimus.*

Amendment 10 allows states to develop a fillet at sea permit and specifies permit requirements.

Amendment 10 also encourages states to continue moratorium provisions to complement the federal moratorium provisions. Although it is not a specific compliance criteria, all states have developed, or are in the process of developing, limited entry or moratorium permitting systems. State permitting systems alternatively require permitting of vessels, fishermen, or gear. Most state systems are similar to the federal permitting program in that they require prospective permit holders to document a history of landing summer flounder during some baseline determination period. Some include vessel replacement restrictions. Many of the state systems are more restrictive than the federal system and several predate the federal moratorium permit.

States often voluntarily adopt management measure that are more restrictive than the federal management program. For example, a number of states prohibit trawling in state waters, some prohibit commercial landings of summer flounder, others have enacted vessel length restrictions in state waters, and many have established closed areas, closed seasons, and gear restrictions. State regulations for

summer flounder are summarized in Table 9.

9.3.4.2. Impact of federal regulations on state management activities

The management measures of this Amendment are identical to those proposed by the Commission 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 an amendment will affect a state's coastal zone. If it will, the amendment 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.

This amendment was reviewed relative to CZM programs of the states from Maine through North Carolina. A letter, sent to all the states, indicated that the Council had concluded that the management measures in the amendment would not directly 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. The letter was mailed to the states along with a hearing copy of the draft Amendment. The states of New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, and Virginia concurred with the Council's opinion. The state of Connecticut did not agree with the Council's opinion.

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

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Table 1. Average summer flounder landings by period, Maine to North Carolina, based on 1980-1992 data.

	1980-1989		1980-1992		1990-1992	
Period	Lbs	%	Lbs	%	Lbs	%
Winter 1 (Jan-Apr)	12,667,819	44.94%	10,928,528	44.21%	5,129,554	38.95%
Summer (May-Oct)	8,463,776	30.03%	7,608,717	30.78%	4,759,860	36.14%
Winter 2 (Nov-Dec)	7,055,051	25.03%	6,183,785	25.01%	3,279,567	24.90%

Table 2. State shares of summer flounder landings (%) for the summer period (May-Oct), based on 1980-1992 data.

	1980-1989		1980-1992		1990-1992	
ST	Average Landings by State (May-Oct)	% of Total	Average Landings by State (May-Oct)	% of Total	Average Landings by State (May-Oct)	% of Total
ME	6,831	0.0807%	5,274	0.0693%	83	0.0017%
NH	36	0.0004%	30	0.0004%	10	0.0002%
MA	1,393,670	16.4663%	1,257,439	16.5263%	803,337	16.8773%
RI	1,524,014	18.0063%	1,301,579	17.1064%	560,129	11.7678%
CT	332,597	3.9297%	306,088	4.0229%	217,724	4.5742%
NY	1,490,439	17.6096%	1,256,174	16.5097%	475,289	9.9853%
NJ	2,089,169	24.6837%	1,912,824	25.1399%	1,325,009	27.8371%
DE	1,254	0.0148%	1,333	0.0175%	2,934	0.0616%
MD	179,885	2.1254%	174,257	2.2902%	155,495	3.2668%
VA	1,059,181	12.5143%	1,030,958	13.5497%	936,883	19.6830%
NC	386,701	4.5689%	362,762	4.7677%	282,968	5.9449%
Total	8,463,776	100.0000%	7,608,717	100.0000%	4,759,860	100.0000%

Table 3. Summer founder allocation of a 11.11 million lbs quota by period for the years 1980-1989, 1980-1992, and 1990-1992.

	1980-1989		1980-1992		1990-1992	
Period	%	Million lbs	%	Million lbs	%	Million lbs
Winter 1 (Jan-Apr)	44.94%	4.9931	44.21%	4.9114	38.95%	4.3275
Summer (May-Oct)	30.03%	3.3361	30.78%	3.4195	36.14%	4.0157
Winter 2 (Nov-Dec)	25.03%	2.7808	25.01%	2.7791	24.90%	2.7668
	100.00%	11.1100	100.00%	11.1100	100.00%	11.1100

Table 4. The total number of vessels, and average number of trips, and average pounds associated with a given threshold (pounds of summer flounder) during Jan-Apr, 1990-1992.

Threshold	Vessels	%	Trips	%	Pounds	%
> 0	758		2,793		3,650,439	
>=201	509	100%	1,397	100%	3,570,817	100%
>=500	412	81%	1,035	74%	3,452,642	97%
>=1000	341	67%	773	55%	3,265,582	91%
>=1500	294	58%	624	45%	3,082,595	86%
>=2000	271	53%	518	37%	2,896,837	81%
>=2500	251	49%	438	31%	2,716,276	76%
>=3000	230	45%	374	27%	2,541,075	71%
>=3500	210	41%	330	24%	2,399,899	67%
>=4000	189	37%	284	20%	2,228,024	62%
>=4500	173	34%	246	18%	2,066,659	58%
>=5000	154	30%	208	15%	1,884,522	53%
>=5500	144	28%	178	13%	1,730,910	48%
>=6000	136	27%	155	11%	1,596,744	45%
>=6500	128	25%	137	10%	1,484,429	42%
>=7000	121	24%	120	9%	1,372,915	38%
>=7500	109	21%	105	8%	1,264,465	35%
>=8000	102	20%	92	7%	1,158,768	32%
>=8500	94	18%	80	6%	1,062,477	30%
>=9000	83	16%	70	5%	977,793	27%
>=9500	72	14%	62	4%	904,500	25%
>=10000	65	13%	56	4%	842,701	24%

Source: Unpublished NMFS Weighout data.

Note: Table based on monthly landing data from ME-VA.

Table 5. The total number of vessels, and average number of trips, and average pounds associated with a given threshold (pounds of summer flounder) during Nov-Dec, 1990-1992.

Threshold	Vessels	%	Trips	%	Pounds	%
> 0	671		1,590		1,898,146	
>=201	440	100%	777	100%	1,855,631	100%
>=500	372	85%	564	73%	1,785,794	96%
>=1000	320	73%	409	53%	1,674,022	90%
>=1500	273	62%	316	41%	1,560,632	84%
>=2000	230	52%	252	32%	1,449,478	78%
>=2500	195	44%	212	27%	1,360,416	73%
>=3000	164	37%	182	23%	1,279,055	69%
>=3500	148	34%	156	20%	1,193,960	64%
>=4000	131	30%	135	17%	1,114,506	60%
>=4500	120	27%	117	15%	1,038,168	56%
>=5000	110	25%	105	14%	984,300	53%
>=5500	104	24%	94	12%	926,621	50%
>=6000	95	22%	82	11%	857,449	46%
>=6500	91	21%	74	10%	805,349	43%
>=7000	87	20%	66	8%	749,549	40%
>=7500	82	19%	59	8%	703,516	38%
>=8000	75	17%	54	7%	662,193	36%
>=8500	68	15%	48	6%	615,629	33%
>=9000	57	13%	41	5%	548,661	30%
>=9500	54	12%	34	4%	483,849	26%
>=10000	50	11%	30	4%	451,331	24%

Source: Unpublished NMFS Weighout data.

Note: Table based on monthly landing data from ME-VA.

Table 6. State-by-state allocation for the summer period (May-Oct) based on a summer period allocation of 3.3361 million lbs (for the 1980-1989 period), 3.4195 million lbs (for the 1980-1992 period), and 4.0157 million pounds (for the 1990-1992 period).

	1980-1989		1980-1992		1990-1992	
ST	% of Total	Quota	% of Total	Quota	% of Total	Quota
ME	0.0807%	2,692	0.0693%	2,370	0.0017%	70
NH	0.0004%	14	0.0004%	13	0.0002%	8
MA	16.4663%	549,326	16.5263%	565,112	16.8773%	677,734
RI	18.0063%	600,703	17.1064%	584,949	11.7678%	472,552
CT	3.9297%	131,096	4.0229%	137,561	4.5742%	183,683
NY	17.6096%	587,469	16.5097%	564,543	9.9853%	400,977
NJ	24.6837%	823,463	25.1399%	859,652	27.8371%	1,117,842
DE	0.0148%	494	0.0175%	599	0.0616%	2,475
MD	2.1254%	70,903	2.2902%	78,314	3.2668%	131,184
VA	12.5143%	417,485	13.5497%	463,328	19.6830%	790,401
NC	4.5689%	152,421	4.7677%	163,031	5.9449%	238,725
Total	100.0000%	3,336,068	100.0000%	3,419,471	100.0000%	4,015,652

Table 7. The total number of vessels, and average number of trips, and average pounds associated with a given threshold (pounds of summer flounder) during May-Oct, 1990-1992.

Threshold	Vessels	%	Trips	%	Pounds	%
> 0	857		3,848		4,256,235	
>=101	649	100%	1,923	100%	4,197,111	100%
>=500	462	71%	1,073	56%	3,995,184	95%
>=1000	375	58%	772	40%	3,780,212	90%
>=1500	305	47%	594	31%	3,563,759	85%
>=2000	272	42%	486	25%	3,375,367	80%
>=2500	253	39%	417	22%	3,223,382	77%
>=3000	237	37%	375	20%	3,108,515	74%
>=3500	219	34%	331	17%	2,966,754	71%
>=4000	207	32%	294	15%	2,825,808	67%
>=4500	198	31%	262	14%	2,690,528	64%
>=5000	184	28%	236	12%	2,568,894	61%
>=5500	173	27%	215	11%	2,458,598	59%
>=6000	161	25%	192	10%	2,328,139	55%
>=6500	147	23%	172	9%	2,203,468	52%
>=7000	139	21%	160	8%	2,118,921	50%
>=7500	133	20%	144	8%	2,008,141	48%
>=8000	124	19%	131	7%	1,904,205	45%
>=8500	120	18%	120	6%	1,813,393	43%
>=9000	110	17%	108	6%	1,708,661	41%
>=9500	105	16%	101	5%	1,641,039	39%
>=10000	98	15%	92	5%	1,556,152	37%

Source: Unpublished NMFS Weighout data.

Note: Table based on monthly landing data from ME-VA.

Table 8. Summer flounder landings by state from Maine to North Carolina for the 1990-1992 and 1980-1992 periods.

	1990-1992		1980-1992	
ST	lbs	%	lbs	%
ME	3,366	0.0085%	137,857	0.0428%
NH	121	0.0003%	1,445	0.0004%
MA	3,134,082	7.9111%	22,421,030	6.9543%
RI	5,612,418	14.1670%	49,954,414	15.4944%
CT	1,258,623	3.1770%	7,641,222	2.3701%
NY	2,376,003	5.9976%	24,000,054	7.4441%
NJ	6,669,971	16.8365%	53,962,358	16.7375%
DE	19,174	0.0484%	69,474	0.0215%
MD	691,216	1.7448%	6,455,008	2.0022%
VA	11,031,148	27.8451%	71,295,968	22.1139%
NC	8,820,063	22.2638%	86,464,470	26.8187%
	39,616,185	100.0000%	322,403,300	100.0000%

Note: CT values adjusted as per Summer Flounder Amendment 4.
DE values for 1990-1992 provided by R. Cole per. comm.

Source: Unpublished NMFS General Canvass data.

Table 9. Summer flounder regulations by state as of May 15, 1997. Y indicates the state is in compliance with the regulation.

Measure	ME	NH	MA	RI	CT	NY	NJ	DE	MD	PRFC	VA	NC
14" commercial size	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
14.5" recreational size	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
10 fish rec possession	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
commercial closure	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
5.5" mesh	Y	Y	Y	Y	Y	Y	Y	N/A	Y	Y	Y	Y
quota plan	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

APPENDIX 1. ALTERNATIVES TO THE AMENDMENT

1. NO ACTION

1.1. RETAIN THE CURRENT MESH REQUIREMENTS

1.1.1. Description

This alternative would mean that the current mesh requirements would remain in effect. As such, the minimum mesh size would only apply to the codend portion of the net.

1.1.2. Evaluation

The minimum mesh and fish size regulations originally adopted in Amendment 2 were developed to reduce mortality of small summer flounder and to minimize waste. A 5.5" mesh retains about 70% of the 14" TL summer flounder that encounter the net. During the development of Amendment 2 it was recognized that a 5.5" mesh would also retain a portion of the 13" TL summer flounder that encountered the net. The Council and Commission decided to reduce the minimum fish size to 13" TL to avoid the wasteful discard of any 13 to 14" TL fish retained in legal summer flounder nets.

These regulations were developed in the belief that fishermen would target 14" TL and larger summer flounder. However, since the implementation of mesh regulations in the summer flounder fishery it has become apparent that many fishermen have been circumventing the mesh regulations through the use of liners, smaller codends or by using legal codends with net constricted forward of the regulated portion of the net. Since meshes smaller than 5.5" are currently allowed forward of the regulated portion of the net, the escapement of summer flounder less than 14" TL may be greatly reduced. The result is that a higher proportion of 13 to 14" TL fish will be retained by the net. Depending on the size of the meshes used in the body and extension, a significant portion of summer flounder less than 13" TL may be retained as well, many of which will not survive when discarded. Mesh selectivity data (Gillikin *et al.* 1981) indicate that there is no escapement of fish 13" TL or larger for a mesh less than 4".

The continuation of the current mesh requirements will do nothing to increase compliance or enhance the enforcement of the mesh regulations. Poor compliance with mesh regulations will result in higher than expected fishing mortality rates on sublegal summer flounder. As a result, the age distribution will not expand as quickly as expected and the rate of stock recovery will slow.

1.2. DO NOT CONTINUE THE MORATORIUM ON ENTRY OF ADDITIONAL VESSELS INTO THE SUMMER FLOUNDER FISHERY

1.2.1. Description

This would mean that the moratorium on the entry of additional vessels into the summer flounder commercial fishery, implemented by Amendment 2, would expire in 1997.

1.2.2. Evaluation

Amendment 2 to the FMP for the summer flounder fishery established a moratorium on entry of additional commercial vessels into the summer flounder fishery in the EEZ for 5 years. The summer flounder moratorium expires in 1997 unless extended by plan amendment. Given the pressure that exits in most of the major fisheries in the Atlantic coast, the expiration of the summer flounder moratorium on entry will allow fishermen that have traditionally participated in other fisheries to fish for summer flounder in order to alleviate some of the economic adversities they are currently facing. According to NMFS data permit files (29 October 1996) there are 1,063 vessels holding summer flounder moratorium permits. The same data file indicates that 4,088 vessels hold Multispecies, Scallop, and Squid, Atlantic Mackerel and Butterfish (SMB) permits. One thousand fifty one vessels of

the 4,088 vessels holding Multispecies, Scallop, and SMB permits also hold Summer flounder moratorium permits. This indicates that 3,037 additional vessels could potentially apply for a summer flounder permit and participate in the fishery if the moratorium is allowed to expire. If this were to occur, the number of participants in the summer flounder fishery could potentially increase four fold relative to the 1996 level.

If the moratorium is allowed to lapse, the fishery will revert to open access and new vessels will enter the fishery. As a result, more fishermen will be attempting to catch the same quantity of fish, thereby increasing costs and decreasing income for the individual participants.

1.3. TAKE NO ACTION REGARDING THE EXPIRATION OF THE COMMERCIAL MORATORIUM PERMIT

1.3.1. Description

This would mean that the current regulations would remain in effect, i.e., a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit.

1.3.2. Evaluation

The requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit would be deleted from the regulations. This regulation, which has been in effect since 1993, has not resulted in the loss of any summer flounder permits. However, this requirement could force vessel owners to fish for summer flounder simply to maintain the permit and, as such, result in an increase in fishing effort.

1.4. TAKE NO ACTION REGARDING THE DOCUMENTATION OF SUMMER FLOUNDER LANDINGS BY STATE PERMITTED VESSELS

1.4.1. Description

This would mean that some of the landings of summer flounder from state waters would not be reported to NMFS.

1.4.2. Evaluation

The summer flounder quota applies to all summer flounder landed for sale, regardless of the place of harvest. However, states are not required to document and report summer flounder landings from state waters, and instead rely solely on federal reporting requirements to determine landings. Since previous stock assessments have indicated that there may be significant underreporting of landings in the summer flounder commercial fishery, it is important that every effort is made to account for all commercial landings regardless of whether fish are caught in federal or state waters.

A significant portion of the summer flounder fishery occurs in state waters. For example, in 1995, 32% of all summer flounder landings were reported as harvested in state waters (0 to 3 miles). Furthermore, 22% of all landings were harvested by gear likely to be deployed in state waters, such as pound nets, traps and pots, gill nets, seines, and spears.

While most states require that fishermen report landings from state waters, not all states provide this data to the NMFS. Those that provide landings information do so voluntarily. If states are not required to report, some states could exceed their quota without being penalized by failing to document landings from state waters by non-federally permitted vessels.

1.5. TAKE NO ACTION REGARDING *DE MINIMUS* STATUS

1.5.1. Description

This would mean that states would not have the option of being declared *de minimus* and as such would be required to implement the management measures pertaining to the quota.

1.5.2. Evaluation

The Summer Flounder FMP is a joint plan prepared under both the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, and the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Under the ACFCMA, if a state does not implement measures required by an FMP, the Federal government may impose a moratorium on the landing of the species covered by the FMP in that state.

Under the current FMP, three states, Maine, New Hampshire and Delaware, receive less than 0.1% of the coastwide summer flounder quota, resulting in allocations of only 51 to 5,284 pounds in 1997. However, these states are expected to comply with all provisions of the FMP.

If the three eligible states claimed *de minimus* status in 1996 and were allocated 0.1% of the coastwide quota, they would have each been allocated 11,111 pounds. All three would have accounted for 33,333 pounds or 0.3% of the coastwide quota. The other 99.7% would have been allocated to the other states. The loss of 0.3% would have reduced the quota in North Carolina, which receives the highest percentage, by 9,153 pounds and in Maryland, which receives the smallest share by 680 pounds.

The administrative burden of implementing a real-time quota monitoring system far exceeds the economic value of the fishery in these states. Allowing them a small allocation of 0.1% is of no conservation risk to the stock as a whole. However, if regulatory demands become so great that the state is forced to prohibit commercial landings of summer flounder, the fish that are currently landed could be tossed overboard as discards.

1.6. TAKE NO ACTION REGARDING THE TRANSFER OF SUMMER FLOUNDER AT SEA

1.6.1. Description

This would mean that summer flounder could be transferred at sea.

1.6.2. Evaluation

Currently, there are regulations that prohibit vessels with multispecies or scallop permits from transferring any fish (including summer flounder) at sea. These regulations also specify that a vessel cannot transfer any species managed under the Northeast Multispecies FMP. The extent to which summer flounder are transferred at sea is unknown. However, such transfers would allow vessels to circumvent regulations such as trip limits and federal and/or state permit requirements thereby increasing effort in the summer flounder fishery. For example, if a fishing vessel lacks a state landing permit, it could transfer its catch at sea to a vessel that does have such a permit. This would circumvent state landing laws and allow the state's quota to be filled more rapidly than anticipated, to the detriment of legitimately licensed vessels. In addition, if a vessel lacks a federal moratorium permit, it could transfer its catch of summer flounder to a federally permitted vessel. This would circumvent federal law and diminish the effectiveness of the commercial moratorium.

1.7. TAKE NO ACTION REGARDING SPECIAL PERMITS FOR PARTY/CHARTER VESSELS

1.7.1. Description

This would mean that there would be no special permits to allow party/charter vessels to fillet at sea.

1.7.2. Evaluation

Under the current regulations, filleting at sea is not allowed if the resultant body parts will be smaller than the minimum size. Summer flounder party and charter boats could be placed at a competitive disadvantage if they are not allowed to provide filleting services. Furthermore, if they are forced to fillet at the dock, they may be forced to make fewer trips.

2. REQUIRE MINIMUM MESH THROUGHOUT THE NET, NOT JUST THE CODEND, BUT DELAY IMPLEMENTATION FOR UP TO 12 MONTHS AFTER APPROVAL

2.1. Description

This alternative is nearly identical to the preferred alternative described in 9.1.1. That is, 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, inside measure, applied throughout the entire net including the body, extension(s) and codend. 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.

However, this alternative would delay implementation of the minimum mesh requirement for up to one year after the mesh provision was approved by NMFS.

2.2. Evaluation

The biological and economic effects of requiring the minimum mesh throughout the net are detailed in 9.2.2.1.

In general, once an FMP or an amendment is approved by NMFS, the regulations become effective 1 to 2 months after approval. However, this may not allow enough time for net manufacturers to obtain the appropriate webbing and construct the nets. In addition, fishermen need time to obtain the nets and rig their vessels.

Based on an informal survey of net manufacturers conducted by Council staff, 5.5 inch webbing to build trawl net bodies is not currently available in quantities necessary to provide nets for the entire summer flounder fleet. Net manufacturers in Rhode Island and New Jersey indicated that at least 3 to 6 months would be required to order 5.5" twine and build the new nets. However, the Wanchese Fish Company in North Carolina indicated that they had more than enough twine to supply the North Carolina summer flounder trawl fleet if the whole net mesh requirement was put in place (J. Daniels pers. comm.). Thus, although enough net material is available in some localized areas, the shortage of 5.5" twine could require that implementation of the net regulation be delayed for at least 6 months.

3. COMMERCIAL QUOTA SYSTEM THAT ESTABLISHES THREE PERIODS: TWO WINTER COASTWIDE PERIODS (JANUARY-APRIL AND NOVEMBER-DECEMBER) AND A STATE-BY-STATE SUMMER PERIOD (MAY-OCTOBER)

3.1. Description

This alternative would allocate the annual quota into three unequal periods (Table 1). In the two winter periods, January-April and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits. In the summer period, May-October, a state-by-state quota system similar to the current state-by-state system would be implemented.

A coastwide system during the winter would allow fishermen to land in any port along the coast. All commercial landings during the winter period would count toward that quota for that period. When the quota has been landed, fishing for and/or landing summer flounder would be prohibited for the

remainder of the period. Landings in excess of the allocation for the period would be subtracted from the following year's quota for the same period.

During the winter periods, coastwide landing limits would have to be implemented. Allocations without landing limits would encourage derby-style fishing practices that would allow the quota to be landed by larger, more mobile vessels at the beginning of each period. As a result, supplies of summer flounder would be discontinuous and smaller boats would be disadvantaged.

A coastwide quota system would require a carefully designed system of landing limits that will have to change each year in order to account for changes in the fishery. Different landing limits could be implemented for each period to ensure equitable distribution over each period. Landing limits would be implemented by the states and the NMFS and could change over the period. The landing limits for each period would be based on the recommendations of the Summer Flounder Monitoring Committee to the Council and Commission. The states would be responsible for notification of state and federal permit holders of initial period landing limits, in period landing limit adjustments, and closures. The fishery would be closed before the end of the period based on projections by NMFS that the quota would be taken. Vessels with moratorium permits could only land summer flounder caught in the EEZ in coastal states from Maine to North Carolina.

During the summer months, a state-by-state system would be in effect. In a state-by-state system, quotas would be distributed to the states based on their percentage share of commercial landings for the period May to October. These state specific shares are specified in Table 2 for various base periods. The state shares during the summer period could be revised based on the recommendations of the Commission to account for any changes in the landings data for the base years. All summer flounder landed for sale in a state would be applied against the state's annual commercial quota regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in a state would be deducted from that state's annual quota for the following year. Vessel's with moratorium permits could not land summer flounder in any state that had not been allocated a commercial quota.

States would have the responsibility for closures in their state and the Regional Administrator would be required to prohibit landings by federally permitted vessels in any state that had reached its quota. States would be allowed to transfer or combine quotas and the states could impose trip limits or other measures to manage their quotas.

3.2. Evaluation

This alternative was evaluated by the Council and Commission as an option to the existing state-by-state quota system. In the two winter periods, January-April and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits. In the summer period, May-October, a state-by-state quota system similar to the current state-by-state system would be implemented.

The annual quota will be allocated into three periods based on historical landings (Table 1). The percent of landings associated with each period would vary depending upon the base years used. For example, based on data for the 1990-1992 period, the allocations periods and the associated percent of the total quota would be: January-April (38.95 %), May-October (36.14 %), and November-December (24.90%). The allocation to each period would be based on past landings to minimize effects on traditional landings patterns.

In the two winter periods, January-April and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits. A coastwide system during the winter would allow fishermen to land in any port along the coast as long as the landings were consistent with the regulations at the state of landing. All commercial landings during a winter period would count toward that quota for that period. When the quota had been landed, fishing for and/or landing summer flounder would be prohibited for the remainder of the period. Landings in excess of the allocation for

the period would be subtracted from the following years's quota for the same period.

During the winter period, coastwide landing limits would have to be implemented. Allocations without landing limits would encourage derby-style fishing practices that would allow the quota to be landed by larger, more mobile vessels at the beginning of each period. As a result, supplies of summer flounder would be discontinuous and smaller boats would be disadvantaged.

Different landing limits could be implemented for each period to ensure equitable distribution over each period. Landing limits would be implemented by the states and the NMFS and could change over the period. The landing limit for each period would be based on the recommendations of the Summer Flounder Monitoring Committee to the Council and Commission. The states would be responsible for notification of state and federal permit holders of initial period landing limits, in period landing limit adjustments, and closures. The fishery would be required to close before the end of the period based on projections by NMFS that the quota would be taken. Vessels with moratorium permits could only land summer flounder caught in the EEZ in coastal states from Maine to North Carolina.

To assess the impacts of the quota during the winter period, the following example was developed. Based on a quota of 11.11 million lbs and using allocation percentages based on 1990-1992 data, 4,327,500 lbs would be allocated to the January-April period, and 2,766,800 would be allocated to the November-December period (Table 3).

During the first winter period (Jan-Apr), a landing limit of 6,000 lbs could achieve the equitable distribution of summer flounder over the period. According to NMFS weighout data for the 1990-1992 period, a landing limit of 6,000 lbs would allow for 55% (2,380,125 lbs) of the summer flounder to be harvested by trips not affected by this landing limit (Table 4). If it is assumed that the trips affected by the implementation of this landing limit will harvest the maximum amount of summer flounder given this landing limit, then an additional 1,947,375 lbs (4,327,500 lbs - 2,380,125 lbs) of summer flounder would be harvested at the 6,000 lbs level. That is, 324 trips (1,947,375 lbs/6,000 lbs per trip) of summer flounder would be made at the 6,000 lbs level. Based on 1990-1992 weighout data, on average, 155 trips were made at or above this level (Table 4). Given the above assumptions, the proposed landing limit would allow for over a two fold increase in the number of trips made at the 6,000 lbs level. When 85% of that period's allocation was projected to be reached, the landing limit would be reduced to 200 lbs.

For the second winter period (Nov-Dec), a landing limit of 8,000 lbs could achieve the equitable distribution of summer flounder over the period. According to NMFS weighout data for the 1990-1992 period, a landing limit of 8,000 lbs would allow for 64% (1,770,752 lbs) of summer flounder to be harvested by trips not affected by this landing limit (Table 5). If it is assumed that the trips affected by the implementation of this landing limit will harvest the maximum amount of summer flounder, then an additional 996,048 pounds (2,766,800 lbs - 1,770,752 lbs) of summer flounder would be harvested at 8,000 lbs level. That is, 124 trips (996,048 lbs/8,000 lbs per trip) of summer flounder would be harvested at 8,000 lbs level. Based on 1990-1992 weighout data, on average, 54 trips were made at or above this level (Table 5). Given the above assumptions, the proposed landing limit would allow for over a two fold increase in the number of trips made at the 8,000 lbs level. When 85% of the period's allocation was projected to be reached, the landing limit would be reduced to 200 lbs.

The proposed landing limit system for both winter periods may allow both small and large vessels to continue landing summer flounder according to traditional fishing patterns. However, the landing limits developed in the above example may be too high or too low for some fishermen. For example, during the first winter period (Jan-Apr) a landing limit of 6,000 lbs might appear too low for a large vessels and too high for a small vessel. This difference in vessel size will make the establishment of landing limits during the coastwide periods problematic.

Landings limits are expected to increase the likelihood that the landings would be distributed over the entire period. Ideally, landing limits would decrease the negative effects associated with unrestricted fishing under a quota management system, such as irregular supplies or market gluts, and exvessel

price fluctuations associated with derby style fishing practices.

A coastwide quota during the winter may not provide the same level of equity or flexibility to summer flounder fishermen as the current state-by-state system. Over the years, personnel from several states have spent a lot of time developing quota management systems that account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them. These systems have been designed to allow for an equitable allocation of the state quota to all the commercial fishermen landing summer flounder in their state. It may be difficult to design a coastwide system that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. In addition, uniform landing limits may not be suitable for all vessels, gears or areas.

Also, it is important to note, that, any graduated system of landing limits would have to account for the administrative burden associated with notice to permit holders. Specially, NMFS and the states would be responsible for notifying fishermen of closures when the quota was projected to be reached. In addition, the states would be responsible for notification of changes in landing limits during the period. If several changes in the landing limits were planned for a period, notification to each permit holder would have to occur a significant number of times during the period. In addition, NMFS staff have indicated that notification to permit holders would require approximately two weeks. Another week would be required to allow vessels that are fishing for summer flounder to return to port before a change in landing limit or a closure. Thus, approximately three weeks would be required to change landing limits and close the fishery for that period. This notification period would be an important consideration in establishing the threshold triggers that would be used for each period to change landing limits. Also, time constraints coupled with the short two month period associated with the second winter period would make the establishment of a graduated system for this period problematic.

During the summer months, May through October, a state-by-state system would be in effect. In a state-by-state system, quotas would be distributed to the states based on their percentage share of commercial landings for the period May to October (Table 2). For example, based on landing data for the 1990-1992 period, an annual quota of 11.11 million pounds, 4.0157 million pounds would be allocated to the summer fishery (Table 3). State allocations would range from 0 to 1.1 million pounds (Table 6).

The state shares during the summer period could be revised based on the recommendations of the Commission to account for any changes in the landings data for the base years. Vessel's with moratorium permits could not land summer flounder in any state that had not been allocated a commercial quota.

A state-by-state quota system would allow for the most equitable distribution of the commercial quota to fishermen during the summer months when smaller boats account for a larger portion of the harvest. States would be allocated quota based on historic landings patterns.

During the summer period, states would have the responsibility of managing their quota for the greatest benefit of the commercial summer flounder industry in their state. States could design allocation systems based on trip limits and seasons. States would also have the ability to transfer or combine quota increasing the flexibility of the system to respond to year to year variations in fishing practices or landings patterns.

4. COASTWIDE COMMERCIAL QUOTA SYSTEM ALLOCATED INTO THREE PERIODS (JANUARY-APRIL, MAY-OCTOBER, AND NOVEMBER-DECEMBER)

4.1. Description

This alternative would allocate the annual quota into three unequal periods. In all periods, January-April, May-October and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits.

A coastwide system would allow fishermen to land in any port along the coast. All commercial landings during each period would count toward that quota for that period. When the quota has been landed, fishing for and/or landing summer flounder would be prohibited for the remainder of the period. Landings in excess of the allocation for the period would be subtracted from the following year's quota for the same period.

Coastwide landing limits would have to be implemented for each period. Allocations without landing limits would encourage derby-style fishing practices that would allow the quota to be landed by larger, more mobile vessels at the beginning of each period. As a result, supplies of summer flounder would be discontinuous and smaller boats would be disadvantaged.

A coastwide quota system would require a carefully designed system of landing limits that will have to change each year in order to account for changes in the fishery. Different landing limits could be implemented for each period to ensure equitable distribution over each period. Landing limits would be implemented by the states and the NMFS and could change over the period. The landing limits for each period would be based on the recommendations of the Summer Flounder Monitoring Committee to the Council and Commission. The states would be responsible for notification of state and federal permit holders of initial period landing limits, in period landing limit adjustments, and closures. The fishery would require to be closed before the end of the period based on projections by NMFS that the quota would be taken. Vessels with moratorium permits could only land summer flounder caught in the EEZ in coastal states from Maine to North Carolina.

4.2. Evaluation

This alternative was evaluated by the Council and Commission as an option to the existing state-by-state quota system. In all periods, January-April, May-October and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits.

The annual quota will be allocated into three periods based on historical landings (Table 1). The percent of landings associated with each period would vary depending upon the based years used. For example, based on data for the 1990-1992 period, the allocations periods and the associated percent of the total quota would be: January-April (38.95 %), May-October (36.14 %), and November-December (24.90%). The allocation to each period would be based on past landings to minimize effects on traditional landings patterns.

In all three periods, January-April, May-October and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits. A coastwide system would allow fishermen to land in any port along the coast. All commercial landings during a specific period would count toward that quota for that period. When the quota had been landed, fishing for and/or landing summer flounder would be prohibited for the remainder of the period. Landings in excess of the allocation for the period would be subtracted from the following years's quota for the same period.

In all three periods, coastwide landing limits would have to be implemented. Allocations without landing limits would encourage derby-style fishing practices that would allow the quota to be landed by larger, more mobile vessels at the beginning of each period. As a result, supplies of summer flounder would be discontinuous and smaller boats would be disadvantaged.

Different landing limits could be implemented for each period to ensure equitable distribution over each period. Landing limits would be implemented by the states and the NMFS and could change over the period. The landing limit for each period would be based on the recommendations of the Summer Flounder Monitoring Committee to the Council and Commission. The states would be responsible for notification of state and federal permit holders of initial period landing limits, in period landing limit adjustments, and closures. The fishery would be required to close before the end of the period based on projections by NMFS that the quota would be taken. Vessels with moratorium permits could only land summer flounder caught in the EEZ in coastal states from Maine to North Carolina.

To assess the impacts of the quota, the following example was developed. Based on a quota of 11.11 million lbs and using allocation percentages based on 1990-1992 data, 4,327,500 lbs would be allocated to the January-April period, 4,015,700 lbs would be allocated to the May-October period, and 2,766,800 would be allocated to the November-December period (Table 3).

During the first winter period (Jan-Apr), a landing limit of 6,000 lbs could achieve the equitable distribution of summer flounder over the period. According to NMFS weighout data for the 1990-1992 period, a landing limit of 6,000 lbs would allow for 55% (2,380,125 lbs) of the summer flounder to be harvested by trips not affected by this landing limit (Table 4). If it is assumed that the trips affected by the implementation of this landing limit will harvest the maximum amount of summer flounder given this landing limit, then an additional 1,947,375 lbs (4,327,500 lbs - 2,380,125 lbs) of summer flounder would be harvested at the 6,000 lbs level. That is, 324 trips (1,947,375 lbs/6,000 lbs per trip) of summer flounder would be made at the 6,000 lbs level. Based on 1990-1992 weighout data, on average, 155 trips were made at or above this level (Table 4). Given the above assumptions, the proposed landing limit would allow for over a two fold increase in the number of trips made at the 6,000 lbs level. When 85% of that period's allocation was projected to be reached, the landing limit would be reduced to 200 lbs.

For the summer period (May-Oct), a landing limit of 3,500 lbs could achieve the equitable distribution of summer flounder over the period. According to NMFS weighout data for the 1990-1992 period, a landing limit of 3,500 lbs would allow for 29% (1,164,553 lbs) of the summer flounder to be harvested by trips not affected by this landing limit (Table 7). If it is assumed that the trips affected by the implementation of this landing limit will harvest the maximum amount of summer flounder, then an additional 2,851,147 lbs (4,015,700 lbs - 1,164,553 lbs) of summer flounder would be harvested at the 3,500 lbs level. That is, 814 trips (2,851,147 lbs/3,500 lbs per trip) of summer flounder would be made at the 3,500 lbs level. Based on 1990-1992 weighout data, on average, 331 trips were made at or above this level (Table 7). Given the above assumptions, the proposed landing limit would allow for over a two fold increase in the number of trips made at the 3,500 lbs level. When 85% of that period's allocation was projected to be reached, the landing limit would be reduced to 100 lbs.

During the second winter period (Nov-Dec), a landing limit of 8,000 lbs could achieve the equitable distribution of summer flounder over the period. According to NMFS weighout data for the 1990-1992 period, a landing limit of 8,000 lbs would allow for 64% (1,770,752 lbs) of summer flounder to be harvested by trips not affected by this landing limit (Table 5). If it is assumed that the trips affected by the implementation of this landing limit will harvest the maximum amount of summer flounder, then an additional 996,048 pounds (2,766,800 lbs - 1,770,752 lbs) of summer flounder would be harvested at 8,000 lbs level. That is, 124 trips (996,048 lbs/8,000 lbs per trip) of summer flounder would be harvested at 8,000 lbs level. Based on 1990-1992 weighout data, on average, 54 trips were made at or above this level (Table 5). Given the above assumptions, the proposed landing limit would allow for over a two fold increase in the number of trips made at the 6,000 lbs level. When 85% of the period's allocation was projected to be reached, the landing limit would be reduced to 200 lbs.

The proposed landing limit system for all three periods is expected to allow both small and large vessels to continue landing summer flounder according to traditional fishing patterns. However, the landing limits developed in the above example may be too high or too low for some fishermen. For example, during the first winter period (Jan-Apr) a landing limit of 6,000 lbs might appear too low for a large vessels and too high for a small vessel. This difference in vessel size will make the establishment of landing limits during the coastwide periods problematic. Furthermore, a coastwide landing limit for the summer period (May-October) will not take into consideration the variation in the inshore summer flounder fishery for vessels landing summer flounder along the coast. More specifically, a homogeneous landing limit along the coast in the summer time will not account for variations in the fishery along the coast. Specifically, implementation of a coastwide landing limit will not account for differences in summer flounder availability or variations in gear or fishing practices.

Landings limits are expected to increase the likelihood that the landings would be distributed over the entire period. Ideally, landing limits would decrease the negative effects associated with unrestricted

fishing under a quota management system, such as irregular supplies or market gluts, and exvessel price fluctuations associated with derby style fishing practices.

It is important to note, however, any graduated system of landing limits would have to account for the administrative burden associated with notice to permit holders. Specially, NMFS and the states would be responsible for notifying fishermen of closures when the quota was projected to be reached. In addition, the states would be responsible for notification of changes in landing limits during the period. If several changes in the landing limits were planned for a period, notification to each permit holder would have to occur a significant number of times during the period. In addition, NMFS staff have indicated that notification to permit holders would require approximately two weeks. Another week would be required to allow vessels that are fishing for summer flounder to return to port before a change in landing limit or a closure. Thus, approximately three weeks would be required to change landing limits and close the fishery for that period. This notification period would be an important consideration in establishing the threshold triggers that would be used for each period to change landing limits. Also, time constraints coupled with the short two month period associated with the second winter period would make the establishment of a graduated system for this period problematic.

A coastwide quota during the winter may not provide the same level of equity or flexibility to summer flounder fishermen as the current state-by-state system. Over the years, personnel from several states have spent a lot of time developing quota management systems that account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them. These systems have been designed to allow for an equitable allocation of the state quota to all the commercial fishermen landing summer flounder in their state. It may be difficult to design a coastwide system that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. In addition, uniform landing limits may not be suitable for all vessels, gears or areas.

During the development of this alternative, the Council also considered bimonthly and quarterly quota systems. However, these were rejected as possible alternatives due to the administrative requirements needed to implement and maintain these systems on an annual basis.

5. REVISE THE FORMULA USED TO ALLOCATE THE COMMERCIAL QUOTA TO THE STATES

5.1. Description

This alternative would revise the allocation formula used to distribute quotas to the states.

5.2. Evaluation

The Council and the Commission considered two allocation periods (1980-1992, and 1990-1992) to revise the existing summer flounder quota system. The state allocations for each of these periods are presented in Table 8.

The years 1990 to 1992 would represent a more recent time period as well as the time period immediately prior to quota implementation. As such, the state allocations based on these years could be more representative of recent fishing patterns. The years 1980 to 1992 would represent a longer time series that included years in which summer flounder were more abundant. As such, use of these years could allow for a more equitable distribution of the summer flounder quota to the states.

The state-by-state quota allocations would vary depending upon the base years employed in the analysis. More specifically, based on 1990-1992, the percentage of summer flounder landings by state ranged from 0.0003% (NH) to 27.8451% (VA). Based on 1980-1992, allocations ranged from 0.0004% (NH) to 26.8187% (NC).

APPENDIX 2. SUMMER FLOUNDER FMP AMENDMENT 10 PUBLIC HEARINGS

7 April 1997, Buzzards Bay, MA

Hearing Officer David Pierce, Summer Flounder Management Board Chairman opened the hearing at 7:10 p.m. Dr. Chris Moore of the MAFMC staff, John Carmichael of the ASMFC staff who prepared these summary minutes, Regina Spallone of NMFS/NERO and 10 members of the public were present.

Dr. Moore read the summary of the amendment, detailing the preferred management measures and the alternatives, then Dr. Pierce opened the hearing for any questions or comments.

Ronald Borjenson, Mass. Comm. Fishermen's Assoc., stated that the historical rations for determining state shares are not good, the data is poor and inaccurate. There is no need for prohibiting transfer at sea.

Richard Gibbs stated that the Plan is unfair and no good and that Massachusetts fishermen are getting cheated by NC.

Jerry Chipperfield stated that a season and trip limit is okay, but stock rebuilding should be delayed to give states more fish and keep the current trip limits. The big problem is offshore discarding. Massachusetts should get recognition for past conservation efforts. Would like to know how long the Plan will be in effect. We need to get all fishermen working together.

Dr. Pierce read into the record comments from the Massachusetts DMF. (See comment letters)

Ron Borjenson stated that the offshore fleet in MA is nearly obsolete. Trip limits are too small for them. In the past, NC boats landed in MA then trucked the fish to NC where they were recorded as NC landings.

Jerry Chipperfield stated that many boats landed in RI in the past, because Newport was the primary summer flounder port. New Bedford and others were yellowtail or winter flounder ports.

Paul Donovan, Mass. Fishermen's Alliance, stated that the 3 week season is too short. Conditions change year to year, so the timing of the season does not always coincide with the timing of the fish.

Jerry Chipperfield supports the 6" mesh and dropping the landing requirement, and is opposed to prohibiting transfer at sea. There is no dock in Nantucket to land flounder, so the fish are transferred to a transport boat which carries them across to a dock where they are landed and recorded.

Ron Borjenson does not support prohibiting transfer at sea.

Paul Donovan is opposed to another permit to allow filleting at sea, but supports allowing the filleting. The practice is helpful, and the Plan needs to prevent landings of undersize fish. If the fish are not filleted by the time the boat returns to the dock, they often just end up being wasted.

The hearing was closed at 8:50 p.m.

8 April 1997, South Kingston, RI

Hearing officer David Borden, New England Council member, opened the hearing at 7:05 p.m. Dr. Chris Moore of the MAFMC staff, John Carmichael, who prepared these summary minutes and Najih Lazar of the ASMFC Staff, April Valliere of RI DFW staff and 23 members of the public were present.

Dr. Moore read the summary of the amendment, detailing the preferred management measures and the alternatives, then Mr. Borden opened the hearing for any questions or comments. For efficiency, the

issues were addressed in order.

1. Mesh throughout the net.

John Catesas stated that this is not needed in Rhode Island. Small fish are not present and are not caught.

Jerry Carvaliho stated that 5.5" mesh throughout the net is absurd. Fishermen catch lots of fish with summer flounder, and it is difficult to change the full net. They really need the cod end only to allow flexibility in the small boat fishery. Besides, they do not catch small flounder in RI anyway.

Mike Tarasevich inquired about discard info from New England. There should not be much. The Plan should consider a line for requiring the mesh throughout the net.

Brian Loftus stated that it is difficult to fish for just one species, and doing so increases discards. Consider a higher threshold for the mesh in the summer, or maybe an exemption period.

John Costas stated that all states should not have to suffer because of enforcement problems in other areas. If mid-Atlantic states will tell New England states what to do, there must be conservation equivalency.

Jerry Carvaliho stated that RI should not lose its sovereignty to larger states. The Plan should allow conservation equivalency to let states meet the goals, however is best for them. The mesh issue is not a problem in RI.

Paul Tarasevich stated that managers must identify where the mesh is a problem and make changes there.

Gil Pope supported conservation equivalency.

2. Continuation of the moratorium on entry.

April Valliere stated that the RI DFW supports this measure.

3. Removal of the landing requirement.

Peter Barbera supported this measure. The plan should not encourage fishing just to keep permits.

Bob Smith agreed. If people choose not to fish they should not lose their permit.

4. Require states to document all landings.

Peter Barbera supported this.

5. Provide *de minimus* option.

No comments received.

6. Prohibit transfer at sea.

Jim O'Malley questioned the impact of this on future joint ventures/IWP operations, and if so, the language should be drafted to allow such operations.

Peter Barbera agreed.

7. Fillet at sea provision.

April Valliere stated that the RI DFW supports this optional permit. As an improvement, studies should be done to determine appropriate fillet sizes because retaining carcasses can be burdensome and costly.

Bob Smith stated a concern about enforcement, disposal of the racks, and whether the skin must stay on fillets

8. Vessel replacement.

Peter Barbera supported a criteria allowing voluntary replacement to let fishermen upgrade. This will not increase the number of licenses and may prevent dangerous conditions.

John Catesas supported the measure.

Brian Loftus agreed. Fishermen now have many questions about what fishery and what permit allows you to make what types of changes to your vessel. The no replacement provision is risky and dangerous. A fishermen who works hard and wants to upgrade to a newer boat should be supported.

Jim McCauley supported the measure. It is wrong to limit fishermen to replacement only when a boat sinks or is unsafe or condemned. The Plan must allow fishermen to improve their boats, especially fishermen who are younger and may start with an older boat. Reduction of the fishery through attrition is offensive. Managers should not even consider changing the multi-species FMP to be like summer flounder. One question is whether a 10% increase is even appropriate. Any upgraded engine of an older model is likely to have 10-20% more horsepower, even if it is the same size and model.

9. Retain the state quota system.

Bob Smith supported the preferred alternative to retain the state-by-state system. Rhode Island has figured out how to manage their share and make the allocation last all year. The system keeps control of the quota at the state level and is based on historic participation.

Peter Barbera stated that he spoke with many RI fishermen who do not want the quota changed. RI has a state allocation that works and keeps a high price. Any changes will be negative. The current Plan recognizes historic participation.

John Costas agreed. States that cannot manage their quota should fix themselves, not make everyone else change. A coastwide quota will result in increased effort, especially from larger boats, and there would be little fish left for small inshore boats.

Brian Loftus supported the preferred alternative. Small boats can't go offshore, and a coastwide quota would quickly be taken by large boats.

Paul Tarasevich stated that there would be no fish for New England under a coastwide quota, they would all be caught of NC and VA. The state system is the only alternative.

Jerry Carvaliho agreed. RI has worked hard on their quota system and took time to be fair and equitable and maintain the price and supply. Any changes will alter landings patterns and price. Do not stop something that works.

Joe Rendeiro disagreed. NC and VA closed early this year. Next year with their large trip limits there will be no price for summer flounder. It is hard to fish offshore and go far out with the small trip limit. High grading is a big problem and increases discards and all boats do it.

Mike Tarasevich stated that he did not high grade. The price restores itself once NC closes. He opposed a coastwide quota. It would likely have high trip limits and the bulk of the quota will be landed by southern boats. He supports more fish for everyone, better science, and improvements in the current Plan. States should set appropriate trip limits and be required to submit annual plans to the

Monitoring Committee, as they are supposed to. The Committee should review the plans to make sure they are adequate.

Gil Pope agreed. A coastwide quota would end early, result in lower prices, and be difficult to monitor.

Bob Smith stated that RI has many boats and they tried to strike a balance with the quota allocation. Under a coastwide system the big boats will get the most. Besides, there is a much better price when trip limits are small.

John Costas agreed. There are a lot more fish than scientists think. There will be more fishing by bigger boats with a coastwide quota. They will easily catch all in a short time and there would be no summer fishery.

Jim McCauley cannot see how periods or coastwide allocations could work with the current abundance of flounder and the low quotas. If the weather is bad in one region, fishermen in the other will get the bulk of the quota. There are too many immature flounder landed to the south. They will never support changing the system. The only coastwide quota that would work is one with quarterly allocations. Even so, a regional allocation is much better.

Gil Pope stated that the recreational overages attests to the abundance of flounder, and perhaps the quota should be higher.

Brian Loftus agreed with McCauley. A regional quota would be better than coastwide. There are big fish offshore, but the small trip limits prohibit fishermen from going out to them.

Joe Rendeiro agreed somewhat. There are ways to make the quota work better, such as area splits. Should also consider days at sea, eliminating two trips per day, reasonable trip limits, 10,000 pounds is too high, and the southern states must change so that all fishermen are equal in the EEZ.

Paul Tarasevich stated that a coastwide quota will be unfair, if NC boats make two trips a day. Also, the weather is much rougher in New England in the winter so NE fishermen would start at a disadvantage and could lose fishing days. State-by-state is the only fair way.

Mike Tarasevich agreed. The northern states will lose out on a coastwide quota and will not have as much influence in setting trip limits.

Gil Pope agreed that the decisions should be kept local. The high NC trip limits have made NE fishermen defensive.

April Valliere stated that the RI DFW supports the preferred state-by-state quota. A coastwide allocation is inequitable.

Mike Tarasevich stated that there could be errors in the assessment if it does not reflect what fishermen everywhere are seeing. Scientists should work more with fishermen to do surveys, possibly getting a pool of boats to help.

Brian Loftus stated that although fishermen in CT have complained about the state-by-state quota, many of them also land fish in RI after CT has closed.

The hearing was closed at 8:35 p.m..

9 April 1997, New London, CT

Hearing officer Tony DiLernia, Mid-Atlantic Council member, opened the hearing at 7:10 p.m. Dr. Chris Moore of the MAFMC staff, John Carmichael of the ASMFC staff who prepared these summary minutes

and approximately 65 members of the public were present.

Dr. Moore read the summary of the amendment, detailing the preferred management measures and the alternatives, then the hearing was opened for questions and comments.

Ed Mann read a prepared statement from US Senator Dodd. (Attachment 1)

Naomi Otterness read a prepared statement from US Congressman Gejdenson. (Attachment 2)

Robert Simmons, State Representative, 43rd District, presented a statement. The quota system is inherently unfair and is in violation of the Magnuson Act. It discriminates against fishermen of certain states through the shares. Connecticut fishermen do not get to land as many fish as those in other states. Other states are simply protecting their special privileges obtained through the state shares. All fishermen want a level playing field when fishing side-by-side in the EEZ. Protection for the whole resource is needed. Connecticut landings data may not reflect actual landings.

Donald Marnell, First Selectman, Town of Stonington read a prepared statement. (Attachment 3)

Ernie Beckwith, CT DEP presented a statement for Commissioner Holbrook and Governor Rowland. He stated opposition to the current system, it violates National Standard #4. It unfairly penalizes CT fishermen. There needs to be a fair and open coastwide system.

Mr. DiLernia summarized the process by which preferred alternatives are selected and final decisions are made, then opened the hearing for any questions or comments.

1. Quota system.

Joe Rendeiro stated that the quota is unfair. A properly conceived coastwide quota will work. The MAFMC has too much jurisdiction over summer flounder that are beyond their area. There should be a dividing line at 70° 30 mins. The southern states should try closed areas. A state quota will not work. Trip limits will work. Should consider the previous CT proposal, it would have worked. There is a collusion between the southern dealers and the MAFMC and ASMFC. Money is being poured in to sink our efforts to change the system. New England prefers a split at 70° 30 mins and trip limits not more than 5,000 pounds from October 1-April 30 for the offshore boats. There should be a smaller trip limit for the inshore fishery to keep large boats away.

Thomas Boyd stated that a coastwide quota made sense. Everyone is concerned about depleted stocks.

Arthur Brooks felt that Connecticut fishermen are getting short changed and should have more of the coastal share.

Robert Simmons asked about the alternative which would revise the allocation formula. That option has the same basic flaw as the current program, because it relies on the same deficient data and is therefore discriminatory. Prefer either coastwide system.

Jonathan Gibson agrees with Mr. Simmons that the state system does not work and is unfair. A trip limit system will work if fair and equitable.

Michael Bomster stated support for a coastwide quota system with a 5-10 thousand pound trip limit. It would be easy to enforce and fair.

William Bomster agreed.

Bill Bomster Jr. agreed.

Joseph Bomster agreed.

Dwayne Baker stated that a coastwide quota is favored. Changing the dates for determining percentages will not change much.

John Babin supported the coastwide quota and a trip limit system.

Joe Rendeiro stated that the recently discovered data in NC is only the beginning. Enforcement is very lax in NC and people there are not conservation minded.

Donald Marnell stated that CT could catch its share in a day with a 10,000 pound trip limit, but regardless, something is wrong when NC can land overages that are greater than the entire CT quota.

Ernie Beckwith, speaking on behalf of the Commissioner, the Governor, and the DEP, stated that everyone knows the system is inequitable and unfair. This is why. The state shares are based on the percentage landed during a base period. However, the states had different length limits during the base period, and they were higher in New England. The southern states landed fluke that were discarded by NE fishermen, so the percentages can not be based on proportions during 1980-1989. The northern states immediately implemented trip limits when the quota began, while NC did not even land its allocation the first few years. Now they have overages and there are many issues to be considered. The unfairness is largely that New England and NC fishermen fish side-by-side and NC fishermen have no trip limit or a large 10,000 pound trip limit, but the others have very small trip limits. The state quota should be replaced with a coastwide quota giving all equal access, allow landings anywhere, reducing needless travel, increasing economic efficiency and quality, and decreasing supply and price fluctuations. Preference is for 2 winter periods and a summer state share quota. The base period should be changed to a more recent time frame. For the future, the Plan should be more creative and consider days-at-sea or regional management.

Bill Bomster Sr. stated that under a days-at-sea system with small trip limits people might get more money because landings would be spread out.

Joe Rendeiro stated that the amount of catchable fish should be determined. There are a lot of summer flounder, according to the fishermen, and the data and the Council members are wrong. Scientists do surveys wrong, and they do not know how to catch fish. They do not know as much about summer flounder as the fishermen do. They have not changed their methods for a century and are not flounder experts. The allowable catch is too small and should be higher, but do not allow overfishing. Protect small fish. There is a difference with the southern boats - they are fleet owned and only the bottom line matters. They do not care about conservation of the stock or future fishing. The people down south and owners only care about profit, not conservation.

Bob Gozzi stated that the quota is unfair, there is a lot of discarding, and days off should be required between trips. Limits should be daily or trip, whatever is longer, to prevent landing of two limits per day.

Arthur Manderas said that everyone is for conservation, but CT is getting the short end. The coastal quota is preferred, allocated into 3 periods. There should be a uniform trip limit, mesh, and size of over 14". Differing minimum sizes during the base periods affect the percentages, so National Standard 4 is violated. Fishermen are not on an equal basis coastwide

2. Mesh throughout the net

Joe Rendeiro stated that NC fishermen tie off their codends, use liners, and do anything else they want. Why is there no enforcement down there? You never hear of any fishermen or fish companies getting a violation, while I got a violation for only 200 pounds over. They just don't care about the resource down there. The 5.5" is not enough, it should be 6" throughout the net.

Arthur Brooks agreed.

Michael Stepski disagreed. Inshore boats do not have a magic mesh size to keep all 14" fish. The 5.5" sometimes lets 16" fish out. 4.5" would work inshore.

Jonathan Gibson agreed with Mr. Rendeiro, and supported keeping all fish caught in the net and eliminate the minimum size to reduce discards.

William Bomster supported 6" throughout the net.

Bill Bomster Sr. supported 6" throughout the net.

Dwayne Baker supported 6" throughout.

John Babin supported 6" throughout.

Ernie Beckwith stated that 6" throughout could be a burden on small inshore boats that are not multi-species permitted fishermen. There are many different seasonal mesh requirements in the states and now the fishermen can change just codends. It could be expensive to require them to have a net specifically for summer flounder. The provision was intended to address cheating in states to the south, but there are larger fish in New England, so it is not a problem here and should be considered regionally.

Bill Gozzi agreed with Mr. Beckwith. As an inshore fisherman, it would be very expensive to comply with this measure. It should not be required of non-federally permitted vessels.

3. Continuation of the moratorium.

Joe Rendeiro supported.

Arthur Brooks supported.

Michael Stepski supported.

Dwayne Baker supported.

John Babin supported.

Ernie Beckwith supported, and requested specification of an ending date, maybe in 3 to 5 years. The Plan should allow limited entry someday.

Ed Emery supported, and also supports some end date so he can join the fishery someday.

4. Minimum landing requirement termination.

Joe Rendeiro expressed opposition to dropping this provision, people must be active in the fishery.

Arthur Brooks supported this provision.

Jonathan Gibson supported this provision, because anyone not catching fish is helping conservation.

Dwayne Baker stated that the current provision could increase fishing, but what of the inshore fishermen who is faced with a closure before he can land his fish and then loses his permit.

John Babin stated that anyone who wants a permit should fish.

Ernie Beckwith supported removal of the provision to require landings. It creates needless effort and penalizes fishermen for conservation.

Fred Emery supported removal.

5. Require states to document all landings.

Joe Rendeiro supported.

Arthur Brooks supported.

Jonathan Gibson supported.

Dwayne Baker supported.

John Babin supported.

Ernie Beckwith supported. It will put all states on the same level. The measure should also require that states report the information to NMFS.

6. Allow a *de minimus* option.

Joe Rendeiro supported.

Ernie Beckwith supported. No state should be required to implement a full quota management system and all its burdens and costs for a very small allocation of fish.

7. Prohibit transfer at sea.

Joe Rendeiro supported.

Arthur Brooks supported.

Jonathan Gibson supported.

Dwayne Baker supported.

John Babin supported.

Ernie Beckwith supported.

8. Allow fillet at sea permit.

Joe Rendeiro stated that the party/charter sector exceeded its quota last year. Managers cannot keep track of their landings now, how will they if filleting at sea is allowed? They would catch undersize fish and there is no way to regulate it. No filleting should be allowed.

Arthur Brooks agreed with Mr. Rendeiro.

Jonathan Gibson supported.

Dwayne Baker was opposed to this measure. It will make it harder to determine the weight of the landings.

John Babin was opposed, enforcement would be very difficult.

Ernie Beckwith was opposed to this item as currently written. While there is a problem in some areas, there should be a better solution. People want the fish filleted when they hit shore and filleting gives mates extra money, and what happens to all the racks if they are all filleted at shore. Connecticut recommends allowing filleting at sea, but all fillets should be at least the minimum size or the racks should be retained. They can then be sold as lobster trap bait. With state specific permits there will be a problem in areas like Long Island sound where many states overlap, so the ASMFC and MAFMC should work on standardized measures that require retention of the racks.

Jonathan Gibson agreed with Mr. Beckwith that racks should be retained, and enforcement should be aware that meatless racks can easily be stretched 1/2".

9. Vessel Replacement criteria.

Joe Rendeiro supports allowing voluntary replacement and a slight increase in length and horsepower. People should not be allowed to sell permits to anyone they would like, there should be a waiting list. The Plan should not allow big increases in vessel size or horsepower.

Dwayne Baker agreed with Mr. Rendeiro.

Ernie Beckwith supported changing the replacement criteria, allowing a one time voluntary replacement with a 10% increase in length and 20% increase in horsepower. The current Plan is too restrictive and forces fishermen to use aging and dangerous vessels. Allowing slight increases should not result in increased effort.

Additional comments.

Joe Rendeiro questioned the current net storage guidelines, and indicated that all fishermen are probably in violation. It is difficult to tie down nets on a steel boat. A net reel is a convenience, but its proper use is prohibited by the current guidelines. Simply not having a net in use should be sufficient. Now, a net on a reel is a violation.

The hearing was closed at 9:35 pm.

7 April 1997, Manhattan Beach, NY

Hearing officer Tony DiLernia opened the hearing. Staff present was Rich Seagraves. Council member John Mason also was in attendance. No one from the public was in attendance.

The hearing was closed at 8:00 pm.

8 April 1997, Riverhead, NY

The hearing was opened at 7:43 pm by hearing officer Bob Hamilton. Approximately 35 members of the public were present. Also in attendance were Council members Tony DiLernia and John Mason. Staff present was Rich Seagraves.

Mr. Seagraves presented the draft Summer Flounder Amendment 10 Fishery Management Plan, then the hearing was opened for questions and comments

Mel Moss, Shinnecock Coop, complained about the process. He felt it was unreasonable for him to comment on such short notice. **(Staff responded by noting that the Amendment was mailed out well in advance of the public hearing. He can comment in writing by 25 April 1997.)** He proposed that a system be established which allowed vessels to sign up for various options which would allow vessels to possess certain amounts of fluke for a specified number of trips. Let the size of the rig they pull

dictate the trip limit amount. For example, a vessel could sign up in advance for 100 trips with a 1,000 lb trip limit or 50 trips with a 2,000 trip limit. The Council could decide what the appropriate combinations are. The fishermen would then be free to take those trips when they chose to rather than go out in the derby fashion under the current state by state system. The trip limit could be tailored to the size of the vessel. The inshore fishery is interested in catching smaller amounts of fluke over a longer period of time than the current system allows.

Dave Aripotch, *F/V Cory and Leah*, was opposed to the *de minimus* provision as currently proposed. He is opposed to any measure which will take fish away from the current producers. He favors the provision which would require 5.5" mesh throughout the entire net. He is concerned about NMFS raising the mesh to 6". He was strongly opposed to the state by state quota system. He proposed that the Council do away with the quota system and just impose a coastwide trip limit. He suggested that different size vessels be given different trip limits. He stated that this makes more sense than the current system. Quota management is the wrong way to go. He felt it was important to everyone to get rid of the quota. Keep a cap on effort and raise the size limit. He was in favor of Mel's idea. A trip limit of 2,000 lb is too small, that is a bycatch limit not a directed trip limit for his vessel. The current quota system is no good because it forces people to go out in all sorts of weather which is unsafe. He would favor days at sea for fluke as long as they are not attached to his groundfish days. He asked if a vessel is in distress, can that vessel land fluke in a nearby state that is closed to the landing of fluke?

Richard Lofstad, Jr., Long Island Fish Exchange, was opposed to the state by state quota system (preferred alternative). He noted that the Magnuson act requires the Councils to consider the economic effects of their management plans. The quota system should get the best economic impact by spreading out the quota to maximize the value of the fish. He suggested a subcommittee of true industry members be appointed to meet and determine how the quota should be allocated for a given year. Let the stakeholders decide how the fish are to be taken not the bureaucrats. The current state-by-state system creates a glut of fish on the market which drives down the price and subsequent return to fishermen and wholesalers. The current derby system creates a lot of volatility in the price. He cited the decline in price of fluke from over $2.00 per lb to a dollar during the open quota period. The fishery should be managed to maximize the economic value of the fish by industry. He favors a coastwide quota system. He wants the permit holders to have the teeth in making these quota/trip limit recommendations. The wholesalers and fishermen should have a say in the distribution of the quota allocation. We also need to invest more money to obtain better scientific data. The current surveys are inadequate. He favors alternative 5, a year round coastwide quota with no state by state allocation component. If there was a federal coastwide quota the industry should decide what a reasonable coastwide trip limit should be. For example, the trip limit could start at 5,000 lb and then be reduced incrementally to 2,000 lb over a period of weeks or months, and then finally be reduced to a bycatch level. He is interested in letting his customers know that there will be a supply of fish available. He favors the 5.5" mesh and feels it should go to 6". He is in favor of increasing the size limit if it will result in an increased quota.

Sid Smith, from Greenport, NY, commented that he disapproves of the current system of permitting the vessel. He is a vessel Captain but has no way of getting into the fishery the way it is currently set up. Other options should be explored which allows Captains to gain access to the resource. He has been fishing for 25 years and proposes that people involved in the fishery should have some record and have a way to get a permit.

Stu Foley, Inlet Seafood Inc., stated that the quota system should be changed, he is opposed to the preferred Alternative (state-by-state quota system). The vessel trip limit should vary by the size of the vessel. He supports alternative 4 (two winter coastwide quotas and a summer state-by-state quota) with some changes. He supported the idea of a vessel signing up in advance for a certain trip limit for the year.

Mike McCarron, F/V *Jaime Elizabeth*, is opposed to the state-by-state quota system and favors getting rid of it. Let the mesh size do it's job. We need to have the fishery open year round. We are not conserving the resource under the current system because we are just discarding small fluke. He favors

a system of days to possess tied to a trip limit. He favors alternative 4 (two coastwide winter periods and a summer state-by-state quota). Under the current system the fishermen are losing money and not getting any return in conservation of the resource because they are discarding dead fluke.

Charles Weimer, Rianda S Fisheries Inc., stated that he wants a larger quota. The way the fishery is closed in November and December is a total crime. He was involved in the days at sea program and he could not avoid catching fluke. There is nothing in the plan to protect the fish. He feels that there is completely unequal access in the EEZ. He favors alternative 4. In the past the fluke fishery produced the largest catches and return in dollars right before Christmas. The current management system is ridiculous and absurd. The resource is being wasted because the level of fluke discarding is absurd. He favors a 6" mesh throughout the net and raising the size limit to 15". The state-by-state quota has not worked and he opposes the preferred alternative (state-by-state quota allocation). He favors the 5.5" throughout the net. He favors continuing the moratorium. He favors the transfer at sea if both vessels have moratorium permits. He feels that the current state by state system is encouraging unsafe behavior at sea. The resource is being wasted, not conserved. The Council went down the wrong road of management. The fluke landings are down 80% since the state by state quota system was put in place. The trimester system would be more equitable than the current system. New York vessels are being discriminated against. It's all politics, not conservation.

Patrick Wetzel, Inlet Seafoods, favors a coastwide quota, specifically alternative 4. He favors getting rid of the current system. He likes Mel's idea but stated it doesn't have a snow balls chance in hell. He has been coming to these hearings for many years. He sits and listens and agrees with 90% of what is said but the Council never reaches a conclusion that is any good. He is never happy with the final outcome. We're not happy, give us more fish.

Mark Phillips submitted written comments. (Attachment 4)

Scott Stratford, stated that he has an inshore vessel. He feels they need a higher quota. He agrees with Mel. The current state by state system is a joke. The coastal quota could be the same thing. He favors alternative 4 and opposes the 5.5" throughout the net.

Don Ball stated that he fishes out of Montauk. He likes Mel's idea. He feels that if you have a 14" size limit then there is no need for the mesh requirement throughout the net. He favors the continuation of the moratorium. He favors alternative 4 as written because it would insure an inshore summer and fall fishery.

William Grimm, Inlet Seafoods, doesn't favor the preferred state by state alternative. He feels that the whole quota system stinks. He has been flatfishing with legal nets and balloon fishing for scup and squid and he was still catching and discarding fluke. Everyone is discarding fluke. The current system is not working, we are still killing fish. He is totally opposed to the concept of *de minimus* if it takes fish away from the current participants. He doesn't see how the document as written can be considered fair. He favors uniform size limits for all fisheries, recreational and commercial. Where is the conservation in the current quota system? He favors no quota with a trip limit. A 2,000 lb trip limit would allow him to operate as a bycatch. He agrees with Rick Lofstad, let the fishermen decide when and how to take the fish. If you have to have a quota, he would favor alternative 4. The current state by state quota allocation rewards the states which did the least for conservation because they could land more fish because they had smaller size limits in the south. The Council needs better data. The quotas should be allocated based on the states catch greater than 14" to be fair.

John Mason stated that he is upset that NMFS is supporting fluke fish farming when they continue to restrict the commercial fishery for fluke. The fact that the government is backing fish farming fluke is wrong and will kill the commercial fluke fisheries. If the recreational fishery in NY doesn't catch their annual quota, could the commercial fishery have them?

Jim Mangano from East Hampton, asked how many fish are in the ocean? If you can't answer that question, how can the Council arrive at a quota? He favors keeping the moratorium, if you let more

people in then you should increase the quota. He opposes the current quota system, and favors alternative 4. He is oppose to the *de minimus* provision if it comes at the expense of the other states. He opposes dropping the use or lose it provision. If the Council thinks the 5.5" mesh is hard to enforce, wait until they try to enforce the fillet at sea rule which he opposes. The government subsidy of fish farming is a major concern. He feels it constitutes a conflict of interest. The government shouldn't be in the fish farming business. He is opposed to the 5.5" mesh throughout the net. Your own data shows that 90-95% of the selection process occurs in the codend. How many violations were there last year for people tying off their nets. There were none to his knowledge in NY state last year. Tying off is not really a problem, who came up with this? Requiring 5.5" throughout the net would be an economic hardship to the inshore boats and is unnecessary. The staff economic analysis is faulty, it spreads the cost of the net over three years but when he buys the net his net manufacturer wants the money all at once, not over three years.

Emerson Hasbrouk asked why the Council did not assign quota shares based on the amount caught over 14". If a summer quota is developed under Alternative 4, the state-by-state shares should be based on the amount each state caught greater than 14".

The hearing was closed at 9:47 pm.

9 April 1997, Cape May Courthouse, NJ

The hearing was opened by Hearing Officer Dusty Rhodes at 7:06 p.m. Tom McCloy of NJ Marine Fisheries, Rich Seagraves of the MAFMC staff and 7 members of the public were present.

Mr. Seagraves presented the draft Summer Flounder Amendment 10 Fishery Management Plan, then the hearing was opened for questions and comments.

Capt. Wayne Halbrunner of Cape May stated that he was in favor of the state by state quota system (preferred alternative). He wants the flexibility to catch flounder when he wants to. He is concerned about the current derby style of fishing because it drives the price down and forces people to fish when they don't really want to. He would like to see each boat assigned a quota which they are free to catch whenever they want, so long as they don't exceed their individual quota. He favored dropping the use it or lose it clause with regards to commercial moratorium permits. He would like to see the State of NJ divide the quota among the participants . He supports the state by state quota system 100%.

The hearing was closed at 7:45 pm.

10 April 1997, Toms River, NJ

The hearing was opened by Hearing Officer Charles Bergmann at 7:06 p.m. Rob Winkle of NJ Marine Fisheries, Rich Seagraves of the ASMFC staff and 30 members of the public were present.

Mr. Seagraves presented the draft Summer Flounder Amendment 10 Fishery Management Plan, then the hearing was opened for questions and comments.

Ray Bogan, United Boatmen, was against the coastwide allocation process. That would go against the historical fishing practices. It would also present a large monitoring burden and overages would be likely. NJ recently implemented a fillet at sea permit and he would like to see this extend to NY as well. He suggests that boats which possess the permit be required to display a placard of some type to facilitate enforcement.

John Cole, Fishermen's Dock Co-op, submitted a written statement. (Attachment 5)

Jim Lovgren, Fishermen's Dock Co-op, submitted a written statement. (Attachment 6)

Tom Fote, Jersey Coast Anglers, supported all of the following: 5.5" throughout the net, continuation of the commercial moratorium, continuation of the current state-by-state quota system, requirement for state to document landings by non-federal permit holders, *de minimus* status for states provided the size limit remains the same, and the permit to allow party/charter vessels to fillet at sea.

Bruce Smith, Jersey Coast Shark Anglers, stated that he had written over 100 letters to the fish bureaucrats who give away the fish to the commercial fishermen. The fish stocks are collapsing around us. We are letting the commercials take all the squid, menhaden etc. There is no enforcement in the commercial fluke fishery yet enforcement is all over the general public. The Councils do not represent the fishermen.

Joe Branin, Belford Seafood Co-op, stated that he has stood before the Council on many occasions in favor of the 5.5" mesh. He feels the 5.5" mesh is fine but not in the wings of the net. The codend costs a couple of hundred bucks to replace, but the entire net costs thousands to replace. This will cause unnecessary economic hardship. The fluke stock is in good shape since 1992. He would like the Council to change the mesh size only in the area a couple of meshes behind the chain line to the back of the net, leave the wings alone. He supports the continuation of the commercial moratorium, elimination of the use it or lose it clause. He feels all NJ landings are being recorded. He supported requiring states to report landings by non-federal permit holders. The problem is that the recreational catches are not being reported, a survey here and a phone call there is not enough. He opposed the permit to allow party/charter vessels to fillet at sea. He feels that the Council is not listening to what the fishermen have to say. Raising the size limit to 14" is only going to cause a discard problem of 13-14" fish. This will result in the senseless waste of good fish. Fishermen are discarding more and more fish due to federal regulations. The government should have stayed out of the fish regulation business. Fishermen can't leave the dock without feeling like criminals. The regulations have gone too far. They are very close to a civil uprising, the Council is going to see real disorder. You go back and tell the Council that they are going to see some real disorder. He supports retention of the current state-by-state quota system.

J.B. Kasper, Outdoor Writer, submitted written comments (Attachment 7). He also commented that the Councils credibility stinks. The Council is asking recreational fishermen to throw back fish so they can be caught by commercial fishermen. The whole system stinks. The size limit is a rip-off. He suggested that the Wallops-Breaux funds be taken away from the fishery managers. He doesn't follow the regulations, they are totally unfair. He keeps what he wants. The recreational fisheries are over-regulated.

Brian Boyce, Belford Seafood, was opposed to the 5.5" throughout the net unless the Council is willing to buy back all his nets. He is opposed to a 14" fish. The big fish just swim up to New England and they catch them. He supports the state-by-state quota. He would like to see the fluke quota increased.

Bill Dickinson, hook and line commercial fishermen, supports the state-by-state quota system (preferred alternative).

Carl Benson stated that he was a commercial hook and line fishermen. He is opposed to the killing of small fish. If we do not stop the killing of small fish, recreational or commercial then we are not going to help the fishery. We must change how we are managing the fisheries.

The hearing was closed.

25 March 1997, Ocean City, MD

Hearing officer Bill Outten opened the hearing at 7:10 p.m. John Carmichael of the ASMFC staff, Chris Moore and Kathy Collins of the MAFMC staff and 11 members of the public were present. Some of the members of the public explained that they were there to represent the Maryland Saltwater Sportfishermen's Association.

Dr. Moore presented the draft Summer Flounder Amendment 10 Fishery Management Plan, then the hearing was opened for comments and questions.

Sam Martin, Atlantic Catch, Inc. of Ocean City, MD, stated that he agreed that the entire net mesh regulation. He spoke in favor of a 6" mesh. If there is going to be a 6" codend, there should be a 6" net in order to decrease mortality. He expressed that the mesh size should be evaluated. He feels that the moratorium on entry of additional vessels should continue in order to cap the effort and reduce it even more with a buy back program. He did not agree with having to land during a 52 week period to retain the moratorium permit. He also added that the permit should not be allowed to be leased. He agrees with the requirement that all landings should be documented. He did not think that prohibiting transfer of summer flounder at sea would effect the fishery. He did not agree with establishing a special state permit for party/charter vessels to allow possession of parts smaller than minimum size. He added that he would like to see the state-by-state quota system retained. He felt that there should not be a replacement criteria because there is going to be a cap on the quota so it shouldn't matter about the size of the vessel. He stated that if he needs more horsepower he should be able to modify his boat the way he would like. He feels that it would allow fishermen to be more versatile in other fisheries.

Monty Hawkins agreed with Sam Martin's comments. He stated that with documenting everything, it creates a lot of paperwork, so it should be kept simple. He said that if the 6" mesh is better, to go with that and stick with it. He said that people are tired of changing their nets. He said that the 6" net would not allow so much bycatch. He stated that if someone is only holding on to a permit just to keep it but they are not actually fishing, they should be made to fish in order to hold on to that permit. He felt that the replacement criteria sounded like it would protect the fishermen.

Henry Koellein, MD Saltwater Sportfishermen's Association, stated that he was in favor of the entire Amendment. He would like to see a 6" mesh throughout the net. He agreed with the continued moratorium on entry of additional vessels. He supported prohibiting transfer at sea. He did not agree with allowing possession of flounder parts smaller than the minimum size. He is opposed to a coastwide quota because a couple of states could close out the fishery before other states could get a chance to catch any fish.

Jeff Eutsler, *F/V Tony and Jan*, stated that he was for the overall Plan. He did not agree with the special state permit for possession of smaller parts than minimum size. He said that he would like to see a 6" webbing for the entire net but it would be hard for them to get because the fishermen would have to be given at least a 12 month notice to buy the nets. He feels that the 52 week period to retain the moratorium permit would make everyone work and that it should be left as a requirement. He also agreed with continuing the moratorium on new entries into the fishery. He felt that the transfer at sea requirement was okay because they couldn't cheat because it would still be recorded as long as dealers have Federal permits. He would like to the paperwork that they have to do kept simple. He would like to see either a 5.5" net with a 13" fish or a 6" net with a 14" fish regulation. He feels that they need to be able to measure the net, possibly with a sanction twine, to make sure it is legal. He did not agree with the vessel replacement criteria because only so much is allowed to be caught so it shouldn't matter if a vessel changes its horsepower.

The hearing was closed at 7:50 p.m.

7 April 1997, Manteo, NC

Hearing officer Dennis Spitsbergen, a member of the South Atlantic Fishery Management Council, Mid-Atlantic Fishery Management Council and ASMFC, opened the hearing at 7:15 p.m. Rick Marks of the North Carolina Fisheries Association and a member of the Mid-Atlantic Fishery Management Council and 21 members of the public were present. Staff present were David Keifer and Kathy Collins.

Mr. Keifer presented the draft Summer Flounder Amendment 10 Fishery Management Plan, then the

hearing was opened for comments and questions.

Mr. Rick Marks, representing the North Carolina Fisheries Association, stated that they support the provision of the 5.5" mesh size throughout the net. He added that many North Carolina fishermen are already using this net. He also added that this will minimize ability for fishermen to choke off the tailbag. He said that it is important that Council and ASMFC realize that, despite rumors of choking off the tailbags, the stock size has tripled in the last few years. He asked to include, as a provision in the north, to allow a 6" tailbag to be maintained because most of them are fishing with a multispecies permit and probably already use a 6" tailbag. He added that it would be appropriate for a 14" fish and would not require those fishermen to buy a new net with the 5.5" provision. They support the moratorium on new entrants. He stated that there is no true definition of a recovered flounder stock and that needs to be determined so that new people could be considered to be allowed into the fishery. They support removing the 'use it or lose it provision.' They also support requiring all states documenting all landings. He said that since ASMFC and the Council are requiring states to improve data collection, it would be important to ask the feds to improve the sampling. The Associations concern is that they may not be sampling the large fish adequately. The Association is also concerned about the vessel replacement criteria because a vessel can only be replaced if it essentially sinks. He said that this criteria needs to be improved. He explained that they should be allowed to increase vessel and horsepower for safety reasons. He stated that people are not required to buy old cars these days, so why shouldn't they be able to improve their vessel to become more efficient. He explained that if they are under a trip limit or quota, why restrict what they can do to their vessel? NFCA is opposed to any change in the quota system, they support the state-by-state quota system. They feel it is the best and most fair option. He added that a coastwide trip limit does not seem sensible. He is concerned and he would be interested in knowing how a fishery would last with an 8,000 lb limit coastwide.

Mr. William Daniels stated that on the coastwide quota, he knows that many are against it. He feels that somebody is not using sound figures because it doesn't add up. He stated that even if they go to coastwide quota, he wants the Council to sit down and see that there would be full-time permits in every fisheries. He said that he has lost a lot of flounder to northern states. He added that the northern states do not have a legal quota landing to their credit that was not gotten by 50% or 75% of southern boats. He feels that he 5.5" provision throughout the net is okay. He said southern states with flounder permits have been hurt the most. He said that they do not want to give up any portion of the fishery and they cannot afford to give up one pound of fish to anybody. He said if they have to, they will look into some legal action parties to get them full-time permits in their fishery.

Mr. James Fletcher, United National Fishermen's Association, supports the provision of the 5.5" net throughout. He said that something has to be done about putting in the moratorium on the fishery, they should not have it is because it is not the answer. He stated that 3.5 million pounds are being discarded by scallop vessels and that most of them have been large and jumbo fish and have been discarded since the quota system. He said that is the reason according to the scientists, that they have not been landed. Those fish were not considered but they were documented that they were landed or caught. He said they need to look into requiring that all states document summer flounder landings. He suggested to put into management that we document by least efficient method. Because of being efficient, North Carolina people have been hurt. The states that have the least amount of documentation have been treated better. He asked what was wrong with 5.5" net,14" fish and no quota? He said that has slipped through. He said that they were told if that happened, the stock would recover. He said that if necessary, there may be some reason for a trip limit.

Mr. Joey Daniels, Wanchese Fish Company, stated that they support the 5.5" net throughout. He added that he has the same reflections as Mr. Fletcher with what the original Plan called for. He supports the moratorium on extension. He would like to see the 52 week requirement to retain a moratorium permit removed. He feels that because North Carolina has had the best trip tickets and documentation that this has come back to haunt them. He feels they need to look at vessel replacement criteria. He agrees that if someone has an old boat and they want to increase it, they should not be limited as to what they can do to make it better. They are against a coastwide quota.

He feels that North Carolina has not gotten a fair share. He stated that many fish that were reported in Massachusetts came from Wanchese, NC.

Mr. Sammie Williams, Williams Seafood, is against a coastwide quota because it would put him out of business.

Mr. Billy Carl Tillet, representing Moon Tillet Fish Co., stated that he does not support a coastwide quota. If he was a full time flounder fishermen and if they could be guaranteed 8,000 or 10,000 lbs a year, he would agree with it. He added that 75% or 80% of the quota came from North Carolina. He supports the 5.5" throughout the net provision and that most fishermen are using that anyway. He supports removing the requirement on the 52 week period in order to retain a moratorium permit. He asked, if he has a permit, why does he have to prove he landed a pound of flounder? He feels the only way they are going to accurately get landings under the quota system is to have all states document landings. Regarding the vessel replacement criteria, he said that if someone has a scallop or multispecies permit, they can get more horsepower. He added that if you have a summer flounder permit, you cannot do this, so why have anything? Some boats they have may be 20 years old and may be a little under powered, so there should be no requirement. So if someone wants to put in whatever they want to better their boat or if their engine blows up, they should be allowed, as long as they are in the fishery. He added that the quota is too low. They could live with a quota if it was not too low.

Mr. Eddie Newman, a commercial fisherman, stated that he was opposed to a coastwide quota. He is opposed to the vessel replacement criteria, because you should be able to upgrade your boat. He suggested to remove the requirement for the 52 week landing period.

Mr. Jimmy Rhule, commercial fishermen from Wanchese, said to do whatever it takes to getting these other guys out of the trouble they are in and get them out of his fishery. Something needs to be done. He said that regarding vessel replacement, they would have to put a smaller engine in the boat than you would take out to equal a 20% difference. He explained that engines have increased in efficiencies and fuel ratios, etc. He stated that if you are under a quota, what would the vessel replacement matter. He feels there should be some kind of a bycatch because it is ridiculous to throw good fish overboard or kill them and have them not accounted for just because a state says you cannot land them there. He added that the guys up north don't want the southern guys to fish in their area.

Mr. Spitsbergen wanted to clear up the trip ticket/data collection system information. He explained that in most of the other states, except maybe Massachusetts, NMFS has been requiring trip tickets, as they are in North Carolina, from other states. He said that the problem in the other states is they could only get trip tickets from permitted dealers and several of those states have non permitted dealers. He explained that would be the gap between total landings data.

Mr. Joey Daniels has concerns about new federal reporting. He asked that if a summer flounder permitted dealer was also packing southern flounder, how do you make sure you do not get northern and southern counts mixed up?

Mr. Spitsbergen stated that he is working on a way to have trip tickets with same numbers sent to the states so that they are accounted for over a phone system. He explained that they are trying to get NMFS out of this because they are not going to know what they actually have.

Mr. Gus Saunders asked if they go to a coastwide quota, does that mean you can just land 6,000 lbs or 8,000 lbs per trip, until a certain amount of fish are caught for the whole coast, then the coast closes down? He feels that is wrong because in the summer time, they have no flounder because they migrate north. He said that even if it was broken into three periods, it would not matter. He said that if northern states agree that they can fish in their area in order to catch their share, and landings can be accounted there, that would be good. He said they are shut out of Massachusetts waters because their boats are above 72'. He stated that if they go to a coastwide quota, the northern guys are going to fish and land, then they cannot land anything because the quota would be filled.

Mr. William Tate asked how are they going to get the 6,000 lbs to 8,000 lbs limit for three months? He also asked how are they going to get that when they can't fish for 10 days? He said that if they could guarantee a 5,000 lbs. limit for three months, they would take that. He added that he is against the coastwide quota.

Mr. Spitsbergen explained that has been a very big concern.

The hearing was closed at 8:15 p.m.

8 April 1997, Morehead City, NC

Hearing officer Dennis Spitsbergen, a member of the South Atlantic Fishery Management Council, Mid-Atlantic Fishery Management Council and ASMFC, opened the hearing at 7:15 p.m. Those present were Rick Marks of the North Carolina Fisheries Association and a member of the Mid-Atlantic Fishery Management Council, Rick Monoghan of the North Carolina Division of Marine Fisheries, Jeff Radonski of NMFS Law Enforcement, John Merriner of NMFS, Pete Moffitt of the South Atlantic Fishery Management Council and 40 members of the public. Staff present were David Keifer and Kathy Collins.

Mr. Keifer presented the draft Summer Flounder Amendment 10 Fishery Management Plan, then the hearing was opened for questions and comments.

Mr. Hubert Potter stated that the 5.5" throughout the net provision is okay, but he is not for the moratorium. He feels that any boat should be allowed into the fishery.

Mr. Roger Jones, co-owner of the *Miss Amanda* and *Jane Marie*, stated that if more boats are let into the fishery, it would hurt them because they cannot make it now as it is. He added that on top of everything there would be regulating the price of fish. He does not believe the government has accurate data on how many flounder are out there to even have a quota. He said he can go along with the 5.5" throughout the net provision. He explained that the way the quota is now, no one is going to go to 70 or 80 fathom to catch those eight and ten year old fish, they are going to fish as close to the beach as possible. He added that there does not have to be old flounder to keep the species going. He feels that nine million pounds of flounder is not enough because there are millions of square miles of ocean. He said that there are more flounder out there than they are being told. He suggested that if there is going to be a quota, keep it the way it is.

Ms. Leslie Daniels, Luther Smith Seafood, stated that they can live with most of what was presented but they are opposed to the coastwide quota. She also stated that the 5.5" net provision was okay.

Mr. Wesley Potter, commercial fishermen, stated that he does not support the coastwide quota system, he does not support the quota system at all. He feels that NMFS could work with the fishermen to make things better. Fishermen are struggling now just to get a few days of fishing, so let them work a week out of each month or so and this would take a lot of pressure off of the fish and allow them to make some money. He does not support the 5.5" throughout the net provision. He added that it looks like the latest system has put the fishermen out of business.

Mr. Rick Marks spoke on behalf of the North Carolina Fisheries Association. He stated that the 5.5" throughout the net has been a tough issue for the Association. He added that a number of members have asked the Board to support this provision. He feels that the mesh changes are enough because they have seen the stock increase. He added that he hopes this is the limit on how far they have to go. They support the moratorium on new entrants. He stated that he hopes the Council and NMFS get a definition of what a rebuilt flounder stock is, so at that point they could be able to consider how they could let new entrants into the fishery. The Association supports the removal of the 'use it or lose it' clause. NCFA also supports all states reporting all of their landings. He added that North Carolina has the best check as far as the trip ticket systems and now they have overages to pay because of this. They feel that all landings need to be reported, even those to non permitted dealers. He requested that

the Council and ASMFC request that NMFS improve their fishery dependent sampling to get an accurate sampling. He stated that NCFA requests to define vessel replacement. He said that they should be able to improve vessels for safety reasons. He stated that NCFA supports the current quota system. They think it is the most sensible right now because of the regional differences in the fishery and sizes in the fish. He said that with talking to the folks fishing in the North Carolina areas, many of them said that they would not want less than a 10,000 lb. trip limit.

Mr. Jimmy Gillikin stated that on the 5.5" throughout the net issue, he thinks people who have the older nets should be able to use up nets they have now and then change over because of expenses. Regarding the moratorium, there are very few people who would get into the flounder fishery today and they should not want to shut someone out of the fishery because all they are going to have is a week in the fishery anyway. He supports removing the requirement of having to land summer flounder during a 52 week period in order to retain the moratorium permit. He is against the coastwide quota. He agrees with requiring all states to document landings. He also agrees with establishing a special state permit to possess flounder parts smaller than minimum size.

Mr. Tony Front stated that he does not have a problem with the 5.5" throughout the net provision. He feels continuing the moratorium is needed unless they get more quota. He would like to see the 52 week period eliminated. He added that all states should be required to document landings because if one state has to do it, they all should. He stated that they need to do something about the transfer at sea because they may be transferred to a much bigger vessel and landed out of the country. He is against a coastwide quota.

Ms. Sandra Gaskill said that with what is facing the commercial fishermen in North Carolina, the moratorium, red tide, a net ban threat, etc., this might push them outside of state waters. She stated that it may make the fishermen in North Carolina have to go floundering. She added that if they cannot get a permit and are not allowed in the fishery, this would hurt them.

Nona Potter submitted a written comment letter. (Attachment 8)

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

9 April 1997, Norfolk, VA

Hearing officer Jack Travelstead of the Virginia Marine Resource Commission and a member of the Mid-Atlantic Fishery Management Council opened the hearing at 7:10 p.m. LCDR Reb Bryant of the USCG and 12 members of the public were present. Staff present were David Keifer and Kathy Collins.

Mr. Keifer presented the draft Summer Flounder Amendment 10 Fishery Management Plan, then the hearing was opened for questions and comments.

Mr. James Haydon stated that he had no real concern with what was presented in the Amendment.

Mr. Charles Amory, of the L.D. Amory Company, was concerned about the vessel replacement criteria. He stated that as long as there is a quota system in place and only so many fish can be caught, what is the problem with replacing a vessel with what horsepower they want to replace it with? He said that he basically supports the preferred alternatives in Amendment 10. If charter boats in New York or elsewhere have problems with filleting, should not just single out charter boats or head boats, etc., they should be allowed to do it. He feels strongly that the current quota system is just beginning to work a little bit and they are just now getting the bugs out. He said that if they are going to do away with the method in which the state-by-state quotas were reached in the original Plan, then it should have to be done for every fishery up and down the coast. He feels that just because North Carolina and Virginia have produced more fish, they should not be punished.

Mr. Travelstead asked who was in support of the current state-by-state quota system, four people said

that they were in support of it. No one supported the coastwide quota system.

Mr. John Harnois stated that each time he has attended a Watermen's Association meeting, the quota system issue has come up in the state of Virginia, he has not heard one voice from the watermen he has spoke with in Virginia who were in support of a coastwide quota. He said that there are enough problems with rockfish trip limits in Virginia. He said that he could not imagine trying to manage the resource on a trip limit along the coast.

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

APPENDIX 3. COMMENT LETTERS AND COUNCIL RESPONSE

A total of 55 comment letters were received by the Council on the hearing draft of Amendment 10. Three letters were received from state agencies, two letters from US Senators, one letter from a US Congressman, one letter from a town selectman, one letter from the NE Council, and one letter from NMFS. The remaining letters were from industry advisors, fisheries associations, and fishermen. All of the letters are reproduced in this Appendix or are attachments to the Public Hearing Summaries in Appendix 2.

There were a total of 21 substantive comments on the proposed regulations in the draft Amendment. These comments and the Council's responses are listed below.

Comment 1: A total of 8 commenters indicated that they supported the preferred alternative which would require that the minimum mesh size apply to the entire net.

After reviewing public comment, the Council and Commission decided that the proposed regulations should state that the minimum mesh size could apply to any portion of the net but not necessarily the entire net. This framework management measure would then give the Council and Commission the flexibility to recommend changes in mesh size for a given year that could apply to the codend, body, or any other portion of the net. The Council and Commission also recommended that in year 1 of Amendment 10, that the minimum mesh size of 5.5" diamond or 6" square apply to the body of the net as well as the codend. As such, the minimum mesh size would apply to the entire net with the exception of the wings.

Comment 2: A total of 8 commenters indicated that the minimum mesh size should apply only to the codend portion of the trawl.

The minimum mesh regulations adopted in Amendment 2 apply only to the codend portion of the net and were developed in conjunction with the minimum size regulations to reduce mortality of small summer flounder and minimize waste. A 5.5" mesh retains about 70% of the 14" TL summer flounder that encounter the net. It was recognized that 5.5" mesh would also retain a portion of the 13" TL summer flounder encountered. The Council and Commission decided to reduce the minimum fish size to 13" TL to avoid the wasteful discard of any 13" to 14" TL fish retained in legal summer flounder nets.

These regulations were developed in the belief that fishermen would target 14" TL and larger summer flounder. However, since the implementation of mesh regulations in the summer flounder fishery it has become apparent that some fishermen have been circumventing the mesh regulations by using legal codends but constricting the net forward of the regulated portion of the net. Since meshes smaller than 5.5" are allowed forward of the regulated portion of the net, the escapement of summer flounder less than 14" TL may be greatly reduced. The result is that a higher proportion of 13" to 14" TL fish will be retained. Depending on the size of the meshes used in the body and extension, a significant portion of summer flounder less than 13" TL may be retained as well, many of which will not survive when discarded. As such, the Council and Commission considered it important that the minimum mesh size could apply to other portions of the net as well as the codend.

Comment 3: Three commenters favored an increase in the minimum mesh size to 6 inches.

This amendment did not propose an increase in the minimum mesh size. Current regulations require a 5.5" diamond mesh or 6" square mesh in the codend portion of the net. The Council and Commission through an annual review process can recommend modifications to the minimum mesh size for the upcoming year. This amendment will give the Council and Commission the additional flexibility to modify the mesh size in any portion of the net.

Comment 4: One commenter suggested that the minimum mesh size should apply to the body and codend portion of the net.

As indicated above, the Council and Commission agree.

Comment 5: One commenter suggested that implementation of any changes to the mesh size and/or net be delayed.

The Council and Commission agree. Additional language will be added to the amendment to allow for the specification of a delay in implementation of any mesh changes to account for the availability of net building materials.

Comment 6: A total of 11 commenters supported the preferred alternative which would continue the moratorium on entry of commercial vessels.

The Council and Commission agree. Amendment 10 will continue the moratorium on the entry of additional vessels into the summer flounder commercial fishery.

Comment 7: One commenter supported the continuation of the moratorium but indicated that an end date should be specified. Another commenter indicated that the moratorium should be evaluated after a specified period of time.

Amendment 2 to the Summer Flounder FMP established a moratorium on entry of additional commercial vessels into the summer flounder fishery in the EEZ for 5 years. As such, the moratorium expires in 1997.

The current summer flounder fleet is capable of taking the entire commercial quota. A potential increase in the number of participants in the summer flounder fishery would cause economic hardship for the summer flounder vessels that have traditionally participated in the fishery. It is unlikely that the resource will expand to such a great extent in the near future such that new entrants could enter the fishery without adversely affecting historic participants.

Amendment 10 will continue the moratorium on the entry of additional vessels into the summer flounder commercial fishery. The amendment will specify that the moratorium may be terminated or replaced at any time by an FMP amendment establishing an alternative limited entry system. If it becomes apparent that the resource has rebuilt and current participants are not capable of harvesting the annual quota the Council and Commission could consider an alternative limited entry system with such an amendment.

Comment 8: A total of 10 commenters supported the preferred alternative that would eliminate the provision to require fishermen to land summer flounder in order to retain their moratorium permits.

The Council and Commission agree. Amendment 10 will delete the existing requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period in order to retain the permit.

Comment 9: A total of 14 commenters supported the requirement that states document all landings of summer flounder.

The Council and Commission agree. Amendment 10 will require all states to develop vessel and dealer reporting systems for summer flounder landings from state waters. States will be required to provide this landings information to the NMFS.

Comment 10: A total of 9 commenters indicated that they supported the alternative that would prohibit the transfer of summer flounder at sea.

The Council and Commission agree. Amendment 10 regulations would prohibit the transfer of summer flounder at sea.

Comment 11: One commenter suggested that the transfer of summer flounder be prohibited except in over the side sales fisheries that target other species.

Summer flounder are a prohibited species of harvest by foreign vessels. As such, any summer flounder transferred over the side with other species that are being harvested in joint venture or IWP operations must be returned to the catcher boat. As such, this proposed exemption would have no effect on a prohibition on transfer.

Comment 12: A total of 9 commenters supported the provision that would allow a state to be declared *de minimus* in regard to the commercial quota.

The Council and Commission agree. Amendment 10 would establish a system to allow a state to be declared *de minimus* in regard to the commercial quota.

Comment 13: Three commenters indicated that the vessel replacement criteria should be identical to those in the NE Multispecies FMP, i.e., voluntary replacement with a one-time upgrade of up to 10% in vessel length and GRT, and 20% in horsepower. One commenter indicated that the amendment should allow for voluntary replacement with a non-specified vessel upgrade.

The Council and Commission agree. After reviewing public comments, the Council and Commission decided that the regulations regarding the vessel replacement language should be modified to allow for voluntary replacement and a one-time vessel upgrade. This would make the regulations identical to those in the NE Multispecies FMP in regard to vessel replacement. As such, an owner of a vessel with both permits could now build a replacement vessel with an upgrade and not have to give up his summer flounder permit.

Comment 14: Two commenters supported the preferred alternative which would maintain the current vessel replacement criteria.

After careful consideration of public comments, the Council and Commission decided that the current regulations should be modified to allow for voluntary replacement and a vessel upgrade. The summer flounder moratorium has been in place for 5 years and the Council and Commission were concerned that the current regulations might force fishermen to fish with old, unsafe vessels. As the moratorium continues, the Council and Commission believe that it is important that fishermen be able to replace their vessels voluntarily. The one-time vessel upgrade will also allow fishermen to increase vessel size and horsepower to increase the safety and efficiency of their fishing operations.

Comment 15: One commenter indicated that the vessel replacement criteria should allow for voluntary replacement but no upgrade in vessel size until the differences between the replacement criteria in the New England and Mid-Atlantic FMPs were addressed.

The Councils, in cooperation with the NMFS, are in the process of preparing a scoping document that will identify the differences in vessel replacement criteria between the different FMPs. This scoping document will be taken to hearings for public review and comment. In the interim, the Council and Commission decided to revise the regulations regarding the vessel replacement criteria for the reasons detailed above.

Comment 16: A total of 12 commenters supported the preferred alternative that would establish a special permit for party/charter boats to fillet at sea.

The Council and Commission agree. Amendment 10 will allow states to issue this permit for party/charter boat operations.

Comment 17: A total of 29 commenters supported the preferred alternative that would maintain the current state-by-state quota system for the commercial fishery.

The Council and Commission agree. The commercial quota is currently allocated to the states based on their share of the commercial landings from 1980 through 1989 (as revised). The states may combine or transfer their quotas with the approval of the NMFS Northeast Regional Administrator. Each state is responsible for managing its commercial quota. Amendment 2 presents a thorough analysis and discussion of the current state-by-state quota system including an analysis of the biological, social and economic impacts as well as how the current system complies with the National Standards.

The state-by-state quota system has been in place since 1993. Over the years, many of the states have refined their management systems to allow for an equitable allocation of summer flounder to the fishermen that land summer flounder in their state. These systems account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them.

After careful consideration of the public comments and after additional debate, the Council and Commission decide to retain the current state-by-state quota system.

Comment 18: A total of 10 comment letters supported a seasonal, coastwide quota system that was either in effect for the entire year or only during the winter months in conjunction with a state-by-state summer period allocation.

The hearing document detailed these two non preferred alternatives to the current state-by-state quota system for summer flounder in Appendix 1 of the document. However, after careful consideration of the public comments and after additional debate, the Council and Commission decide to retain the current state-by-state quota system.

The Council and Commission determined that a coastwide quota during the winter or over the entire year may not provide the same level of equity or flexibility to summer flounder fishermen as the current state-by-state system. Over the years, personnel from several states have spent a lot of time developing quota management systems that account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them. These systems have been designed to allow for an equitable allocation of the state quota to all the commercial fishermen landing summer flounder in their state. The Council and Commission determined that it would be difficult to design a coastwide system that was better than the current state-by-state system, i.e., one that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. In addition, they noted that uniform landing limits may not be suitable for all vessels, gears or areas along the coast.

Comment 19: Two comment letters argued that the current state-by-state quota system should be replaced by a coastwide system for reasons detailed in a ten-point argument (refer to the letters from the state of Massachusetts and the New England Council). Some of the same arguments were made in two other letters that indicated that the current quota system violated National Standard 4.

In general, the comments in the "ten-point" letters suggest that the status of the stock indicates that the current quota system and other management measures implemented by Amendment 2 are not reducing fishing mortality and that a coastwide quota system would be more effective and equitable. Many of the statements made in the "ten-point" letters referred to the regulations implemented by Amendment 2 and were not specific to the commercial quota system. In response, the Council and Commission offer the following.

The state-by-state quota system implemented under Amendment 2 was developed over a period of years by the Council and Commission. The New England states were active participants in these negotiations and supported the use of 1980-1989 as the base years for determining the shares assigned to the states. The Council and Commission consider a distribution of the quota based on percentages derived from these landings to be fair and equitable. In addition, given that the landings during the time period were not equal, the distribution of the quota does not have to be equal in order to be equitable.

The letters suggest that larger quotas were promised for each year of the management program. Amendment 2 implemented a fishing mortality rate reduction schedule that was later modified by Amendment 7. That schedule, and its modification, established target fishing mortality rates of 0.53 for 1993-1995, a harvest cap of 8400 mt (18.52 million pounds) in 1996 and 1997, and a target fishing mortality rate associated with F_{max} (currently estimated to be 0.23) in 1998 and beyond. Given this reduction in fishing mortality rates, and the harvest caps, it would be reasonable to assume that the associated quotas might not increase each year.

In addition, the Summer Flounder Advisory Report indicates that the stock is at a medium level of historic abundance and is overexploited. The fishing mortality rate for 1995 exceeded 1.0. However, the 1994 and 1995 year classes were estimated to be average or above average, respectively, and the presence of these year classes on the fishing grounds in 1997 may account for fishermen's reports that summer flounder are very abundant. Reducing fishing mortality rates on these year classes will allow for an increase in spawning stock biomass with the associated possibility of better recruitment and higher quotas in future years.

The letters refer to enormous levels of discards at sea. However, sea sampling data indicate that the discard level in the commercial fishery has decreased in recent years with discard rates of 6.6% and 3.3% for 1994 and 1995, respectively. Similarly, the letters indicate that the recreational catch limits have been exceeded due to the lack of effective recreational restrictions. In actuality, Amendment 2 created a process whereby recreational harvest limits are established each year. In addition, the limit was not exceeded every year but in two out of the four years from 1993 to 1996. In 1993 the limit was exceeded by 0.5 million lbs. In 1994 and 1995, the recreational harvest was below the limits by 1.34 and 2.6 million lbs, respectively. In 1996, the harvest limit was exceeded by approximately 3 million pounds.

The letters refer to levels of underrreporting in the commercial fishery. Under a coastwide quota system, it is probable that the level of underreporting would increase as the burden of monitoring the fishery shifted from the states to the NMFS. The states are currently working to improve reporting of commercial landings and Amendment 10 would require states to document all state landings and report those landings to NMFS.

A statement is made in the letters that the current quota system forces fishermen to travel hundreds of miles to land summer flounder. In fact, vessels have traditionally traveled long distances to fish for and land summer flounder. For example, a significant portion of the landings of summer flounder in the New England states can be attributed to vessels from North Carolina. In addition, many of the new England vessels are permitted to land in several, neighboring states.

A statement is also made that the current system has resulted in an economic loss to the New England states. In fact, the loss of any revenues attributed to the state-by-state quota system are shared by all the states not just the New England states. Amendment 2 implemented a quota system to reduce mortality on summer flounder. The quota is based on target mortality rates that have resulted in reduced landings, and as such, reduced revenues, in all the states.

The letters argue that the system is unfair since fishermen can fish in federal waters under different sets of rules, i.e., landing limits. In addition, the letters argue that the current system causes the states to promote their individual interest at the expense of cooperative management. As indicated above, Amendment 2 regulations were fully supported by the Commission and its member states. That

amendment established a state-by-state allocation based on landings for 1980-1989. The state-by-state quota system has been in place since 1993. Over the years, many of the states have refined their management systems to allow for an equitable allocation of summer flounder to the fishermen that land summer flounder in their state. These systems use a combination of landing limits that differ by state to account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them. These systems maximize the benefits of the quota to the state fishermen while at the same time meeting the restrictions imposed by the coastwide plan.

Comment 20: One commenter argued that the state shares used to allocate the quota were unfair because they did not account for differences in length limits in effect during the base years 1980-1989.

This issue has been addressed several times by the Council and Commission. Commercial length frequency data is available for some of the states covered by the NMFS weighout system for the years 1980-1989. However, no length frequency data were collected from the states of Maine, New Hampshire, Connecticut, Delaware, and North Carolina. Staff from the North Carolina Division of Marine Fisheries have collected North Carolina length frequency data from the winter trawl fishery since 1982.

Landings data reflect minimum size regulations implemented in each of the states. Landings do not reflect the actual sizes of fish available to the gear, caught by commercial fishermen, and discarded dead. If more restrictive minimum size regulations had been implemented in southern states during those years more small fish would have been discarded dead and there would have been increased pressure on, and increased landings of, larger fish. As such, the availability of larger fish to the northern states would have been reduced and consequently the landings in the northern states would have been reduced. In addition, Virginia's territorial sea closure probably reduced landings of smaller flounder in 1989 and this impact would confound the interpretation of these percentages. In reality, the fact that some northern states had a larger minimum size then some southern states reflects the fact that fewer fish less then that length had been traditionally available to commercial fishermen in the northern states.

Comment 21: The state shares used to allocate the quota should be revised based on 1990-1992 data since these data would result in more equitable state allocations.

After lengthy deliberations and debate, the time period that was selected by the Council and Commission to allocate the commercial quota to the states was 1980-1989. Each state received a percent allocation based on the landings during that time period. The years 1990 to 1992 would represent a more recent time period as well as a time period immediately prior to quota implementation. However, this shorter period of time would not account for historic participation in the fishery when summer flounder were more abundant and available to more fishermen along the coast.

SUMMER FLOUNDER, SCUP AND BLACK SEA BASS FISHERY MANAGEMENT PLAN AMENDMENT 10

PUBLIC HEARING COMMENTS

KC

TRUSTCOMPANY BANK
THE BANK WITH HEART SINCE 1896

RECEIVED
MAR 14 1997
MID-ATLANTIC FISHERY COUNCIL

ROBERT J. FIGURSKI
SENIOR VICE PRESIDENT

March 6, 1997

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL
Room 2115, Frear Federal Building
300 South New Street
Dover, Delaware 19904-6790

Attention: David R. Keifer
Executive Director

Dear Mr. Keifer:

Kindly be advised that due to my need to perform my Bank responsibilities, I will be unable to attend the scheduled Hearing on the matters discussed in your 2/28/97 mailing. However, in view of the impact of the issues to be considered, I respectfully ask that my recommendations contained herein be considered by the Council:

1. I had thought that the Council had earlier established a minimum mesh size for commercial fishermen of 5.5" diamond mesh throughout the net length.

In either case, as the Council has recently increased the minimum size summer flounder which may be caught by recreational fishermen from 14" to 14 ½", in the interest of fairness to all fishermen, as is required in the Magnuson Act, and in order to increase the summer flounder bio-mass, the question as to if the minimum mesh net size should be 5 ½" or otherwise requires information as to the quantity of summer flounder sized under 14", or more fairly 14 ½" which would be trapped in a 5 ½" size net.

In addition, in fairness also to the commercial fishermen, as well as the manufacturers and/or wholesales of commercial nets, I agree that there should be a reasonable transition period for any future changes in minimum mesh sizes. Thereby allowing them to wear out rather than having to discard them.

2. I agree that there should be a continued moratorium on entry of additional commercial vessels into the summer flounder fishery because if there are more commercial vessels fishing for summer flounder, less summer flounder will be left for the recreational fishermen community's and also to grow the bio-mass.

3. I agree that we should not force commercial fishermen to fish for summer flounder at such times that it is not economically sound for the commercial fishermen to do so, but which they would be forced to do just to retain their permits.

4. In order for the Council to make rational decisions with regard to regulations regarding the summer flounder fishery, the Council needs accurate information as to the quantity of summer flounder caught by all parties. Therefore there should be a requirement for states to document their summer flounder commercial landings.

5. As I do not know what is meant by "de minimus" status, I cannot comment on this.

6. I generally agree that there should be a prohibition concerning the transfer of summer flounder at sea.

7. Again, I believe that the rules should be the same for everyone while allowing the fishery to increase. If this were to be the case, there would be more, and larger summer flounder for everyone in the future. And again I believe that there should be a reasonable phase-in period so as to give people and businesses a reasonable amount of time to adopt new policies and procedures. Therefore, I support a special state permit for party/charter boats to allow the possession of summer flounder parts smaller then those approved minimums for a reasonable period of time.

Very truly yours,

Robert J. Figurski
Senior Vice President

FISHERMEN'S DOCK COOPERATIVE, INC.

PO BOX 1314 - 57 CHANNEL DRIVE

PT.PLEASANT BEACH, N.J. 08742

OFFICE 908-899-1872 DOCK 908-899-1697

FAX 908-899-3294

March 18, 1997

Mr. Patrick H. Augustine
9 Woods Court
Huntington, N.Y. 11743

Re: ASMFC 1997 March Meeting - Summer Flounder Mgmt. Board

Dear Mr. Augustine

As the commercial representative to the Summer Flounder Panel for the State of New Jersey, I would like to comment on a few views to the Summer Flounder Board.

1.- We are very much in favor of retainng the current State by State quota system.

2.- 14 in. commercial fish size - we do not support. A percentage of 13 in. fish per trip could be supported.

3.- 5 1/2 in. net throughout can not be supported. The 5 1/2 bag in the plan along with the quota has dramatically increased the fish stock in a short period of time.

We support all below:

4.- Continue a moratorium on entry of additional vessels into the summer flounder fishery

5.- Remove the requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit.

6.- Require that states document all summer flounder commercial landings in their state that are not otherwise included in the federal monitoring of permit holders.

7.- Implement a provision such that any state could be granted de minimus status if commercial summer flounder landings during the last preceding calendar year were less than 0.1 percent of the total coastwide quota.

8.- Prohibit transfer of summer flounder at sea.

9.- Establish a special state permit for party/charter vessels to allow the possession of summer flounder parts smaller that the minimum size.

Sincerely yours,

John Cole

John Cole
President
Fishermen's Dock Cooperative, Inc.
Member of NJ Marine Fisheries Council

KC
SF10

MARYLAND SALTWATER SPORTFISHERMEN'S ASSOCIATION, INC.

7626 Baltimore & Annapolis Blvd., Glen Burnie, MD 21060-3530
(410) 768-8666, FAX (410) 768-5988

April 1, 1997

RECEIVED
APR - 4 1997
MID-ATLANTIC FISHERY COUNCIL

David R. Keifer
Executive Director
MAFMC
300 South New Street
Room 2115
Dover, DE 19904

Dear Mr. Keifer,

The Maryland Saltwater Sportfishermen's Association (MSSA) is the largest sportfishing organization in Maryland composed of over 7,000 conservation-minded members. We have also been recognized as being the official voice for the recreational fishermen by our General Assembly and the Department of Natural Resources. We would like to take this opportunity to offer comments on Amendment 10 of the Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass Fishery.

The MSSA is in agreement and supports the proposed language and the seven measures contained in your news release dated March 7, 1997. It is vitally important that we begin strict conservation measures in order to ensure the recovery of summer flounder stocks. In fact, the MSSA is so concerned about this issue that the majority of those in attendance at your first public hearing in Ocean City, Maryland were MSSA members.

In addition to supporting the measures already mentioned, we would strongly recommend that you would increase the minimum mesh provisions that applies to the entire net to a six (6) inch diamond mesh. We feel that this would greatly decrease the mortality directly related to this fishery.

Yours In Fishing,

Richard Novotny
Executive Director

The Commonwealth of Massachusetts

Division of Marine Fisheries
Leverett Saltonstall State Office Building
100 Cambridge Street
Boston, Massachusetts 02202

PHILIP G. COATES
DIRECTOR

727-3193

April 7, 1997

Dr. James H. Gilford, Chairman
Mid-Atlantic Fishery Management Council
Room 2115 Federal Bldg.
300 South New St.
Dover, Delaware 19904-6790

Dear Jim:

We offer the following comments on Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. We intend to forward a more complete review in the next few weeks. Our emphasis in this letter is on the quota management system.

As you know, DMF begrudgingly has supported the Plan for many years, even though we've had to live with a 6.8% share of the commercial quota. We recognized back in 1992 that fluke was overfished, and all states needed to support the plan so all could benefit from a rebuilt resource of many year-classes. The 16th SAW reported that stock was at a low biomass level and was over-exploited. We had every reason to believe that with all states keeping to the regional quota and with fishing mortality being reduced significantly, by 1997 we would have a high probability of a resource capable of sustaining a large quota for Massachusetts. Our percent share, although low, would translate into a reasonable state quota that would allow at least a modest fishery lasting well into the fall — traditionally an important time for commercial fluke fishermen and dealers.

Our faith in the management approach was misplaced. Although there is some evidence for stock rebuilding, the fishery is still recruitment-dependent, there is little evidence of age structure extension, fluke is still overexploited (F = 1.5 in 1995, 78% annual exploitation), and our fluke quota for 1997 is only 730,000 lbs. compared to a total quota of 9.1 million lbs. More noteworthy is the totally unexpected fact that in 1993, the first year of the plan, our state share was about 842,000 lbs — 112,000 lbs. more than in 1997. The regional quota in 1993 was 12,350,000 lbs. Now its about 9.1 million! Can this be called successful fisheries management? Absolutely not, and the states that have sacrificed as part of the effort to stop overfishing and to rebuild this resource have been called dupes by their fishermen and dealers. They claim we've bought the Brooklyn Bridge and the water that runs under it. We understand their frustration.

What is the current situation for summer flounder management? We offer the following characterization:

• Fisheries for summer flounder continue to focus on young flounder thereby preventing flounder abundance from rebuilding to levels capable of sustaining annual quotas more than double those of recent

years;

• This dependence of fisheries on young flounder is a result of a failure of the current summer flounder fisheries management plan to protect young fish, especially in the Mid-Atlantic area, or to prevent fishing mortality from greatly exceeding managers' yearly mortality targets since 1993 — the first year of management by quotas;

• Many New England fishermen are being forced by the current management plan to travel hundreds of miles from their homeports, or to relocate, to land their summer flounder in other states with open fisheries and higher landing limits;

• This forced displacement of New England vessels to other states' ports results in a loss of landings and their economic value to the New England states thereby impacting processors and those providing support services within New England ports;

• This forced displacement places fishermen's vessels and lives at risk due to the perils of winter weather and adverse sea conditions encountered by these fishermen as they travel great distances for many hours to reach mid-Atlantic ports;

• This quota-share approach for winter landings of summer flounder is divisive and causes states to promote their own individual interests at the expense of interstate, cooperative management of summer flounder;

• The summer flounder management plan continues to promote tremendous wastage of fluke that must be discarded at sea and promotes misreporting, no reporting, and non-compliance by fishermen and dealers;

• Summer flounder recreational fishermen are not restrained by plan restrictions leading to recreational landings far exceeding the plan's recreational harvest limits and to high fishing mortality, at the expense of rebuilding and much higher quotas for future years;

• The promise of a rebuilt fluke resource and much larger coastwide quotas — causing New England states to originally agree to low percent shares of a coastwide commercial quota — has been proven false, and prospects for larger future quotas are poor due to continued high fishing mortality and to fisheries that still rely on young fish; and

• It is inequitable and unfair for New England states' fishermen to fish alongside other states' fishermen during the winter in federal waters, but to be subjected to unavoidably low landings limits or landings prohibitions caused by small percent shares assigned to their home states.

The above 10-point argument for change leads us to conclude that the Council and Atlantic States Marine Fisheries Commission's decision to keep the current quota management option as the preferred alternative is ill-advised. The Council and ASMFC argue that it is difficult to design a system that provides for equitable allocation of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. The Council and ASMFC fear a redistribution of summer flounder catch geographically and between vessel types. We appreciate these arguments. We would be inclined to support those arguments if were not for the fact that the fluke commercial fishery is primarily an EEZ fishery during the winter-spring and the fleet is highly mobile. Witness the Massachusetts vessels that have traveled to North Carolina to land fluke. Remember years gone by and the highly mobile North Carolina fleet following fluke northward in the summer and fall and landing large amounts of fluke in Massachusetts.

The equity argument has lost its edge, especially since the quota management for scup and black sea bass is completely different from fluke. Starting this year, assuming NMFS implements the Regulatory Amendment, the Council and NMFS will have two winter seasons with no state quota shares. It is an EEZ fishery so the choice makes sense, although we still stand by our position that quota management for scup, and sea bass, is inappropriate at this time. In 1998 black sea bass will have a quarterly quota approach. Again, no state allocation approach for the winter. By keeping the state-by-state allocation approach for the entire year, we argue that Amendment 10 conservation and management measures discriminate between residents of different states.

If fishing mortality was under control, we'd be hard-pressed to make the aforementioned National Standard argument and to justify another quota approach. But fishing mortality is not under control. Therefore, all states should be on same playing field during the winter-spring. This can be accomplished by a quota management system that establishes three periods: two winter coastwide periods (January-April and November-December) and a state-by-state summer period (May-October).

Finally, we suspect that 1998 will be another year of low commercial quota for Massachusetts. The Council/ASMFC target-F of 0.23 likely will lower the coastwide quota even more, especially if the next year-class (1996) is average or below average. Except for the North Carolina survey there is no evidence the 1996 year-class is above average. Time will tell. You can well imagine Massachusetts fishermen and dealer concern that the current system will be perpetuated for many more years if the Council and ASMFC adopt the status quo quota management system. Five years of patience has been for naught, and that patience has evaporated like the Massachusetts quota and our fishermen's opportunity to land fluke in Massachusetts.

We have more remarks to make about our preferred alternative. However, those remarks and others will be forwarded to you at a later date.

Sincerely,

Philip G. Coates
Director

cc
Mass. Marine Fisheries Commission
Jack Dunnigan
Paul Howard
Andy Rosenberg
David Keifer

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Environmental Management
DIVISION OF FISH AND WILDLIFE
Government Center
4808 Tower Hill Rd.
Wakefield, R.I. 02879
Tel. (401) 789 - 3094; (401) 277 - 3075 Fax (401) 783 - 4460

MID-ATLANTIC FISHERY COUNCIL

4/8/97

Mr. David Keifer, Executive Director
MID-ATLANTIC FISHERY MANAGEMENT COUNCIL
Room 2115 Federal Building
300 South New St.
Dover, DE 19904-6790

Dear Mr. Keifer:

The Rhode Island Division of Fish and Wildlife is in support of the preferred alternative in Amendment 10 to the summer flounder, scup, and black sea bass fishery management plan as adopted by the MAFMC and the ASMFC. The Division supports the continuance of the current permit moratorium and vessel replacement language implemented under Amendment 2. We support the measures to apply the minimum mesh size throughout the entire net and the prohibition of transfers at sea as necessary conservation tools for achieving the rebuilding strategy.

The Division strongly supports the Amendment 10 requirement that states are responsible for documenting all commercial summer flounder landings which are not included under federal monitoring. To achieve this end, RI established a statewide computerized reporting system in 1995 to track commercial fisheries managed under quotas which has enabled the state to track species specific quotas on a timely basis.

With regard to the party and charter boat industry, we support the investigation of an <u>optional</u> state-issued permit for party and charter vessels for possession of fillets. The Division has been exploring options to accommodate the filleting at sea through determination of a statistically valid fillet size and minimum size relationship. Industry has clearly stated that bringing carcasses back to the dock with the boat would be both burdensome and costly to them. Development of a fillet law which is enforceable needs to be further explored through a combined state/federal effort.

The Division supports the continuation of the state-by-state quota system based on the period 1980-1989 as an essential component of the summer

flounder management plan objectives and is opposed to any of the alternatives listed to revise the baseline years used for allocating the commercial state-by-state quota. We believe that 1980-1989 timeframe represents a time series which is more reflective of average landings and traditional length frequencies in the fishery. There is no factual basis presented in Amendment 10 to support adoption of alternate baseline years. Adoption of another time series appears to bias quota allocations against those who adopted conservation measures early on solely for the economic benefit to neighboring states.

Due to the recent 1994 strong year class of summer flounder, stock size and catch per unit effort have increased dramatically in 1996, resulting in a large share of the state by state allocated quotas taken in a very short time in North Carolina and Virginia. The non-preferred alternative for a coastwide commercial quota system would set up an inequitable system, whereby those states with seasonal nearshore concentrations of summer flounder could catch a disproportionate share of the coastwide quota. Fishermen would then be forced to target other species, with an increased discard mortality of fluke. This would significantly impact RI and other northern states by not allowing equitable harvest. Therefore, from an economic and biological standpoint, the Division believes the coastwide quota is not justified.

The Division wishes to emphasize the importance of the summer flounder fishery for Rhode Island constituents and supports all efforts for conservation of this valuable resource. Thank you very much for the opportunity to comment on this plan.

Sincerely,

John A. Stolgitis

John A. Stolgitis
Chief

JS870497.02

APRIL 9, 1997

ANTHONY SOUGSTAD
53 HUBBARD AVE
FREEPORT N.Y. 11520
516-223-3429

RECEIVED
APR 11 1997
MID-ATLANTIC FISHERY COUNCIL

TO ASMFC.

DEAR SIRS:

MY NAME IS ANTHONY SOUGSTAD, A COMMERCIAL FISHERMAN OPERATING OUT OF FREEPORT N.Y. FOR THE LAST 15 YEARS AND MONTAUK + SHINNECOCK FOR 10 YEARS PREVIOUS TO THAT. I CANNOT MAKE THE MEETINGS ON AMENDMENT 10, DUE TO SICKNESS IN MY HOME, BUT I WISH TO COMMENT ON IT AND OTHER THINGS, IN THIS LETTER

FIRST OFF I MUST REMIND YOU THAT WHEN YOU MAKE A LAW, IT MUST BE EQUITABLE TO ALL, AND THAT IS IN YOUR OWN GUIDELINES ALSO BEFORE MAKING THESE LAWS YOU MUST LISTEN TO THE COMMENTS FROM THE PEOPLE WHO ARE OUT THERE FISHING ON A DAILY BASIS.

ON THE FIRST POINT, THE LAWS CONCERNING THE SUMMER FLOUNDER FISHERY ARE SO OBVIOUSLY LOP-SIDED, IT'S AMAZING THAT YOU CAN'T SEE IT OR COULD IT BE THAT YOU ARE IGNORING IT. ALL WINTER LONG, WHILE US LITTLE GUYS ARE TIED TO THE DOCK BECAUSE OF NO FISH IN OUR RANGE, THE BIG RIGS ARE FISHING IN THE CANYONS WITH 3" MESH. IN THE SPRING OF THE YEAR WHEN THE FISH START MOVING INSHORE + US LITTLE GUYS GET A CRACK AT THEM, WE HAVE TO USE A 5.5" CODEND

(NEXT PAGE)

(2)

THIS ALLOWS AT LEAST A THIRD OF THE FLUKE TO GET OUT, NOT TO MENTION THE SEABASS, PORGIES, BUTTERFISH + SQUID THAT WE LOSE. YOU CALL THIS FAIR? WE CANNOT AFFORD TO CHANGE OUR GEAR TO 5.5" THRU-OUT THE NET THAT FAST. $3 TO 4,000 DOLLARS FOR A NET AND I HAVE 3. WHAT DO I DO - BURN THEM? ON TOP OF THAT IT HAS BEEN PROVEN BY YOUR OWN BIOLOGISTS THAT THERE IS NO DIFFERENCE IN THE % ESCAPEMENT BETWEEN 5" WEBBING + 5½" WEBBING AS LONG AS THE BAG IS 5½ WHY DO YOU WANT TO BURDEN US ANYMORE THAN YOU ALREADY HAVE?.

ONE POSITIVE NOTE. (LISTEN!) FLUKE AND SOME OTHER SPECIES HAVE RE-BOUNDED FAR BEYOND ANYONES EXPECTATIONS. NOW THIS MIGHT BE DUE TO STRICT STATE + FEDERAL REGULATIONS OR NATURAL CYCLING. THE FACT REMAINS THAT COAST-WISE, THE FISH ARE HERE STRONGER THAN EVER. CAROLINA CAUGHT THEIR YEARLY ALLOCATION IN JUST NINE DAYS AND THEY GET THE LIONS SHARE OF THE QUOTA!

THE STATE OF NEW YORK ALLOCATES OUR TINY PORTION ON A QUARTERLY BASIS SO ALL OF US HAVE SOME FISH TO CATCH. AND WHEN I SAY TINY, I MEAN TINY! WE GET OUR DAILY LIMIT IN ONE OR TWO 1½ HOUR DRAGS AND GO HOME ITS NOT MUCH BUT ITS ALL WE HAVE. IF YOU GO TO A COAST WISE QUOTA, THERE WILL BE NO SUMMER FLOUNDER FISHERY FOR EIGHT MONTHS OF THE YEAR (OVER PLEASE)

(3)

THE BIG BOATS WILL FILL IT IN THE FIRST FEW WINTER MONTHS. THE PRICE OF ALL FLAT-FISH WILL DROP TO PENNIES. A COASTWISE QUOTA WILL SPELL FINANCIAL RUIN FOR ALL OF US AND WILL BE THE DEATH BLOW FOR THE ENTIRE INSHORE FLEET.

I UNDERSTAND THAT YOU ARE CONCERNED ABOUT A YEAR CLASS OF FLUKE AND THE LACK OF BIG FISH THERIN. WERE THEY CAUGHT UP? CONTEMPLATE THIS: BIG FISH DONT SWIM WITH LITTLE ONES. I REMEMBER YEARS AGO WHEN I FISHED THE CANYONS FOR SCUP, WE NEVER CAUGHT THE BIG HUMPBACKS WITH THE PINS. THEY SWAM SEPERATLY. THE SQUID AND BLACKBACK BEHAVE THE SAME WAY. AND THE SAME THING HOLDS TRUE FOR THE FLUKE. IF YOU WANT TO SEE THE BIG FISH, YOU HAVE TO GO TO WHERE THEY ARE. WHITING BOATS FISHING BY THE HAGUE LINE ARE KICKING OVER 10 TO 15 BUSHEL OF LARGE + JUMBO FLUKE PER-TOW! VEACHES CANYON HAS ALWAYS BEEN KNOWN FOR ITS LARGE + JUMBO FLUKE POPULATION. BUT WHO WILL GO THAT FAR ANYMORE FOR THE SMALL AMOUNTS WE ARE ALLOWED TO CATCH.

HOW ABOUT THE WHITING? TRADITIONALY THIS HAS BEEN A SMALL BOAT FISHERY. BUT SINCE THE OVERSEAS PIN WHITING FISHERY HAS PROVEN SO LUCRATIVE + THEY HAVE BEEN FOUND IN 100 FATHOMS AND DEEPER,

(NEXT PAGE)

(4)

THERE HAS NOT BEEN AN INSHORE WHITING FISHERY AT ALL. AND NOW YOU WANT TO CHASTISE US AGAIN WITH A 3" BAG? YOU LEAVE ME DUMFOUNDED!

IN CLOSING, LET ME REMIND YOU AGAIN THAT THE STATE + FEDERAL REGULATIONS THAT ARE ALREADY IN PLACE ARE WORKING AND WORKING EXTREMELY WELL. INSTEAD OF IMPOSING NEW HARDSHIPS ON AN ALREADY OVER-BURDENED INDUSTRY, THINK OF WHAT THEY WILL DO TO THE FAMILIES OF THE FISHERMEN WHO MUST LIVE BY THEM. THIS LETTER WAS NOT WRITTEN MALICOUSLY. ITS INTENT IS TO MAKE YOU AWARE OF WHAT IS HAPPENING IN AN ALREADY OVER-REGULATED INDUSTRY. FEEL FREE TO CONTACT ME BY MAIL OR BY PHONE

SINCERELY,

Anthony Sougstad

ANTHONY SOUGSTAD

KC

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
FISHERIES DIVISION

April 9, 1997

RECEIVED
APR 23 1997
MID-ATLANTIC FISHERY COUNCIL

David R. Kiefer, Executive Director
Mid-Atlantic Fishery Management Council
Room 2115 Federal Building
Dover, Delaware 19904-6790

Re: Comments on Amendment 10 to the Summer Flounder FMP

Dear David:

I would like to offer comments for the Connecticut Department of Environmental Protection regarding proposals for inclusion in Amendment 10. But, first I must state that we are concerned that there was inadequate notice that alternative quota management options was a subject of consideration at the public hearings. The MAFMC February 27, 1997 notice of public hearings barely mentioned this issue. Reference to quota management was on the top of the back page and was easily missed. I had to read the notice two times before I picked it up, and I was looking for it!

AMENDMENT 10 PREFERRED ALTERNATIVES

1) Five and one-half inch minimum mesh throughout the net.

This is not an issue for most of our federal permit holders as they must comply with 6" throughout the net as a requirement in the groundfish plan. But the "throughout the net" requirement will be burdensome for many of our small inshore non-federal permit holders. These small inshore fishermen need flexibility to survive. Currently, they can meet our seasonal mesh regulations requirements by just changing codends. If this becomes a compliance criteria for the ASMFC plan they will have to purchase a new net specifically for summer flounder. A $2,000 to $3,000 investment is significant for these fishermen.

The proposal for "throughout the net" was offered to avert the practice of "choking off tail bags" and the use of liners to target smaller fish. This really is not a significant issue in this area as we see larger fish. As you know, fluke tend to migrate north and east as they grow. Perhaps the proposal should be considered on a regional basis where the harvest of small fish has been a problem. This regional approach may also address the issue of a shortage of supply of 5 ½" mesh in the Rhode Island and New Jersey areas; a North Carolina supplier has indicated they have enough 5 ½" twine to supply the North Carolina fleet.

2) Continue the moratorium on entry of additional commercial vessels.

The DEP supports continuation of the moratorium but feels that an end date needs to be specified. When we entered into the quota system almost 5 years ago we expected the stock to rebuild, the quota to increase, and perhaps limited entry could be provided by the late 1990's. Unfortunately, we have a long way to go in rebuilding this stock. Fishermen have been denied access for 5 years with no end in sight. A reasonable moratorium end date would provide a milestone for reconsideration, and some hope for these fishermen.

3) Retain vessel replacement criteria.

The DEP believes that the vessel replacement criteria should be changed and would support allowing a one time voluntary replacement and a 10% increase in vessel length and GRT, and a 20% increase in horsepower as currently allowed in the Northeast Multispecies plan. The current vessel replacement criteria in the summer flounder plan are too restrictive; a vessel has to sink, burn or be declared unseaworthy by the Coast Guard. Fishermen are forced to continue fishing aging, economically inefficient and potentially dangerous vessels. The criteria in the Northeast Multispecies plan are reasonable and should not result in a significant increase in fishing effort if applied to summer flounder. Moreover, harvest in the summer flounder plan is already capped by the commercial quota.

4) Remove requirement that summer flounder must be landed during a 52 week period to retain the federal permit.

The DEP supports removal of this requirement. This requirement forces fishermen to land summer flounder, unnecessarily increases fishing mortality, and penalizes fishermen for conservation. Moreover, no fishermen has lost his summer flounder permit because of this requirement.

5) Require that states document all summer flounder landings in their state not otherwise included in monitoring of federal permit-holders.

We strongly support adoption of this requirement. This provision would reduce the potential for over-harvesting beyond the quota and would facilitate faster recovery of the summer flounder stock. While most states require fishermen to report, not all may be reporting summer flounder landings to NMFS. The proposed requirement would ensure that all states are on a "level playing field" regarding state landings in relation to their quota.

6) Allow *de minimus* status for states.

The DEP supports this proposal. A state should not have to implement a quota management system with the associated administrative burdens and regulations if their commercial landings is an insignificant bycatch fishery.

7) Retain the current state-by-state commercial quota system.

The DEP strongly believes that the current state specific quota system is inequitable, unfair, and clearly discriminates between residents of different states, a violation of Magnuson-Stevens National Standard 4.

As you know, the state percent shares of annual coastwide commercial quotas are based on each state's (Maine through North Carolina) proportion of total summer flounder landings for the period 1980 to 1989. During this period (the base period), several states, primarily mid-Atlantic and southern states, had significantly smaller minimum length limits than the northern states. While Connecticut, New York, Massachusetts (14" in 1983) and Rhode Island (14" in 1984) had a 14" minimum length for the majority of the base period; North Carolina maintained an 11" minimum through September 1, 1988 when it increased to 13 inches and, Virginia had no minimum length limit until 1981 when they implemented a 12" length limit (10% or 2 fish tolerance for sub-legal fish) which they maintained until 1993. Also, during the base period, New Jersey had a 12" minimum length until 1986 when it increased to 13", Delaware had no minimum length, and Maryland had a 10 inch minimum. Consequently, states such as North Carolina and Virginia were able to land summer flounder that the New England states could not retain due to their higher length limits. This resulted in greater landings, and a greater proportion of the base period total for those southern states in relation to the states with higher length limits. The combined state quota shares for North Carolina and Virginia total almost 50% of coastwide annual quotas. Summer flounder landings during the base period for Connecticut, Massachusetts, Rhode Island, and New York would have been higher if these states had lower length limits, and landings for the southern states would have been lower if they had higher length limits. Consequently, it is apparent that equitable allocation of a coastwide quota **cannot** be based on state's proportion of landings during the 1980-1989 base period. Such a system is inherently unfair, inequitable, and clearly discriminates between residents of different states.

The inequity of the state share system quickly became apparent during the early years of the quota management system. Connecticut, Rhode Island, and New York had to impose restrictive trip limits to prevent over harvest of their annual quotas, while Virginia and North Carolina, had no restrictions during 1993 what so ever! Moreover, during 1993 North Carolina transferred almost 400,000 pounds of fluke quota to other states because they could not harvest their quota! In 1994 North Carolina again transferred 150,000 lbs to another state (NY). Connecticut also benefited from a transfer of 23,085 lbs of North Carolina quota via New Jersey in 1994. The inequity of quota management system is also blatantly apparent when New England fishermen fishing side by side with North Carolina fishermen, can only retain a few hundred pounds of fluke while North Carolina fishermen have had no trip limits for the first 4 years of the plan. The summer flounder FMP requires reductions in fishing mortality, the burden of this reduction should be equally borne and applied to all fishermen.

We strongly urge replacement of the state share quota system with a coastwide quota management system. A coastwide system would treat all fishermen fairly and equally. All would have equal opportunity to access the resource and, they could also land in any port. Fishermen would not be compelled to travel to out of state ports to land summer flounder. This would improve economic

efficiency and quality of the product. This system would also reduce market gluts, insure a more continuous supply of product and reduce large changes in price. But most importantly, fishermen would be treated equally and fairly, and not be penalized because of their state of residence.

Either coastwide system presented in Amendment 10 would be acceptable to the DEP. But, we prefer the alternative with two winter coastwide periods with a state-by-state summer period. While no system is perfect, and even the coastwide system may have significant problems to overcome, the combination state-quota/coastal system incorporates the best of both systems. The larger offshore vessels feel comfortable that they can compete effectively with other state's offshore fleets during the productive winter periods, while the vulnerable inshore fleet is ensured an allocation for the summer period when the fish become available. If the coastal/state quota system is adopted, the base period for allocation of the state quotas should be 1990 to 1992.

Although not covered in Amendment 10, consideration should be given to other quota management alternatives. Ideas that could be explored are 1) a Days at Sea approach or, 2) regional management strategies such as a higher minimum length for the northern states with no quota, and a lower length limit and a quota for mid-Atlantic/southern states.

8) Prohibit transfer at sea.

We strongly support this proposal. This would reduce the possibility of vessels circumventing state and federal landing limits and permit requirements. This will also protect permitted vessels and insure the effectiveness of the moratorium.

9) Special state permit for party/charter vessels to allow possession of summer flounder parts smaller than the minimum size.

We do not believe that this proposal is the best way to address the problem. Presently, mates cannot fillet fish for customers until arrival at the dock. This task could be performed while steaming back to port resulting in a time savings for customers and operators, and would also provide additional income. We addressed this problem in Connecticut by prohibiting possession of any summer flounder fillets less than the minimum length unless the carcass of the fish from which the fillet was removed is retained and meets the minimum length. Some would argue that this does not address the issue of disposal of racks. This is not a problem in our area as charter/party operators have a ready market for the racks for bait. Most have long standing relationships with local lobstermen.

Adoption of the state permits proposal could result in adjacent states having different rules. This is an important law enforcement issue in Long Island Sound as we have a state line running down the middle of the Sound, and an area where three state jurisdictions converge in eastern Long Island Sound. I would propose that an approach similar to what we have in Connecticut be included in Amendment 10.

ALTERNATIVE TO THE AMENDMENT

1) **Revise the formula used to allocate the commercial quota to the states.**

Unfortunately, the hearing officer forgot to address this issue at the hearing and I also forgot to bring it to his attention.

The DEP strongly feels that the existing base period (1980 to 1989) used to allocate the annual commercial quota to the states results in inequitable and unfair state shares. During this period (the base period), several states, primarily mid-Atlantic and southern states, had significantly smaller minimum length limits than the northern states. This resulted in greater landings, and a greater proportion of the base period total for those southern states in relation to the states with higher length limits. Therefore, an equitable allocation of a coastwide quota cannot be based on state's proportion of landings during the 1980-1989 base period. Such a system is inherently unfair, inequitable, and clearly discriminates between residents of different states.

While the DEP prefers a coastwide quota management system to a state share quota system, utilizing a base period of 1990 to 1992 should result in more equitable state allocations as there were smaller differences in length limits during this period.

Thank you for consideration of our comments and concerns.

Sincerely,

Ernie

Ernest E. Beckwith, Jr.
Director

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POINT LOOKOUT, N. Y. 11569
(516) 432-5522

RECEIVED
APR 14 1997
MID-ATLANTIC FISHERY COUNCIL

April 9, 1997

Mid atlantic Fisheries Management Council
Room 2115 Federal Building
300 South New Street
Dover, Delaware 19904-6790

Dear Dr Gilford

We wish to go on record in support of a new summer flounder plan which establishes seasonal quotas and coast-wide trip limits. Our rationale for this position is as follows.

1. Reduce vessel run times when fishing long distances from states that are open, while other states closer to fishing areas may be closed under the current system. Product quality will obviously improve.

2. The reliability of landings vs. the quota recordings should improve.

3. Confusion over which states are open for what trip limits will be minimized.

4. If done properly, the overall administrative burden that exists under the current system should be reduced.

5. It will bring summer flounder management in conformance with other species

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(516) 432-5522

that are on a coast-wide basis
(ie Scup-plan).

After several years experience, it is apparent that the current system has serious defeciencies that must be fixed if we expect to achieve the six (6) major objectives in the FMP

Very truly yours

cc. DAVID KEIFER

KC

MEMORANDUM
April 11, 1997

To: David Karlen
From: C. Wayne Lee
3000 Raymond Ave.
Kill Devil Hills, NC 27948
Subject: Amendment #2 to Summer Flounder Plan

First, let me thank you for holding a public meeting in Manteo, NC. As you know summer flounder is an important species to both the recreational and commercial communities.

1. 5 ½ inch mesh throughout. I strongly support this change. It will prevent the use of choke straps to tie off the tailbag. Also, it should reduce the kill of smaller fish. It will not stop the use of illegal liners or double nets if a boat decides to cheat. Hopefully stock levels will be large enough to act as an incentive against cheating.
2. I support the moratorium on additional vessels. However, an effort should be made to find a way to reduce capacity in this fishery.
3. I concur that we should remove the requirement that a boat with a permit must land summer flounder during a 52 week period. This forces effort on an already depleted resource and spreads the state quota over a larger base which penalizes the boats that are dependent on this species.
4. I strongly concur that states document all summer flounder commercial landings in their state that are not otherwise included in the federal monitoring of permit-holders. The North Carolina trip ticket program does that in our state.
5. I support the de minimum status, providing the state implements the same minimum size required in other states with a program.
6. I do not think we should allow transfer at sea.
7. I support a permit system for party/charter boats to allow possession of parts smaller than the minimum size.
8. I strongly support retaining the state by state quota system. The coastwide quota system reallocates fish from the southern to the northern states and is unfair. If such a system is to be discussed, then we must open all other fisheries that now preclude our boats so that we have a level playing field. Anything less would be unfair.

Wayne Lee

JOSEPH I. LIEBERMAN
CONNECTICUT

COMMITTEES:
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS
GOVERNMENTAL AFFAIRS
SMALL BUSINESS

United States Senate

WASHINGTON, DC 20510-0703

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(202) 224-4041

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HARTFORD, CT 06103
203-240-3566
TOLL FREE: 1-800-225-5605

April 15, 1997

RECEIVED
APR 21 1997
MID-ATLANTIC FISHERY COUNCIL

David R. Keifer
Executive Director
Mid-Atlantic Fishery Management Council
300 South New Street
Dover, DE 19904-6790

Dear Mr. Keifer,

I am writing to urge the Council to adopt a proposed amendment change regarding the quota on summer flounder. The amendment would provide a more equitable alternative to the current state-by-state quota system.

The Magnuson-Stevens Act requires that conservation and management measures treat all participating states equitably and fairly. No state is entitled to an excessive share of the allocation under the act. Since its inception, the current quota system has based the fluke allocation on poor historical baseline data that did not address the issue of stricter conservation requirements in states like Connecticut. As a result, Connecticut fishermen and their families are treated inequitably and other states receive an excessive share of the commercial allocation.

The summer flounder fishery is important to Connecticut's economy and is an essential part of the state's cultural history. The current quota system has disrupted severely traditional fishing, landing, and processing of the flounder catch in our state. It is clearly flawed and inequitable. For several years, the state of Connecticut, the Congressional delegation, local elected officials, and the fishing fleet have tried to work within the system to make the summer fluke quota fair for all commercial fishermen who rely on this resource for their economic livelihood. To date, despite our continued efforts, nothing has been done to address this problem.

Connecticut has long advocated a coast-wide quota and uniform trip limit as a more equitable alternative to the current state-by-state quota system. These concepts are incorporated in Amendment 10 to the summer flounder management plan. I urge the Council to adopt this alternative.

I would appreciate it if you could add this letter to the record for the public hearing held April 9, 1997 in New London, Connecticut.

Sincerely,

Joe Lieberman

PRINTED ON RECYCLED PAPER

North Carolina Fisheries Association, Inc.

P.O. BOX 12303
New Bern, N.C. 28561

Phone: (919)633-2288
FAX: (919)633-9616

RECEIVED
APR 21 1997
MID-ATLANTIC FISHERY COUNCIL

April 17, 1997

Mr. Dave Keifer
Executive Director
Mid-Atlantic Fishery Management Council
Room 2115, Federal Building
300 S. New Street
Dover, DE 19904

***Comments*: Amendment #10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan**

Dear Dave:

Thank you for the opportunity to comment on Amendment #10 to the Summer Flounder FMP. Please accept these comments on behalf of the members of the North Carolina Fisheries Association (NCFA).

1) Minimum Mesh
NCFA supports adding a provision that requires 5.5" mesh throughout the net. Fishermen currently using this mesh indicate it operates much cleaner and allows for the escapement of numerous summer flounder ≤13". Additionally, we understand that approximately 620 northern fishermen are currently operating with Multispecies Days at Sea permits and harvesting flounder with nets having 6" mesh codends. Therefore, we also request that the MAFMC include an option allowing for a 6" mesh tailbag which will reduce the impact on the industry. This provision has conservation benefits since a 6" mesh targets a 14.7" flounder. Additionally, this option will prevent northern fishermen from a requirement to replace all their nets which will lead to further economic disruption.

2) Moratorium On Entry
NCFA supports maintaining the current moratorium on new entrants due to the fact that the fleet can harvest the entire quota in short, record time. However, in the interim, we request that NMFS and the MAFMC define what is a "recovered summer flounder stock" so that when achieved, a process can be developed for allowing new entrants. NCFA does not support extending the moratorium for another 5 years, but rather for some reasonable, interim period (i.e. 1-3 years).

Jerry Schill	Rick Marks	Sandy Semans	Sarah Schill	Dawn Swindell	Amy Willis
President & Secretary	Vice President Government Affairs & Science	Vice President Communications	Office Manager	Advertising Coordinator	Special Projects
Ext. 121	Ext. 122	Ext. 123	Ext. 120	Ext. 124	Ext. 125

3) Expiration Of Moratorium Permit
NCFA supports removal of the expiration provision requiring summer flounder landings every 52 week period. This part of the regulation is not necessary and may encourage extra effort in the fishery. Commercial fishermen should not be forced "to use or lose" their permits.

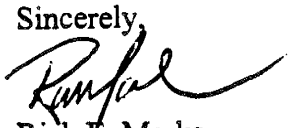
4) State Landings
NCFA supports the provision requiring that all States document all summer flounder landings regardless of federal permit presence/absence. This will ensure that all landings are accounted for in the management process and result in parody between state data collection programs. Furthermore, since States will be required to improve data collection under this provision, NMFS should also be required to improve fishery-dependent biological sampling to more accurately quantify the age structure of the summer flounder stock.

5) Vessel Replacement Criteria
The current vessel replacement criteria (VRC) may lead to unsafe conditions for commercial fishermen and is therefore, not satisfactory. The VRC must be improved to allow for voluntary increases in horsepower (>20%), length and gross registered tonnage (at least 10%). Since this fishery is managed under a federal quota system with state-mandated trip limits, allowances for vessel and safety improvements should not have a deleterious effect on the resource. Additionally, numerous fishermen are of the opinion that mandating VRC is an infringement on their rights as taxpaying, U.S. citizens.

6) Commercial Quota System
The NCFA supports the preferred alternative. While members of the NCFA are not in favor of summer flounder quotas to begin with, they recognize that regional differences in fish size and the fishery are not conducive to a "one size fits all" quota management approach. In reality, the trip limits associated with the coast wide alternatives would not allow for participation by larger trawlers or vessels originating on the western side of NC's extensive sound system.

Thank you for the opportunity to comment on the proposed changes to Amendment #10. Please do not hesitate to call on NCFA should you have any questions regarding our comments.

Sincerely,



Rick E. Marks
VP, Government Affairs & Science

DIC - CM

WEST END FISHERMEN'S ASSOCIATION

Apr

RECEIVED
APR 24 1997
MID-ATLANTIC FISHERY COUNCIL

To MAFMC and ASMFC.

I feel compelled to add this letter to [illegible] earlier to include some newly discovered facts. There is a wide spread belief among the fishermen west of 72°30' in New York and New Jersey that if they speak out against the 5½" mesh thru out the net proposal that the Council would some how force a 6" regulation on them. At first I thought that it was just a local rumor, I called some fishermen in New Jersey and they told me that they had heard the same thing. This must have really scared the fishermen since I was told that not even one fishermen showed up at the April 7th hearing at Kingsborough Comm. College. This hearing was scheduled to accomadate the fishermen west of 72°30'

The turn out at the April 8th meeting in Riverhead N.Y. had between 20 to 30 fishermen in attendance with some of them supporting the 5½" mesh thru out the net proposal. These fishermen fish almost exclusively east of 72°30' and are not impacted by this proposal to the extent that the fishermen west of the line are. In fact this proposal would give them a distinct advantage over the fishermen west of the line.

I have recently recieved data from NMFS that show as many as 61 New York boats east of 72°30' obtained a small mesh exemption for Summer flounder. This means that during the winter months these boats can use any

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WEST END FISHERMEN'S ASSOCIATION

size mesh they choose when directly fishing for summer flounder while the fisherman to the west would be forced to buy all new nets This violates the National Standard which states in effect that all fishermen be treated equal. All we ask west of 72°30' is to continue to use our old nets with a 5½" codend. The data shows that you get the same selectivity with this net as you would with a net that is all 5½" mesh

I am enclosing a copy of the list of boats that enjoyed the small mesh exemption in 1995 to 1996 (135 boats coastwide). (1993 - 1994 = 130 Boats) (1994 - 1995 = 174 boats) the 1996 to 1997 was not complete at the time I obtained this data. It is my belief that the fishermen at the Riverhead meeting that spoke in favor of 5½ are on this exempt list and see this as an opportunity to gain a business advantage over their competation to the west.

I have also found out that the Mid Atlantic Council has set up a committe to study the possibility of regulating us as a mixed trawl fishery. This is truly what we have always been. It would be a shame if shortly after we bought new nets, @$4,000 each, the rules were changed again and these net became useless

The bottom line is the summer flounder are back, now let's save the fishermen from extinction. I think it's time to give the fishermen a break and start addressing other important issues such as Habitat Degradation.

Yours truly,
Charlie Wertz
Charlie Wertz

160 Gordon Place, Freeport, NY 11520 • (516) 623-7076

WEST END FISHERMEN'S ASSOCIATION

March 1 1997

To ASMFC and MAFMC

I am Charles Wertz, an industry adviser for Summer flounder to the Mid-Atlantic Fishery Management Council. I have owned an operated a dragger out of Freeport N.Y. for over 30 years.

The 5.5 inch diamond mesh throughout the entire net proposal, included in Amendment 10, is arbitrary and capricious and is not needed at the present time. It was proposed to eliminate an alleged problem in the Southern States where there was suspicion that some fishermen were able to alter the net to retain 13" fish with the adoption of the 14" size limit for the entire coast this problem has been eliminated. I might also add that when I questioned the Chief of Enforcement for NMFS last year he stated to me and the Mid Atlantic Council that "there had been only 4 alleged violations to date.

The problem with this Draconian measure is it will immediately make 20 to 25 thousand dollars worth of nets useless for 40 to 50 day boats that fish the New York Bight area. Each one of these boats own 5 to 6 nets, at a cost of $4,000 each, that are less than 5½". These nets are presently legal West of 72°30" for ground fish and summer flounder.

When Chris Moore, biologist for MAFMC, was questioned about escapement of Juvenile fish from complete 5½" nets as opposed to only 5½" codends he stated "the escapement is the same."

Since there is no scientific reason to adopt this measure at the present time, I strongly request that this provision

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WEST END FISHERMEN'S ASSOCIATION

be dropped from Amendment 10. I might also point out that this would not be unprecedented since there is now an exemption program during the winter months East of 72°30", that exempts over 50 boats from using a 5½ Codend for summer flounders, thus not subjecting them with the same financial burden proposed for the "day boats" of the New York Bight. Admendment 10 also affords relief to party/charter vessels by allowing the possession of summer flounder parts smaller than the minimun size.

All I am asking for is relief from a hardship which if imposed will have no effect on the Summer flounder population but would cause a severe financial hardship to a group of commercial fishermen who are barely making ends meet at this time.

In closing I would like to state that in my opinion and observations the Summer Flounder population has rebounded under present regulations beyond all expectations. North Carolina caught over 1 million pounds in just 9 days. Let's take a deep breath at this time and refrain from passing any regulations that are not necessary and would cause a group of struggling fishermen such severe financial hardship.

Yours truly

Charlie Wertz

Charles Wertz
Chairmen.

160 Gordon Place, Freeport, NY 11520 • (516) 623-7076

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1995 - 1996 SUMMER FLOUNDER SMALL MESH EXEMPTION PROGRAM

HOME STATE	VESSEL NAME	OWNER NAME	HOME PORT
CT	MATTHEW MARK	TIDEWATER FISH/DAVID JONES	STONINGTON
	LADY HELEN	F/V LADY HELEN INC	STONINGTON
	SEAFARER	ARTHUR MEDEIROS	STONINGTON
	JENNA LYNN	R C G FISHERIES INC	STONINGTON
	SUSAN & FRANCES II	TIMOTHY F MEDEIROS	STONINGTON
MA	FIRST LIGHT	FIRST LIGHT SEAFROZEN LLC	BOSTON
	LUCKY THIRTEEN	FREDERICK W BENSON	BOSTON
	RHONDA DENISE	ROBERT SWEENEY	BOSTON
	SERENA	M & R FISHERIES INC	BOSTON
	INTREPID	ERIN FISHERIES	BOSTON
	THUNDER BAY	THUNDER BAY INC	BOSTON
	ALL MAINE WOMAN	BRIAN E TURNBAUGH	BOSTON
	ALLIANCE	EPIPHANY SEAFOOD INC	BOSTON
	CHEYENNE	CHEYENNE INC	BOSTON
	XIPHIAS	FISHING VESSEL GALE INC	BOSTON
	LIGHTNING BAY	LIGHTNING BAY INC	BOSTON
	RHODE ISLAND	BRIAN LOFTES	BOSTON
	OSPREY	OSPREY FISHING CORP	BOSTON
	NAUTILUS	DAVROD CORP	BOSTON
	MARGARET HOLLEY	KAREN SUE INC	BOSTON
	GREEN ARROW	V & G SEA PRODUCTS INC	BOSTON
	LUKE AND SARAH	WOOD HOLLOW TRAWLERS INC	BOSTON
	MIKHAELA LOUISE	MIKHAELA LOUISE INC	BOSTON
	MISS JUDITH	MICHAEL R MCCAFFREY	BOSTON
	SEA BREEZE	BRUCE LADD	BOSTON
	ELIZABETH R	ROWELL FISHING INDUSTRIES INC	BOSTON
	NARRAGANSETT	INDEPENDENT FISHING CORP	BOSTON
	QUITSA STRIDER II	QUITSA FISHERIES INC	CHILMARK
	UNICORN	VINEYARD HIGHLAND INC	MENEMSHA
	LUCISAURA	J & A FISHING CORPORATION	NEW BEDFORD
	FOUR PAWS	KENNETH CHIPERFIELD	NEW BEDFORD
	MAJESTIC	F/V MAJESTIC INC	NEW BEDFORD
	IRENE MARIA	FERREIRA FISHING	NEW BEDFORD
	SANTA QUEEN	FELCAL FISHING CORP	NEW BEDFORD
	POTPOURRI	VESSEL BETTY ANN INC	NEW BEDFORD
	LUCKY VENTURE	THREE FRIENDS FISHING CO	NEW BEDFORD
	CREOLE BELLE	A & W FISHERIES INC	NEW BEDFORD
	MANDY RAY	MANDY RAY FISHERIES INC	PLYMOUTH
NC	VALLEY WIND	CLIFTON & CAROL POTTER	LOWLAND
	CAPT ALFRED	CLIFTON & CAROL POTTER	LOWLAND
	SIDDIE GOLDEN	CLIFTON & CAROL POTTER	LOWLAND
	HARD TIMES	CAROL POTTER	LOWLAND
	CAPT POTTER	CLIFTON & CAROL POTTER	LOWLAND
	WENDY LYNN	CLYDE A POTTER	LOWLAND
	GENTLE BREEZE	GENTLE BREEZE INC	LOWLAND
NJ	JERSEY GIRL	F/V LINDA LEE INC	CAPE MAY
	VAUD J	VAUD J INC	CAPE MAY
	BULLDOG	BULLDOG FISHERIES INC	EAST BRUNSWICK
NY	ILLUSION	MARK S PHILLIPS	GREENPORT
	CIRRUS	WHITE WAVE CORP/R COOPER	GREENPORT
	BAY OF ISLES	MICHEL ZALESKI	GREENPORT
	PRINCE OF PEACE	BOAT EVENING PRAYER INC	HAMPTON BAYS
	LADY IRMA	BRUCE BEKWITH	MONTAUK
	CHRISSY K	GEORGE M MILLER	MONTAUK
	JAIME ELIZABETH	SEA HARVEST INC	MONTAUK
	PONTOS	PONTOS FISHERIES INC	MONTAUK
	RIANDA S	CHARLES E WEIMAR	MONTAUK
	BOZO	THEODORE STEVENS	MONTAUK
	CALLI-LIN ELIZABETH	JULIA A STAVOLA INC	NEW YORK
	PERCEPTION	WILLIAM GRIMM	NEW YORK
	FARE LADY	WILLIAM GRANAU	NEW YORK
	CORY & LEAH	DAVE ARIPOTCH	NEW YORK
	NEPTUNE	ALAN CHAPLASKI	NEW YORK

1995 - 1996 SUMMER FLOUNDER SMALL MESH EXEMPTION PROGRAM

	STEPHANIE & BRYAN	ELMRIDGE FISHERIES INC	NEW YORK
	BUDDY	PAULINE III INC	NEW YORK
	CORRINA	MEL MOSS	NEW YORK
	SHINNECOCK II	JOHN TERESI	NEW YORK
	DONNA LEE	RONALD J COCUZZA	NEW YORK
	RAZOR'S EDGE	SPRINGVILLE FISHERIES INC	NEW YORK
	EVENING PRAYER	LAURENCE VAN ESSENDELFT	NEW YORK
	TERRI SUE	GLENN R BECK	NEW YORK
	HAIL MARY	JOHN H WINDELS III	NEW YORK
	ATLANTIS	STUART J FOLEY	NEW YORK
	MERIT	MERIT SEA FOOD CORP	NEW YORK
	ATLANTIC TRAVELER	ROCKPORT YACHT INC	NEW YORK
	RITA R	NICK'S LOBSTER INC	NEW YORK
	NIGHTMOVES	JACKSON FISHERIES	NEW YORK
	DOTTIE ANN	RICHARD BECKMANN	NEW YORK
	KATIE & MEG	FISH HAWKS INC	NEW YORK
	PATRIOT	PATRIOT FISHING CO	NEW YORK
	CHARLOTTE G	DRAG-ON FISHING CO	NEW YORK
	MISTER BILL	OFFSHORE DIVING CORP	NEW YORK
	HUNTER	EAST COAST LOBSTER CO INC	NEW YORK
	PATTY JO	CLINTON FISHERIES INC	NEW YORK
	MEGAN BETSEY	CHARLES O'DONNELL	NEW YORK
	ARLENE AND CARRIE	ARLENE AND CARRIE INC	NEW YORK
	MATTHEW AND MELISSA	LAUREN JO INC	NEW YORK
	MISS NANCY	ROBERT HAMILTON JR INC	NEW YORK
	JAIME MAE	JAIME MAE INC	NEW YORK
	MARY ELIZABETH	MELVIN H MOSS	NEW YORK
	MISS SANDY	JOHN & SUSAN BERGLIN	SHINNECOCK
	CHAMPION	GREGG JAYNE	SHINNECOCK
PA	SUN DANCE	F/V SUN DANCE LTD	PHILADELPHIA
	LORI MICHELE	WALL CHILD INC	PHILADELPHIA
RI	J B J	IKE & JENS INC	GALILEE
	LAURA JEAN	HUNTLEY FISHERIES INC	NARRAGANSETT
	ING TOFFER II	CAP INC	NEWPORT
	CATHERINE LOUISE	HUNTLEY FISHERIES INC	POINT JUDITH
	WALLABY	TREVOR & CHRISTINE DALEY	POINT JUDITH
	CINDY ANN	JOHN KILCOMMONS	POINT JUDITH
	LINDA MARIE	KENNETH A KETCHAM	POINT JUDITH
	DONA MARIA	CLARK A REPOSA SR	POINT JUDITH
	KATRINA LEE	CLARKE REPOSA	POINT JUDITH
	MARY ELENA	HAROLD A LOFTES JR	POINT JUDITH
	BARBARA JOAN	FINEST KIND SEAFOOD CO. INC	POINT JUDITH
	DEBORAH LEE	RODMAN W SYKES	POINT JUDITH
	KAREN ELIZABETH	SALT PONE FISHERIES INC	POINT JUDITH
	EXCALIBUR	RENAISSANCE TRAWLING CORP	POINT JUDITH
	KATE & SHAWN	J & B FISHERIES	POINT JUDITH
	HUNTRESS I	DAVROD CORP	POINT JUDITH
	TRINITY	EDWARD J PAGE	POINT JUDITH
	SHELBY ANN	HARD BOTTOM FISHERIES	POINT JUDITH
	TRAVIS & NATALIE	FREDERICK J MATTERA	POINT JUDITH
	CHARLIE'S PRIDE	SEAFARER ENT INC	POINT JUDITH
	PERSEVERANCE	DANIEL MACIESKI	POINT JUDITH
	BLACK SHEEP	MIKE PAUL TARASEVICH	POINT JUDITH
	SECOND WIND	CHAMPLINS OFFSHORE ENT INC	POINT JUDITH
	ATLANTIC QUEEN	HOWARD A FOLLETT	POINT JUDITH
	GRANDVILLE DAVIS	CHRISTOPHER BROWN	POINT JUDITH
	HEATHER LYNN	HEATHER LYNN INC	POINT JUDITH
	VIC-TER-RAE	RAYMOND W LIVERNOIS	POINT JUDITH
	FAIR WIND	DANIEL MACIESKI	PT JUDITH
	E CARL RICE JR	JOS & MARJ WHALEY	PROVIDENCE
	FORAGER	HIGH POINT TRAWLERS INC	PROVIDENCE
	SAINT JUDE	DAVID BOOTH	PROVIDENCE
	ROSE MARIE	ROSE MARIE INC	WAKEFIELD
	DEBBIE SUE	KAREN SUE INC	WAKEFIELD

1995 - 1996 SUMMER FLOUNDER SMALL MESH EXEMPTION PROGRAM

	REBECCA MARY	SCOTT W BABCOCK	WAKEFIELD
	ZELLA	SCOTT W WESTCOTT	WAKEFIELD
	ENTERPRISE	DAPPER FISHERIES INC	WAKEFIELD
	ROANN	THOMAS WILLIAMS	WESTERLY
	AGGRESSOR	RON-GINO FISHERIES	WESTERLY
	QUIAMBAUG QUEEN	JOSEPH F RENDEIRO	WESTERLY
WV	DOMINATOR	JARR FISHING CORP	FALLING WATERS
	BRENDA LOUISE	MICHAEL J & BRITT M MONTEFORTE	FALLING WATERS

SUMMER FLOUNDER SMALL MESH EXEMPTION PROGRAM

PERMIT YEAR	CT	FL	MA	NC	NJ	NY	PA	RI	VA	W/V	TOTAL
1993	5	1	27		5	46	4	40		2	130
1994	3		64		3	61	2	38		3	174
1995	5		33	7	3	44	2	39		2	135
1996	2		24	1	2	33	1	35	2	2	102 ← incomplete
TOTAL	15	15	148	8	13	184	9	152	2	9	**541**

04/15/97

To Mid Atlantic Fishery Council:

April 20, 1997

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APR 24 1997
MID-ATLANTIC FISHERY COUNCIL

(1)

I strongly oppose the changing of the entire net to 5 1/2 mesh for several reasons of which I will discuss. But first of all I must admit I have a tough battle to try & convince we don't need this mesh change for I feel your minds are made up & also my peers don't going to oppose this with much vengeance. Not that they are not opposed its that they've given up. They think by not opposing it you'll not try to give us 6". But we know this isn't true don't we. Here some of the reasons why I'm opposed to the entire net change. First of all the fluke stocks are very healthy now. When you do tax quotas up or 1 month. I think the stocks are healthy day. This last January quota is a perfect example. For the 1st time no boat was allowed to have any fluke on board prior to Jan 1. usually boats will go out early and have to

cath. by then. And the quota was caught in a couple of weeks I know the quota was cut but still 2 weeks fishing on fish we used to work the whole winter long. The quota was shortened, why because the pole season was over, why? plenty of resource. I'm in favor of to increase fs 14" but not a net change if you think people are choking off not the 14" fish would stop many of these doing so if this is true. All people are choking there not of fish there is many fish still. Lets be realistic the stock is not plentiful due to the 5½" cod end and lets leave it be and just change the fish minimum to 14". I feel the quota should be increased due to the healthy stock. Lets reward the fisherman who built up the stock by allowing them to make a living when quotas are caught in days weeks or months its quite evident the stocks are healthy. With these

small quotas getting filled in a short period of time is indicative of a healthy stock. When I worked on deck on boats we for years fished fluke from Aug to March whenever we wanted. Then the year I bought boat the fluke disappeared all years prior were fine but for 2 years we never fished due to poor landings during this time many boats didn't fish for them. During this time period the fisheries were trying to implement a plan. Guess what happened? The day the 5½" Cod End went into effect the fluke suddenly he appeared. I was out in the Hudson Canyon that day it was first after a major North Easter and there was fluke everywhere. I think those bad years the fish might have had a different cycle. and maybe there was a fish kill or something but we didn't over fish them and if we did I feel we the fishermen them lean years by not fishing for the fluke rebuilt

the stock. The stock is plentiful now let us utilize it. With these individual state quotas getting filled quick it has destroyed the price. Such fluke buyers are buying alternat products because they only get fluke a very short period of time. This deadly fishing has to end. I feel upset of you council members wont fairly address our concerns. My personal feeling is that a lot of you members are just enjoying the nice pay and hotel stays eating shrimp and steak and by polluting the bay right throwing much more around to justify your jobs. Why subject us to financial hardships by making us change the entire net when the stock is healthy. Be reasonable and set an example now that you have to work with the fishermen and not against. Each little mom & pop boat out in our port and surrounding ports probably have 5 to 30,000 dollars in fluke nets. ~~that~~ you're planning

to out law. Please! we think the one long
and hard. We will have to re invest that much
money in the new nets & I'm quite sure we'll never
recoup because we'll still see short seasons due to
quotas being caught up due to healthy stocks.
Let me remind you once more the fishermen don't oppose much
of these giving up. I assure you the appeal, but feel of the
price in you won't try to increase to 6".

(5)

Thank you
Tonnette Lawson

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APR 15 1997
MID-ATLANTIC FISHERY COUNCIL

My name is Arthur Medeiros, President of the Southern New England Fishermen's and Lobstermen's Assoc., Inc.

I would like to go on record as supporting the following:

1. Modify the commercial minimum mesh regulations, such that the minimum mesh provisions currently 5.5 diamond mesh apply to the entire net.
2. Continue the moratorium on entry of additional commercial vessels into the fishery. (Yes with an appeal process)
3. Remove the requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit (support)
4. Require that states document all summer flounder commercial landings in their state that are not otherwise included in the Federal monitoring of permit holders (support)
5. Implement a provision such that any state could be granted de minimum status if commercial summer flounder landings during the last preceding calendar year were less than 0.1 percent of the total coastwide quota. (support)
6. Prohibit transfer of summer flounder at sea: [redacted] (support)
7. Establish a special state permit for party/charter vessels to allow possession of summer flounder parts smaller than the minimum size (leave it the way it is.)

I am in favor of a coastwide commercial quota system allocated into three periods Jan-April, May-October and Nov-Dec. with

A. Uniform trip limits
B. Uniform Mesh Regulations
C. Uniform Fish size of 14" minimum

There has got to be a better way than it is now.

The present system of State quotas was implemented in 1993 at which time each state got a set percentage of the National quota based on State Landings from 1980 thru 1989.

During this base period Conn, New York and Mass. all had a minimum size of 14".

Thru this same time frame North Carolina, Virginia, and New Jersey had a minimum size limit of 11" to 13".

Based on this minimum size of 11"-13" Southern Fishermen particularly those from North Carolina and Virginia were able to land substantial amounts of summer flounder that states with the 14" minimum could not land.

This resulted in large numbers for the southern states during the period of 1980-1989 and substantially lower landings for states with the 14" minimum.

We consider this a direct violation of the Magnuson Act as stated in National Standard ~~for~~ 4 which states that Conservation and Management measures shall not discriminate between residents of different states.

If it becomes necessary to allocate or assign fishing privileges among various U.S. 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 manner that no particular individual corporation or other entity acquires an excessive share of such privileges.

In conclusion I believe that protecting fish stocks and fishermen is an achievable goal and everyone should work to that end on an equal basis.

Once again, I believe that by working together we can achieve our goals.

Arthur Medeiros

Arthur Medeiros, President
S.N.E.F.L.A.

P.S. I would also support a Commercial Quota System that establishes three periods: Two winter coastwide periods Jan-Apr. and November - December and a state by state summer period May-October.

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MID-ATLANTIC FISHERY COUNCIL

Ro

David R. Keifer

John A. Mason
53 Ocean Ave.
Hampton Bays
N.Y. 11946

Regards to
Amendment 10

I agree with almost everything except the quota system

1. The quota should be 4 times as much

2. 1,063 licenses into 11 millions lbs of fluke is about 10,500 lbs per boat. (not enough)

3. I.Q.s would be a way to go. And eliminate a lot of regulations

4. What could happen if you go with the proposed plan, is that each quarter a gang of vessels could mop up the quota quickly, and hurt the resource.

5. As a 50 ft boat operator, I wait every yr to catch fluke. But when it comes to the beach in N.Y. state, in my

Amount, it is almost always shut down.

6. Fish Farming today is being supported by the Federal Government to grow fluke. So what this means is that in order for fish farms to survive, the quota will not be increased for commerical fisherman, no matter how many fish are in the ocean

7. One fish farm claims that in the next couple of years it will produce 3/4 of a million lbs of fluke for market, this is as much as all of New York states quota (This is not Right?)

8. What happened with fish farms when stocks were low is that they made money, now stocks are good and nobody is makeing any money.

John A Brown
F/V Vincenzo

OFFSHORE MARINERS' ASSOC., INC.
114 MacArthur Drive
New Bedford, MA 02740-7277
Tel. 990-1377
April 22, 1997

Dr. James H. Gilford, Chairman
Mid-Atlantic Fishery Management Council
Room 2115 Federal Bldg.
300 South New St.
Dover, Delaware 19904-6790

Dear Dr. Gilford:

On behalf of the Offshore Mariner's Association, I wish to comment on Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The fishermen I represent since 1993 have been denied fair access to fluke that are so common off Massachusetts shores. These offshore fishermen have had to live by the rules set by the Division of Marine Fisheries, rules that have almost completely ended the winter fishery for these vessels except for those vessels fortunate enough to have a license to land fluke in other states and willing to steam hundreds of miles to land their fluke in other ports to have their fish trucked back to Massachusetts. Is this sensible management? My organization insists it's absurd management designed to profit Mid-Atlantic states' fishermen.

By continuing to promote the approach of state allocations, especially during the winter when fluke are in federal waters, the Council unfairly impacts fishermen of my organization. Reasonable trip limits during the winter for all offshore fishermen is a far better approach. There will be some closures, but at least, with separate winter quotas and trip limits, opportunities will exist for my organization's fishermen who no longer will be forced to discard large amounts of fluke. This is wasteful fishing, and the Council should adopt an approach that reduces this waste. This is not conservation. It is desecration!

We support the arguments made by the Division of Marine Fisheries and by the New England Council against keeping the status quo for quota management. We ask the Council adopt an alternative such as the one that establishes the winter quotas with all offshore fishermen competing on an equal footing with each other, but subject to certain trip limits. Adopt an alternative that stops unfairness and inequity and that doesn't put the lives of fishermen represented by my organization, and those from other ports in all states, at great risk as they try to land elsewhere what should properly be landed in their own homeports close to family and friends. Thank you for the opportunity to comment.

Sincerely,

Howard W. Nickerson

Howard Nickerson
Offshore Mariners Association

VSC
VIRGINIA SEAFOOD COUNCIL • 76 Raleigh Rd. • Newport News, VA 23601 • (804) 595-6603 • Fax (804) 596-8771

April 23, 1997

David Keifer
Executive Director
Mid-Atlantic Fishery Council
Room 2115, Federal Building
300 S. New Street
Dover, DE 19904

Dear Mr. Keifer:

The Virginia Seafood Council supports the preferred measures for Amendment 10 adopted by the Council and the Commission's Summer Flounder, Scup and Black Sea Bass Board.

However, we do quibble with the number eight alternative. Since the fishery is tied to a quota, it would not harm stocks if vessel owners chose to replace their boats with slightly larger and more powerful models which might improve safety. At present this is an not an important issue since the fishery is so depressed that very few owners are considering replacing their boats.

We are unequivocally against any move to a coastwide quota system. A coastwide quota system would unfairly disadvantage Virginia and Southern vessel owners and docks. Efforts, by some, to move to a coastwide allocation system cannot be justified.

Although not an issue dealt with specifically in Amendment 10, we also believe that the stock assessment program needs to be reviewed and improved. Captains are consistently reporting that there are more flounder out there than at anytime in their fishing lives. While the information may be anecdotal, these reports are particularly significant since there have been hardly any new entrants to the fishery in the last 15 years. Most Fluke captains have a more than 20-year history in the fishery.

The Virginia Seafood Council represents most facets of the industry in Virginia.

Sincerely,

Daniel Kauffman

Daniel Kauffman
President
CC: John Carmichael

F/V JAIME ELIZABETH
SEA HARVEST INC.

M. McCARRON
45 MADISON HILL DR.
MONTAUK, N.Y. 11954

April 24 97
Mid-Atlantic Council

Re: Amendment 10

Dear Sirs:

Here are my comments as follows, 1.1 agree. 1.2 disagree no more permits should be issued at this time or until commercial quota is above 60 million yearly. I feel we should continue moratorium for another five years and then be resolutted at that time 1.3 agree. 1.4 disagree We want to make all the states count all landings of summer flounder. 1.5 agree, 1.6 Won't be applicable if coastwide trip limit is in effect. 1.7 agree, 2 agree, 3 agree, 4 disagree with quota system but agree with three periods. 5 disagree with quota agree with three periods. 6 agree.

Yours Truly

Michael McCarron

New England Fishery Management Council
5 Broadway, Saugus, Massachusetts 01906-1036
TEL (617) 231-0422 FTS (617)-565-8457
FAX (617) 565-8937 FTS (617)-565-8937

Chairman
Joseph M. Brancaleone

Executive Director
Paul J. Howard

April 24, 1997

Dr. James Gilford, Chairman
Mid-Atlantic Fishery Management Council
300 South New Street
Dover, DE 19901-6790

Dear Dr. Gilford:

I am writing to convey the New England FMC's comments on Amendment 10 to the Summer Flounder, Scup and Black Sea Bass FMP. Our Council appreciates the difficulty of managing an overfished, coastwide fisheries resource and believes some of the approaches that the Mid-Atlantic Council has taken to scup management are beneficial. Clearly the most contentious issue raised by Amendment 10 is whether to change from the state-share allocation system to some other form of allocation, such as numbers 4 and 5 in Appendix I (Alternatives to the Amendment).

We believe the National Standard 4, 5, 9 and 10 issues raised below justify a change in the system. Our Council, therefore, recommends that the Mid-Atlantic Council adopt either the "hybrid" allocation (two winter-period coastwide quotas with common trip limits for all, and a summer period quota allocated on a state-specific basis, as in #4 of the alternatives), or the "coastwide" allocation system (three coastwide period quotas with common trip limits for all, as in #5 of the alternatives). Moreover, we believe these alternatives will need further development to address all the problems identified below.

We originally supported the management measures for the summer flounder fishery because fluke were severely overfished, the stock was at a very low level, and because we believed the states would benefit from a rebuilt resource. Unfortunately, our expectations for an improved resource have not been met. The 1993 quota was 12.35 million pounds; now it is only 11.1 million.

For the following reasons the FMP and the proposed Amendment 10 have fundamental flaws, particularly relating to the state share quota system.

- Although there is evidence of some stock rebuilding, the fishery still depends very heavily on new recruits and there are relatively few fish of older ages. Also, the stock is still highly overexploited with annual removals equaling 78% (fishing mortality = 1.5) in 1995.

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MID-ATLANTIC FISHERY COUNCIL

- The failure of the FMP to prevent fishing mortality from greatly exceeding annual targets since 1993 and the failure to protect young fish, especially in the Mid-Atlantic area, have forced the fishery to concentrate too much on in-coming year classes.

  The large catch of young flounder prevents the stock from rebuilding to levels capable of sustaining annual quotas more than double those of recent years. Until this problem is resolved, the amendment and the FMP fail to ensure an optimum yield from the fishery and therefore fail to meet the Magnuson Act National Standard 1.

- The plan continues to cause an enormous level of discards of fish at sea, and misreporting and non-compliance by fishermen and fish dealers. Scientists and industry agree that large numbers of fish have 'disappeared' from the population either from discarding or misreporting. The very high bycatch mortality of the target species (discards) means that the FMP does not comply with National Standard 9.

- The FMP forces many fishermen to travel hundreds of miles from their homeports or to relocate to land summer flounder in other states with open fisheries and higher landings limits. This causes them to risk their lives and vessels while traveling in dangerous winter weather and sea conditions to reach distant ports. The amendment does not mitigate this problem, and, for this reason, the amendment and the FMP do not meet National Standard 10 in promoting the safety of human life at sea.

- The economic loss caused by the loss of landings to certain states and the increased costs of forcing vessels to land or relocate in other states creates enormous economic waste in violation of national standard.

- The FMP forces fishermen from some states to fish in federal waters under different rules (unavoidably low winter landings limits or prohibitions) than fishermen from other states. These differences raise serious concerns about whether the FMP meets National Standard 4.

- The expectation of a rebuilt summer flounder resource and a corresponding increase in quotas have not materialized and prospects for increased quotas in the future are poor because of continued high fishing mortality and reliance on small fish.

- The state quota system causes the states to promote their individual interests at the expense of cooperative management for the benefit of the resource, fishermen and the public.

- The lack of effective recreational fishing restrictions has allowed recreational catch limits and overall fishing mortality targets to be exceeded at the expense of rebuilding and increased future harvest levels.

Other issues

- The NEFMC has gone on record in support of applying the 5-1/2 inch minimum mesh size to the entire net, however, we believe the minimum mesh size should be 6-inches east of 72°30' W. longitude.

- The NEFMC supports the extension of the moratorium on new entrants.

- The NEFMC supports the elimination of the landings requirement for permit renewal.
- The NEFMC recommends, as an interim measure prior to reconciliation of the different vessel replacement rules in New England and the Mid-Atlantic, that the amendment allow the voluntary replacement of a vessel (without an increase in size or horsepower) for reasons other than the vessel is unseaworthy. The change would make the summer flounder vessel replacement rules consistent with those the MAFMC recently adopted for the black sea bass fishery and would reduce the serious safety concerns caused by the current restrictions. (We look forward to ultimately resolving differences in vessel upgrading and replacement regulations between the Councils through the work of the NEFMC Interspecies and the MAFMC Comprehensive Management Committees.)
- The NEFMC supports requiring states to document all commercial landings of summer flounder not included in the federal monitoring of permit holders.
- The NEFMC supports the provision granting states *de minimus* status for very low levels of summer flounder landings.
- The NEFMC recommends prohibiting the transfer of summer flounder at sea except in over-the-side sales fisheries that target other species. In this case, we recommend prohibiting the retention of summer flounder by the receiving vessel. The purpose of this recommendation is to allow over-the-side transfers in fisheries such as herring and mackerel without jeopardizing the summer flounder rebuilding program.
- The NEFMC supports allowing party/charter boats to possess summer flounder parts smaller than the minimum size subject to appropriate restrictions such as bringing ashore the fish-frame from which fillets are cut. However, we oppose such a provision if it creates an administrative burden by requiring states to issue a permit for such operations. Each state should determine whether or not a such a permit is necessary.

If you have any questions about our comments, please don't hesitate to contact me. Thank you for considering our views.

Sincerely,

Joseph M. Brancaleone
Chairman

cc: Dr. Andrew Rosenberg
John H. Dunnigan

David R. Keifer
Mid-Atlantic Fishery Management Council
Room 2115 Federal Building
300 South New St.
Dover, Del 19904

Jonathan A. Gibson
3 Greenhaven Rd.
Pawcatuck, Ct. 06379

Dear Sir,

I recently attended a meeting April 9, 1997 in New London, Ct. to discuss Amendment 10 of the Summer Flounder Management Plan. I make a living building commercial fishing nets as well as fishing commercially. I'm in favor of Amendment 10 with the exceptions and/or additions as follows:

1. MINIMUM MESH SIZE

I believe that the minimum mesh size should be 6" between knots diamond or square and that any fish caught in this mesh size should be allowed to be landed regardless of size. The Northern Fishery has this mesh size in effect now and it is working in selecting larger fish. The only problem is that occaisionally a sub-legal length fish is caughtand the fisherman must throw the fish back, usually dead. This is a waste of the resource.

2. MINIMUM MESH THROUGH ENTIRE NET

I have a proposal that will work for the Management Council, the fisherman, and commercial net builders. The proposal is as follows:

Any mesh size from the wing ends of the net to a point measured along the longitudinal axis 5 feet behind the center/mouth of the footrope. From this point, 5 feet behind the mouth of the net to the terminus of the net must meet the minimum mesh size.

I don't think that any fisherman would try to fish a net that is tied off 5 feet behind the sweep and if he did, I don't think he'd catch many fish, if any. I chose 5 feet because as a net maker, it is a lot easier to replace bellies on a net if one does not have to fight the weight of the sweep. If you think 2 or 3 feet would be better, then so be it. The point is, this measure would meet the Management Council's objectives and be a lot easier to enforce. It would also allow all fishermen the ability to use any net face he may already have which is usually the most expensive part of a net. All a fisherman would have to do is replace illegal mesh size bellies with legal ones including tail piece and bag. This proposal would also allow net makers/net shops to stock and sell a wider variety of mesh sizes and would not make any mesh obsolete. If a fisherman should lose his groundfish net, he could make do with another style net by changing the bellies etc. and not lose too much time fishing. Net shops would be busy selling bellies. Small boats would not have to buy a whole new net. The advantages for all are obvious.

3. STATE PERMITS FOR PARTY/CHARTER TO ALLOW SMALLER THAN LEGAL LENGTH FILLETS

The system that the State Of Connecticut has seems to work well. If smaller than legal length fillets are possessed on a boat, then the carcass/rack of the fish must be kept and meet legal length. The only problem I have heard of is that some anglers have filleted undersized fish and have been able to stretch the rack as much as ½". Perhaps the rack length should be increased by ½" for the right to retain sub-legal fillets. Also, I believe that all racks must be unloaded at the end of the fishing trip. Some boats might refridgerate legal racks one day in order to fish on illegal fish the next. At no time should the number of fillets not be consistent with the number of racks.

4. COMMERCIAL QUOTA SYSTEM

I am not in favor of keeping the present quota system as it is unfair and in direct violation of the Magnuson Act. Governor Rowland of Ct., State Representative Rob Simmons, First Selectman of Stonington Don Maranell, among others from Connecticut have made comments and submitted them to the Management Council on the unfairness of the present quota system and the violation of the Magnuson Act. I am in full agreement.

Although I think it's far from perfect, of the alternatives given, I would prefer the COMMERCIAL QUOTA SYSTEM THAT ESTABLISHES THREE PERIODS: TWO WINTER COASTWIDE PERIODS (JAN-APRIL AND NOV.-DEC) AND A STATE-BY-STATE SUMMER PERIOD (MAY-OCT)

ADDITIONAL COMMENTS

The biggest problem I see in the regulation of the fishing industry is the inability to enforce regulations. Because of this, many fishermen and certain states are getting more than their fair share by less than legal means. It is my opinion that the best deterrent to any illegal activity is a harsh penalty. I don't believe that the consequencesfor illegal fishing activities are harsh enough. There is no room for any cheaters in any fisheries. Violations of fishing regulations should be treated as a crime, and punishment administered proportionately to the severity of the crime.

In the existing commercial quota, the penalty for exceeding a state's quota is a reduction of that state's quota by the amount of overage in the following year. I believe that the amount of overage should be doubled, half of that amount should go back into the general quota to be divided by states that did not exceed their quota, and the following year's quota for the state in violation should be reduced by twice the amount of the overage. A penalty system like this would force states to be precise about their landings. There should also be extreme punishment for anyone or any state

cont.

cont.

falsifying any landing records. Other gross violations such as extreme overages on trip landings, fishing with small mesh, fishing in closed areas, and any willful and blatant violation of regulations should be delt with by suspension from the fisheries. Most conservation-minded fishermen feel the same as I do on this issue. Regulations are fine if they are enforced, but if not enforced, they are usually laughed at and violated. This must stop!

In closing, I would like to be on your mailing list for any future hearings, opinion polls, commentaries, discussions, brainstorming, etc. I thank you very much for the opportunity to share my opinions and views on Amendment 10 To The Summer Flounder, Scup, And Black Sea Bass Fishery Management Plan.

Sincerely,

Jonathan A. Gibson

April 25, 1997

To: All Commercial Fishermen, their families, and anyone associated with the commercial fishing industry in Virginia and North Carolina

Reference To: Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

Dear Watermen:

You may or may not have heard of Amendment 10. But if affects your livelihood if you prefer to land summer flounder in Virginia or North Carolina The following is an excerpt from a document drafted by Mid Atlantic Fishery Management Council and approved by NMFS. It pertains to the Commercial Quota System.

The commercial quota is currently allocated to the states based on their share of the commercial landings from 1980 through 1989 The states may combine or transfer their quotas with the approval of the NMFS Northeast Regional Administrator. Each state is responsible for managing its commercial quota.

The state-by-state qucta system has been in place since 1993. Over the years, many of the states have refined their mangement systems to allow for an equitable allocation of summer flounder to the fishermen that land summer flounder in their state. These systems account for seasonal variations in abundance of summer flounder as well as changes in the size of the vessels that harvest them.

However, some participants, particularly in the New England states, have indicated that they are dissatisfied with the current system and would like to replace it with a coastwide allocation. These individuals indicate that the current system forces them to travel hundreds of miles to land summer flounder in other states with open fisheries and higher landing limits. As a result, they argue that there is a loss of revenue to the New England states and fishermen's lives and vessel are put at unnecessary risk due to the adverse conditions they might encounter. In addition, they also indicate that the state-by-state allocations have caused states to promote their own interests at the expense of cooperative interstate management of summer flounder. Finally, they indicate that the state shares put them at a competitive disadvantage when fishing in federal waters alongside fishermen from other states.

A coastwide system could eliminate state allocation issues and provide for uniform landing limits along the coast. If properly designed, it could also streamline the management system and make availability of summer flounder more predictabel for fishermen and processors. **However, the potential problems associated with a coastwide quota system make it impractical. It will be difficult to design a system that provides for**

an equitable allocation of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. Uniform landing limits may not be suitable geographically and between vessel types.

Given these considerations, the Council and Commission have voted to retain the current system as the preferred alternative for public hearings. However, they are seeking additonal public comment on the current system as well as several coastwide and state-by-state alternatives that are being cosidered as substitutes for the current system.

We support the preferred alternative which is to keep the quota system as it is. If a coastwide quota system is implemented the majority of the quota would be landed in the New England states. It is likely that little or no summer flounder would be landed in Virginia or North Carolina. If we allow this to happen to the fluke fishery surely other fisheries will follow suit.

The North Carolina Fisheries Association and the Virginia Seafood Council have sent letters to NMFS and MAFMC supporting the current quota system. But we need to show them that the watermen and associates support this view also. It is always difficult for fishermen to attend meetings because of the nature of your business. But this is a good way to make your voice heard.

Today is the last day for public comment on this issue. If you agree with us, please read and sign the following letter and fax a copy to NMFS and MAFMC today. Then forward a copy by mail to NMFS and MAFMC at the following addresses:

National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930-2298
FAX 508-281-9333

Mid-Atlantic Fishery Management Council
Room 2115 Federal Building
300 South New Street
Dover, DE 19904-6790
FAX 302-674-5399

We need as many letters sent in as possible. Please sign them and state your relationship to the fishing industry. Thank you for your interest and support

Sincerely,
Denise Daniels
Denise S. Daniels
(Mrs. Tim Daniels)

Joey Daniels
Wanchese Fish Company

April 25, 1997

Dr. Andrew Rosenberg
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930

Dear Dr. Rosenberg,

I would like this letter to go on record as public comment on Ammendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan.

As a resident of a southern state I support the current commercial quota system and feel that the proposed alternatives would inflict severe economic hardships on our industry. The quota system itself has already caused many hardships to fishermen, their families, and many related industries. I plead with you to keep the quota system as it is.

Sincerely,

Steve Daniels
Old Point Packing
Newport News, VA

April 25, 1997

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Timothy B Dowl V.P. OLD POINT Prod.
P. T.M.F. 2 Boats
F/V CAPT AT
F/V MISS LAUREN
P F/V SONYA GREEN
P. F/V TOPT FLIGHT
P. F/V EDNA MARIA

April 25, 1997

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National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930

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Sincerely, Brian Huffman

I work with a packing Plant in Va, as well as a family member of a fisherman. This is our livelihood. Please don't decrease our income, any more than it already has been by this system.

April 25, 1997

Mr. David R. Keifer
Mid-Atlantic Fishery Management Council
Room 2115 Federal Building
300 South New Street
Dover, DE 19904-6790
FAX 302-674-5399

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Sincerely,

[signature]

919-449-6021

April 25, 1997

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Room 2115 Federal Building
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Sincerely,

J. Ann Moore

Capt. & Sonya Buck

April 25, 1997

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Sincerely,

Michael A. Campisano

Repair & Maintenance to the fishing industry

April 25, 1997

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Sincerely,

919-441-6021

Joey Daniels President and owner Wanchese Fish Co
and following vessels Hero Lee, Richard Wayne, Vickie, Bridget Denise,
Triangle I, Capt. Mac, Miss Maode, Good News, Frank & Maria

April 25, 1997

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National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930

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Good News, and Frank & Marin

April 25, 1997

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Room 2115 Federal Building
100 South New Street
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Sincerely,

Murray Nixon Fishery Inc.
Ricky Nix

April 25, 1997

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Room 2115 Federal Building
300 South New Street
Dover, DE 19904-6790
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Sincerely,

Stephen C. Daniels
Capt- Bailey Boy

April 25, 1997

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Sincerely,

Wayne L Martin

April 25, 1997

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Sincerely,

Ted Hayes Jr.
Fisherman 20 yrs

Luther L. Smith & Son

All Varieties of Seafood

ATLANTIC, NORTH CAROLINA 28511

April 25, 1997

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Sincerely,

Leslie S. Daniels

FLAGSHIP
GROUP, LTD.

April 25, 1997

VIA FAX 302 674 5399

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Mid-Atlantic Fishery Management Council
Room 2115 Federal Building
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Sincerely,

Stephen A. Johnsen, President
Flagship Group, Ltd.

:abw

FOOD WORLD TRADE CENTER NORFOLK, VA 23510-1624 804 625 0038 FAX 804-624-1761

+757-622-8918 FLAGSHIP GROUP 358 P01 APR 25 '97 15:53

April 25, 1997

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Room 2115 Federal Building
400 South New Street
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Sincerely,

Ed Mullis
OPERATIONS MGR.

SEA-RICH
SEAFOODS

Ed Mullis
205 Jefferson Avenue, Newport News, VA 23607
Office: 804-244-1917 • Fax: 804-244-7947
Supply: 804-244-1109

April 25, 1997

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Sincerely,

Sadie Rathbon
UniStar AirCargo

April 25, 1997

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Sincerely,

Timothy B Davis
Old Point Packing
Newport News, VA

April 25, 1997

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Sincerely,

[illegible] Fish Packer
Elias Washington Fish Packer
Walton L. Doerat Supervisor

Old Point Packing

April 25, 1997

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Sincerely,

Marine Weldee
Newport News, VA

April 20. 1997

Dear Mr. Keifer,

I would like to comment on the proposed amendment 10 to the Summer Flounder Plan. I support the idea of a 5 1/2 " mesh through-out the net. Industry should be allowed a period of one year in which to obtain the necessary webbing. This would enable the industry to continue fishing for a longer time by increasing the size fish being harvested and give a better yield to the fisherman. I believe we must continue the moratorium on the fishing permit but would not be in favor of the use it or lose it provision. Vessel replacement should be on a voluntary basis and not under a requirement for the boat to sink before it can be replaced. If we are going to track the quota and treat each state fairly then all landings MUST be recorded by all states in a timely manner. There is little reason to transfer flounder at sea and I could not support this action. I could support a special fillet permit for the party and charter boat segment of the industry as long as the bag limit and minimum size could be enforced. I firmly believe the current state by state system should stay in place. It should be noted that the states with the higher quota's where the states that participated in the fishery traditionally with most of the landings generated by boats from North Carolina. The idea of a state being De Minimus scares me. If on one hand we require the timely reporting of all landings then how could we justify allowing a state not to do so. If a state wishes to declare themselves de minimus then they should not serve on the council's committee or the commission's technical board.

What the whole problem comes down to is this, the states who have a small quota are the same states who primarily fished for ground fish. The summer flounder quota is at a all-time low. Summer flounder are in great abundance and the quota is rapidly reached. On the other hand the status of the ground fish plan stinks. Vessels are only allowed 88 days at sea in this fishery thereby increasing the need for additional sources of harvest. If there was a much larger quota then there would not be this large out cry from those who have not traditionally fished for summer flounder.

Thank you for taking the time to consider my views and I hope that by working together we can have a healthier fishery today and in the futher.

Yours truly,

Frank X Carroll
F/V STARBRITE

April 20. 1997

Dear Mr. Keifer.

I would like to comment on the proposed amendment 10 to the Summer Flounder Plan. I support the idea of a 51/2 " mesh through-out the net. Industry should be allowed a period of one year in which to obtain the necessary webbing. This would enable the industry to continue fishing for a longer time by increasing the size fish being harvested and give a better yield to the fisherman. I believe we must continue the moratorium on the fishing permit but would not be in favor of the use it or lose it provision. Vessel replacement should be on a voluntary basis and not under a requirement for the boat to sink before it can be replaced. If we are going to track the quota and treat each state fairly then all landings MUST be recorded by all states in a timely manner. There is little reason to transfer flounder at sea and I could not support this action. I could support a special filet permit for the party and charter boat segment of the industry as long as the bag limit and minimum size could be enforced. I firmly believe the current state by state system should stay in place. It should be noted that the states with the higher quota's where the states that participated in the fishery traditionally with most of the landings generated by boats from North Carolina. The idea of a state being De Minimus scares me. If on one hand we require the timely reporting of all landings then how could we justify allowing a state not to do so. If a state wishes to declare themselves de minimus then they should not serve on the council's committee or the commission's technical board

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Yours truly,

Ronald Walker
Walker Fisheries

April 20. 1997

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Yours truly,

Jim Harris
F/V Abracadabra

April 20, 1997

Dear Mr. Keiffer,

I would like to comment on the proposed amendment 10 to the Summer Flounder Plan. I support the idea of a 51/2 " mesh through-out the net. Industry should be allowed a period of one year in which to obtain the necessary webbing. This would enable the industry to continue fishing for a longer time by increasing the size fish being harvested and give a better yield to the fisherman. I believe we must continue the moratorium on the fishing permit but would not be in favor of the use it or lose it provision. Vessel replacement should be on a voluntary basis and not under a requirement for the boat to sink before it can be replaced. If we are going to track the quota and treat each state fairly then all landings MUST be recorded by all states in a timely manner. There is little reason to transfer flounder at sea and I could not support this action. I could support a special fillet permit for the party and charter boat segment of the industry as long as the bag limit and minimum size could be enforced. I firmly believe the current state by state system should stay in place. It should be noted that the states with the higher quota's where the states that participated in the fishery traditionally with most of the landings generated by boats from North Carolina. The idea of a state being De Minimus scares me. If on one hand we require the timely reporting of all landings then how could we justify allowing a state not to do so. If a state wishes to declare themselves de minimus then they should not serve on the council's committee or the commission's technical board.

What the whole problem comes down to is this. the states who have a small quota are the same states who primarily fished for ground fish. The summer flounder quota is at a all-time low. Summer flounder are in great abundance and the quota is rapidly reached. On the other hand the status of the ground fish plan stinks. Vessels are only allowed 88 days at sea in this fishery thereby increasing the need for additional sources of harvest. If there was a much larger quota then there would not be this large out cry from those who have not traditionally fished for summer flounder.

Thank you for taking the time to consider my views and I hope that by working together we can have a healthier fishery today and in the futher.

Yours truly,

Wayne Halbuner
F/V Elise B
Cape May NJ

APPENDIX 4. ENVIRONMENTAL ASSESSMENT

1. INTRODUCTION

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 was based on the ASMFC management plan. 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. 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.

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. Amendment 2 was a major amendment that contained a number of management measures including a commercial moratorium, commercial quotas, and recreational limits. 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 4 adjusted Connecticut's commercial landings of summer flounder and revised 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. Amendment 6 allowed multiple nets on board as long as they were properly stowed and changed the deadline for publishing the overall catch limits and commercial management measures to 15 October and the recreational management measures to 15 February. Amendment 7 revised the fishing mortality rate reduction schedule for summer flounder. Amendment 8 established management measures for scup (*Stenotomus chrysops*) and Amendment 9 established a management program for black sea bass (*Centropristis striata*).

This Amendment 10 proposes a number of changes to the summer flounder regulations implemented by Amendment 2 and later amendments to the Summer Flounder, Scup and Black Sea Bass FMP. Specifically this amendment would modify the commercial minimum mesh regulations, continue the moratorium on entry of additional commercial vessels, modify the vessel replacement criteria, remove provisions that pertain to the expiration of the moratorium permit, add a *de minimus* option for states, and prohibit transfer of summer flounder at sea.

Because this amendment has been prepared by both the Council and Commission, there are additional management measures in the amendment that will be implemented by the Commission as part of their interstate management process. Defined as compliance criteria, these management measures are not part

of the federal regulatory process. These management measures include a requirement that states document all summer flounder commercial landings in their state and also allow a state to issue a special permit for party/charter vessels to allow the possession of summer flounder parts smaller than the minimum size.

In addition, the document reconsiders the commercial quota system implemented by Amendment 2. Amendment 2 presents a thorough analysis and discussion of the current state-by-state quota system including an analysis of the biological, social and economic impacts. A description of the biological, economic, and social impacts of the current state-by-state quota system, as well as an analysis of several options to this system are presented in section 5.1.6 below.

2. PURPOSE AND NEED FOR ACTION

The problems to be addressed in Amendment 10 are set forth in section 4.2 of Amendment 10.

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 fisheries.

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. AFFECTED ENVIRONMENT

The distribution and habitat requirements of summer flounder are described in section 6 of Amendment 2. The description of the fishery can be found in section 7 of this amendment. The economics of the summer flounder fisheries are described in section 8 of Amendment 2 and this amendment. The economic impact of the proposed alternatives and options to the alternatives is described in section 5.1 of the EA. The social characterization of the summer flounder fisheries can be found in the Fishery Impact Statement of this Amendment.

5. ENVIRONMENTAL CONSEQUENCES

A description and discussion of the biological, economic and social impacts of the preferred and non-preferred alternatives (options) of the Amendment are presented in section 5.1 below. The analysis of impacts, with specific reference to the guidance presented in NOAA Manual 216-6 regarding the determination of environmental significance, is provided in sections 5.2 to 5.6.

5.1. MANAGEMENT ALTERNATIVES

5.1.1. Alternative 1. Minimum Mesh Requirement

Biological Impacts

The minimum mesh and fish size regulations originally adopted in Amendment 2 were developed to reduce mortality of small summer flounder and to minimize waste. A 5.5" mesh retains about 70% of the 14" TL summer flounder that encounter the net. During the development of Amendment 2 it was recognized that

5.5" mesh would also retain a portion of the 13" TL summer flounder that encountered the net. The Council and Commission decided to reduce the minimum fish size to 13" TL to avoid the wasteful discard of any 13 to 14" TL fish retained in legal summer flounder nets.

These regulations were developed in the belief that fishermen would target 14" TL and larger summer flounder. However, since the implementation of mesh regulations in the summer flounder fishery, anecdotal reports indicate that fishermen have been circumventing the mesh regulations by using legal codends but constricting the net forward of the regulated portion of the net. Since meshes smaller than 5.5" are currently allowed forward of the regulated portion of the net, the escapement of summer flounder less than 14" TL may be greatly reduced. The result is that a higher proportion of 13 to 14" TL fish will be retained by the net. Depending on the size of the meshes used in the body and extension, a significant portion of summer flounder less than 13" TL may be retained as well, many of which will not survive when discarded. Mesh selectivity data (Gillikin *et al.* 1981) indicate that there is no escapement of fish 13" TL or larger for a mesh less than 4". Although mesh selectivity data for summer flounder are based on studies done with codends, it is probable that retention levels for a given mesh size would be similar in other portions of the net.

Poor compliance with mesh regulations will result in higher than expected fishing mortality rates on sublegal summer flounder. As a result, the age distribution may not expand as quickly as expected and the rate of stock recovery will slow.

The requirement of 5.5" mesh in the body, extension(s), and codend portions of the net will decrease the use of small mesh by improving compliance with the mesh regulations. The change to the FMP to require the minimum mesh throughout these portions of the net should have a positive enforcement impact relative to the current regulations, which applies only to the codend. Enhanced enforcement and compliance with the mesh regulation will result in reduced mortality on immature summer flounder and reduce the discard of fish below the minimum legal size. Reduced mortality on small summer flounder will increase the contribution of incoming year classes to the spawning stock biomass which will enhance stock rebuilding.

This amendment will allow the Council and Commission to recommend changes in mesh size for any portion of the trawl net. These recommendations will result from the Summer Flounder FMP Monitoring Committee process that is conducted each year. This flexibility will allow for modifications in mesh size that are responsive to changes in stock dynamics and/or fishermen behavior.

This amendment would allow the Council and Commission to recommend to the Regional Administrator a delay in implementation of any changes in the mesh provisions. The proposed mesh regulations would become effective 6 months after the final regulations are published in the Federal Register. In general, once an FMP or an amendment is approved by NMFS, the regulations become effective 1 to 2 months after approval. However, this may not allow enough time for net manufacturers to obtain the appropriate webbing and construct the nets. In addition, fishermen need time to obtain the nets and rig their vessels.

Based on an informal survey of 4 net manufacturers conducted by Council staff, 5.5 inch webbing to build trawl net bodies is not currently available in quantities necessary to provide nets for the entire summer flounder fleet. Net manufacturers in Rhode Island and New Jersey indicated that at least 3 to 6 months would be required to order 5.5" twine and build the new nets. However, the Wanchese Fish Company in North Carolina indicated that they had more than enough twine to supply the North Carolina summer flounder trawl fleet if the whole net mesh requirement was put in place (J. Daniels pers. comm.). Thus, although enough net material is available in some localized areas, the shortage of 5.5" twine could require that implementation of the net regulation be delayed for 6 months.

Permit data files from the NMFS indicate that as of 29 October 1996, there were 1,063 commercial vessels holding summer flounder permits. Of these vessels, 620 (58%) also hold Multispecies Days-at-Sea (Individual or Fleet) permits. All these vessels must fish with a minimum mesh size of 6.0" when fishing under a Multispecies Days at Sea in the SNE or GOM/GB regulated mesh areas. Vessels fishing in the Mid-Atlantic regulated mesh area are subject to the summer flounder minimum mesh size, which is currently 5.5" (S. Murphy pers. comm.). Given the number of commercial vessels holding summer

flounder permits that also hold Multispecies "Days-at-Sea" permits, it is expected that approximately 42% of the vessels (1,063 - 620) participating in the summer flounder fishery would be affected by this management alternative.

Summer flounder are part of an overall mixed bottom trawl fishery that generally includes *Loligo*, scup, butterfish, black sea bass, whiting, other flatfishes and other species. It is likely that some fishermen will experience a change in the size of marketable, bycatch species caught as a result of the implementation of this alternative. The degree to which changes in the size composition of marketable species harvested as a bycatch with summer flounder will depend on fishing practices (e.g., season, area, etc.), the selection characteristics of a 5.5" diamond (6" square) mesh for the particular species landed with summer flounder and the degree to which fishermen are following the minimum mesh size regulations adopted in Amendment 2. The result will be reduced discards not only of summer flounder but also of other non-target species that are landed as a bycatch. These non-target species include those of commercial value and "trash" species which are unmarketable. Anderson *et al.* (1983) examined the selection properties of small versus large mesh for summer flounder and associated species in New York waters. Results of their study indicated a significant reduction in the retention of small individuals of both marketable and non-marketable species taken in association with summer flounder in tows using large (5.5 inch) versus small (3.0 inch) mesh. In addition to improved escapement of small individuals of marketable species (scup, butterfish and black sea bass), they observed a 47% reduction by weight of non-marketable species including sand flounder, fourspot flounder, cunner, Northern and striped searobin, bay and striped anchovy, sand lance, conger eel and smooth dogfish. Most, if not all, of these animals would be discarded dead when taken in the commercial summer flounder fishery. Thus, additional ecological benefits could be realized through the implementation of the minimum mesh throughout the net through reduced mortality on non-target species.

Economic Impacts

The costs associated with gear conversion would vary for inshore and offshore vessels. More specifically these costs would vary according to the various features that can be incorporated into the gear and the horsepower (hp) or size of the fishing vessel. For vessels operating in the inshore fishery (assume 250 hp) a 5.5" diamond mesh in the body, extension and codend would cost approximately $775. For vessels operating in the offshore fishery (assume 670 hp) a 5.5" diamond mesh in the body, extension and codend would cost approximately $1,354 (M. O'Rourke pers. comm.). These costs are considered direct costs associated with the required gear conversion. Any gear replacement costs for those vessels that participate in the summer flounder fishery and need to comply with the mesh size criteria described in this section would be incurred in year one (1998) of the implementation of this management action. Currently, 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 fish only with a 5.5" minimum diamond, or a 6.0" minimum square mesh codend. Because otter trawl vessels harvesting summer flounder at the above specified threshold levels already possess the minimum size required codend, then the costs attributed to the mesh size restriction described in this document would be lower for these vessels.

It is likely that some fishermen will experience a change in the size of marketable, bycatch species caught as a result of the implementation of this alternative. Changes in revenues associated with changes in the size composition of marketable species harvested as a bycatch with summer flounder cannot be determined due to lack of data. However, it can be expected that because there is a price differential for the species caught as a bycatch with summer flounder, then revenues from those species will increase due to price increases from harvesting larger fish. Therefore, any loss in annual gross revenues from the decrease in the harvesting of small fish as a consequence of the implementation of this alternative will be compensated due to the increase in revenues due to price differentials.

Social Impacts

It is expected that the implementation of this management action will decrease the use of small mesh by improving compliance with mesh regulations. This will allow the age distribution of the stock to expand

and the rate of recovery to continue. As a result, more summer flounder will become available to fishermen increasing benefits to fishermen and their communities.

Approximately 443 commercial vessels participating in the summer flounder fishery would be affected by this management alternative. This amendment would allow the Council and Commission to recommend to the Regional Administrator a delay in implementation of any changes in the mesh provisions. This will allow enough time for net manufacturers to obtain the appropriate webbing and construct the nets, and for fishermen to obtain the nets and rig their vessels benefiting both fishermen and their communities.

Other Possible Options for Alternative 1:

Option 1. No Action. Retain the Current Mesh Requirements

Biological Impacts

This option would mean that the current mesh requirements would remain in effect. As such, the minimum mesh size would only apply to the codend portion of the net.

The minimum mesh and fish size regulations originally adopted in Amendment 2 were developed to reduce mortality of small summer flounder and to minimize waste. A 5.5" mesh retains about 70% of the 14" TL summer flounder that encounter the net. During the development of Amendment 2 it was recognized that a 5.5" mesh would also retain a portion of the 13" TL summer flounder that encountered the net. The Council and Commission decided to reduce the minimum fish size to 13" TL to avoid the wasteful discard of any 13 to 14" TL fish retained in legal summer flounder nets.

These regulations were developed in the belief that fishermen would target 14" TL and larger summer flounder. However, since the implementation of mesh regulations in the summer flounder fishery it has become apparent that many fishermen have been circumventing the mesh regulations through the use of liners, smaller codends or by using legal codends with net constricted forward of the regulated portion of the net. Since meshes smaller than 5.5" are currently allowed forward of the regulated portion of the net, the escapement of summer flounder less than 14" TL may be greatly reduced. The result is that a higher proportion of 13 to 14" TL fish will be retained by the net. Depending on the size of the meshes used in the body and extension, a significant portion of summer flounder less than 13" TL may be retained as well, many of which will not survive when discarded. Mesh selectivity data (Gillikin *et al.* 1981) indicate that there is no escapement of fish 13" TL or larger for a mesh less than 4".

The continuation of the current mesh requirements will do nothing to increase compliance or enhance the enforcement of the mesh regulations. Poor compliance with mesh regulations will result in higher than expected fishing mortality rates on sublegal summer flounder. As a result, the age distribution will not expand as quickly as expected and the rate of stock recovery will slow.

Summer flounder are part of an overall mixed bottom trawl fishery that generally includes *Loligo*, scup, butterfish, black sea bass, whiting, other flat fishes and other species. If this action was taken, the harvest of small summer flounder, as well as that of other small finfishes (commercial and non-commercial) would continue. The result will be reduced discards not only of summer flounder but also of other non-target species that are landed as a bycatch. These non-target species include those of commercial value and "trash" species which are unmarketable. Anderson *et al.* (1983) examined the selection properties of small versus large mesh for summer flounder and associated species in New York waters. Results of their study indicated a significant reduction in the retention of small individuals of both marketable and non-marketable species taken in association with summer flounder in tows using large (5.5 in) versus small (3.0 inch) mesh. In addition to improved escapement of small individuals of marketable species (scup, butterfish and black seabass), they observed a 47% reduction by weight of non-marketable species including sand flounder, fourspot flounder, cunner, Northern and striped searobin, bay and striped anchovy, sand lance, conger eel and smooth dogfish. Most, if not all, of these animals would be discarded dead when taken in the commercial summer flounder fishery. Thus, negative ecological consequences would occur without improved enforcement of the summer flounder mesh regulations through increased mortality

on non-target species.

Economic Impacts

This action would likely lead to the continuation of poor compliance with mesh regulations which has resulted in higher than expected fishing mortality rates on immature summer flounder. As a result, the age distribution will not expand as quickly as expected and the rate of stock recovery will slow. This will decrease net benefits in the long-term.

Social Impacts

Taking no action regarding the current mesh requirements will allow for the harvesting of undersized summer flounder to continue. Potential conflicts could arise between those fishermen that follow Amendment 2 mesh regulations and those that have been circumventing the mesh regulations by using legal codends but constricting the net forward of the regulated portion of the net. Poor compliance with mesh regulations will result in higher than expected fishing mortality rates on sublegal summer flounder. As a result, the age distribution may not expand as quickly as expected and the rate of stock recovery will slow. As a consequence fishermen and their communities may be impacted in a negative manner.

Other Possible Options for Alternative 1:

Option 2. Require Minimum Mesh Throughout the Net, not Just the Codend, but Delay Implementation for up to 12 Months After Approval

Biological Impacts

This option is nearly identical to the preferred alternative described in 5.1.1. That is, 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, inside measure, applied throughout the entire net including the body, extension(s) and codend. 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.

This option would delay implementation of the minimum mesh requirement for up to one year after the mesh provision was approved by NMFS. Delaying implementation of this management action would not address the problem associated with high fishing mortality of small summer flounder in a timely manner.

The biological effects of requiring the proposed minimum mesh requirement is described in section 5.1.1 above.

In general, once an FMP or an amendment is approved by NMFS, the regulations become effective 1 to 2 months after approval. However, this may not allow enough time for net manufacturers to obtain the appropriate webbing and construct the nets. In addition, fishermen need time to obtain the nets and rig their vessels.

Based on an informal survey of net manufacturers conducted by Council staff, 5.5 inch webbing to build trawl net bodies is not currently available in quantities necessary to provide nets for the entire summer flounder fleet. Net manufacturers in Rhode Island and New Jersey indicated that at least 3 to 6 months would be required to order 5.5" twine and build the new nets. However, the Wanchese Fish Company in North Carolina indicated that they had more than enough twine to supply the North Carolina summer flounder trawl fleet if the whole net mesh requirement was put in place (J. Daniels pers. comm.). Thus, although enough net material is available in some localized areas, the shortage of 5.5" twine could require that implementation of the net regulation be delayed for at least 6 months.

Economic Impacts

This option is nearly identical to the preferred alternative dealing with the minimum mesh requirement. However, this option would delay implementation of the minimum mesh requirement for up to one year after the mesh provision was approved by NMFS. The same economic impacts as those discussed under section 5.1.1 would occur. However under this action fishermen that need to replace any net components would have an additional six months to comply with the action. Delaying implementation of the minimum mesh requirements for 12 months would not address the problem associated with high fishing mortality of small summer flounder in a timely manner.

Social Impacts

Similar social impacts as those discussed under the preferred alternative discussed in section 5.1.1 are expected.

5.1.2. Alternative 2. Commercial Moratorium

Biological Impacts

Amendment 2 to the FMP for the summer flounder fishery established a moratorium on entry of additional commercial vessels into the summer flounder fishery in the EEZ for 5 years. A detailed evaluation of the moratorium on commercial vessels was presented in the Final Environmental Impact Statement described in Volume 2 of Amendment 2 to the summer flounder FMP. The analysis presented below expands on the discussion conducted in Volume 2 of Amendment 2. The following analysis describes the potential effects of the proposed measure on the fleet that is currently participating in the summer flounder fishery. The summer flounder moratorium expires in 1997 unless extended by plan amendment.

Given the pressure that exits in most of the major fisheries in the Atlantic coast, the expiration of the summer flounder moratorium on entry will allow fishermen that have traditionally participated in other fisheries to fish for summer flounder in order to alleviate some of the economic adversities they are currently facing. According to NMFS data permit files (29 October 1996) there were 1,063 vessels holding summer flounder moratorium permits. The same data file indicates that 4,088 vessels hold Multispecies, Scallop, and Squid, Atlantic Mackerel and Butterfish (SMB) permits. One thousand fifty one vessels of the 4,088 vessels holding Multispecies, Scallop, and SMB permits also hold Summer flounder moratorium permits. This indicates that 3,037 additional vessels could potentially apply for a summer flounder permit and participate in the fishery if the moratorium is allowed to expire. If this were to occur, the number of participants in the summer flounder fishery could potentially increase four fold relative to the 1996 level.

In addition, there was a moratorium permit application deadline of November 30, 1993. As of mid-April, 1997, approximately 290 applications were received too late to be considered for the moratorium permit. If the moratorium expired, it is probable that these vessels, some of which are probably included in the 3,037 vessels noted above, would enter the fishery.

If the moratorium was lifted, the number of fishermen participating in the summer flounder fishery could increase substantially. In some instances, even though the quotas are managed through a state-by-state system, an increase in effort and derby-style fishing practices could still occur. This type of behavior could potentially increase the bycatch and discard of non-commercial finfish species as well as the takes of some species of turtles. Anderson *et al.* (1983) observed non-marketable species including sand flounder, fourspot flounder, cunner, Northern and striped searobin, bay and striped anchovy, sand lance, conger eel and smooth dogfish to be taken in association with summer flounder. Most, if not all, of these animals would be discarded dead. Thus, negative ecological consequences through increased mortality of non-target species, including sea turtles, could occur if derby-style effort in the summer flounder fishery were to increase dramatically due to reversion to open access conditions.

Economic Impacts

The current summer flounder fleet is capable of taking the quota in total. An increase in the number of vessels in the summer flounder fishery would have adverse economic impacts. Summer flounder gross revenues per vessel would, on average, decrease and overcapitalization would be intensified. According to unpublished NMFS weighout data (Maine-Virginia) 832 known vessels landed summer flounder in 1994; 52 (6.25%) were tonnage class I (vessels less than 5 GRTs), 255 (30.65%) were tonnage class II (vessels 5-50 GRTs), 371 (44.59%) were tonnage class III (vessels 51-150 GRTs), and 154 (18.51%) were tonnage class IV (vessels greater than 151 GRTs). On average summer flounder accounted for 11.63% of the total gross revenue (based on weighout data of all species landed with summer flounder) for the vessels that landed summer flounder in 1994. The percentage of total gross revenues derived from summer flounder by vessel's tonnage class were 12.30% for tonnage class I, 17.49% for tonnage class II, 17.57% for tonnage class III, and 3.74% for tonnage class IV. These percentages indicate that summer flounder gross revenues as a percentage of the total gross revenues for vessels that participated in the summer flounder fishery in 1994 were significant for tonnage class II and III vessels, and moderate for tonnage class I vessels.

A potential increase in the number of participants in the summer flounder fishery would cause economic hardship for the summer flounder vessels that have traditionally participated in the fishery. The extent of the economic pressure would depend on the ability of the vessels that currently fish for summer flounder to compete in other fisheries. Taking into consideration the overall level of competition for the existing fishery resources of the Atlantic coast, it is likely that the number of alternatives for those vessels would be very small. Therefore, the expiration of the summer flounder moratorium permit would have negative economic impacts for vessels currently participating in the fishery. Assuming the degree of vessel participation in the summer flounder fishery in 1994, it would be expected that vessels of tonnage class II and III would likely be affected the most from the expiration of the summer flounder moratorium permit. These tonnage class vessels represented over 75% of the total number of vessels that landed summer flounder in 1994.

The continuation of the moratorium will provide an opportunity for participants in the fishery to benefit as the resource rebuilds as a result of the fishing mortality reduction program. This is likely to increase net benefits in the long-term.

Social Impacts

The continuation of the commercial moratorium will not allow for an increase in the number of participants in the summer flounder fishery. This measure is likely to be supported by all fishermen that are currently participating in the summer flounder fishery. However, other fishermen that would like to switch to the summer flounder fishery in order to escape some of economic adversities due to the pressure that exists in most of the major fisheries in the Atlantic coast would likely be opposed to this measure. The increase in participation that would result from the discontinuation of the moratorium would likely come from other fleets which have not traditionally taken or relied on summer flounder for employment and income. Thus, it is likely that the fishing communities which have traditionally depended on summer flounder would be negatively effected if the fishery were to revert to open access.

Other Possible Options for Alternative 2:

Option 1. No Action. Do not Continue the Moratorium on Entry of Additional Vessels Into the Summer Flounder Fishery

Biological Impacts

This would mean that the moratorium on the entry of additional vessels into the summer flounder commercial fishery, implemented by Amendment 2, would expire in 1997.

Amendment 2 to the FMP for the summer flounder fishery established a moratorium on entry of additional commercial vessels into the summer flounder fishery in the EEZ for 5 years. The summer flounder

moratorium expires in 1997 unless extended by plan amendment. Given the pressure that exits in most of the major fisheries in the Atlantic coast, the expiration of the summer flounder moratorium on entry will allow fishermen that have traditionally participated in other fisheries to fish for summer flounder in order to alleviate some of the economic adversities they are currently facing. According to NMFS data permit files (29 October 1996) there are 1,063 vessels holding summer flounder moratorium permits. The same data file indicates that 4,088 vessels hold Multispecies, Scallop, and Squid, Atlantic Mackerel and Butterfish (SMB) permits. One thousand fifty one vessels of the 4,088 vessels holding Multispecies, Scallop, and SMB permits also hold Summer flounder moratorium permits. This indicates that 3,037 additional vessels could potentially apply for a summer flounder permit and participate in the fishery if the moratorium is allowed to expire. If this were to occur, the number of participants in the summer flounder fishery could potentially increase four fold relative to the 1996 level.

If the moratorium was lifted, the number of fishermen participating in the summer flounder fishery could increase substantially. In some instances, even though the quotas are managed through a state-by-state system, an increase in effort and derby-style fishing practices could still occur. This type of behavior could potentially increase the bycatch and discard of non-commercial finfish species as well as the takes of some species of turtles. Anderson *et al.* (1983) observed non-marketable species including sand flounder, fourspot flounder, cunner, Northern and striped searobin, bay and striped anchovy, sand lance, conger eel and smooth dogfish to be taken in association with summer flounder. Most, if not all, of these animals would be discarded dead. Thus, negative ecological consequences through increased mortality of non-target species, including sea turtles, could occur if derby style effort in the summer flounder fishery were to increase dramatically due to reversion to open access conditions.

Economic Impacts

The implementation of this option would mean that the moratorium of entry of additional vessels into the summer flounder commercial fishery, implemented in Amendment 2, would expire in 1997. If the moratorium is allowed to lapse, the fishery will revert to open access and new vessels will enter the fishery. Thus, the number of participants in the summer flounder fishery could potentially increase four fold relative to the 1996 level. This would increase effort and capitalization in the fishery. As the level of participation of additional vessels into the summer flounder fishery increases, on average, the gross revenue from summer flounder for the vessels under the current moratorium of entry would decrease.

Social Impacts

With the implementation of this action, the moratorium will be allowed to expire. If this were to occur, 3,037 additional vessels could potentially apply for a summer flounder permit and participate in the fishery. Gross revenues from summer flounder vessels operating under the current moratorium of entry, on average, would decrease. Furthermore, if the effort switch into the summer flounder fishery is substantial, gear and user group conflict will develop. The ability for those individuals (fishing under the current moratorium of entry) to recover the entire amount of lost income by switching to another fishery would depend upon the status of that fishery and the amount of capital already present. If the effort switch is substantial, additional gear and user group conflict could accompany movement into another fishery.

5.1.3. Alternative 3. Vessel Replacement Criteria

Biological Impacts

Vessels with moratorium permits could be replaced by another vessel and the permit transferred to the new vessel. The replacement vessel can be upgraded such that the vessel's horsepower may not exceed 20% of the horsepower of the replaced vessel and the vessel's length, GRT, and NT may not exceed 10% of the respective specification of the replaced vessel.

This regulation would make vessel replacement criteria in the summer flounder fishery identical to those specified in the Northeast Multispecies FMP for vessel replacement. Permit data files from the NMFS indicate that as of 29 October 1996, 58% of the vessels holding summer flounder permits also hold

Multispecies Days-at-Sea (Individual or Fleet) permits. If the vessel replacement criteria for summer flounder was not changed, the holder of a Northeast Multispecies Permit and a Summer Flounder Permit would have been restricted to the summer flounder regulations (i.e., no voluntary replacement and no upgrade) when a vessel was replaced.

Since the vessel replacement criteria for the Northeast Multispecies FMP took effect in May 1994, 109 vessels (D. Gouveia pers. comm.), or 6% of the permitted vessels, have applied for transfer of permits or replacement of vessels. If this measure is approved, there is no indication of how many summer flounder permitted vessels will employ the vessel replacement criteria as a way to increase either their length, GRT, NT or horsepower. However, based on the percentage of vessels transferred or replaced in the Northeast Multispecies fishery, it may be expected that approximately 64 vessels may be replaced in a four year period in the summer flounder fishery. Even if all these vessels were to be increased in length, GRT, NT, and horsepower as allowed in this alternative, the fishing power of the fleet as a whole would not significantly increase. In addition, mortality on summer flounder is controlled by an annual quota, so there should be no negative effects on the summer flounder resource.

Economic Impacts

This alternative is not expected to change the fishing power of the fleet in a significant way. Therefore, exvessel revenues as a consequence of the implementation of this action are not expected to change. In addition, this measure is expected to improve vessel replacement monitoring by the NMFS and reduce management costs due to standardization among FMPs.

Any replacement of aging vessels or engines will be performed as determined by the owner. At that time individual owners will have to address the benefits of replacing inefficient or increasingly unsafe vessels versus the costs of such changes.

Social Impacts

This alternative would allow for the vessel replacement criteria to be identical in the Summer Flounder and Northeast Multispecies FMPs.

The implementation of this alternative could allow for aging vessels or engines (as determined by the owner) to be replaced when they become inefficient or increasingly unsafe. This will in turn have a positive social impact as the potential loss of fishermen lives due to unsafe vessels and/ or engines will be reduced.

Other Possible Options for Alternative 3:

Option 1. No Action. Do not Change the Existing Vessel Replacement Criteria

Biological Impacts

This would mean that the current vessel replacement criteria would stay in effect. That is, vessels with a moratorium permit could be replaced but not upgraded when declared unseaworthy by the Coast Guard. This regulation would continue to make vessel replacement criteria in the summer flounder fishery different to those specified in the Northeast Multispecies FMP for vessel replacement.

Permit data files from the NMFS indicate that as of 29 October 1996, 58% of the vessels holding summer flounder permits also hold Multispecies Days-at-Sea (Individual or Fleet) permits. If the vessel replacement criteria for summer flounder was to remain the same, the holder of a Northeast Multispecies Permit and a Summer Flounder Permit would continue to be restricted to the summer flounder regulations (i.e., no voluntary replacement and no upgrade) when a vessel was replaced.

The fishing power of the fleet as a whole will remain constant with the implementation of this option. However, since mortality on summer flounder is controlled by an annual quota, there should be no

significant added benefits to the summer flounder resource if this option was implemented.

Economic Impacts

The implementation of this option is not expected to change the fishing power of the fleet. Therefore, exvessel revenues as a consequence of the implementation of this action are not expected to change. However, this option will not be expected to improve vessel replacement monitoring by the NMFS and reduce management costs due to standardization between FMPs.

Social Impacts

This option would not allow for vessel replacement criteria to be identical for in Summer Flounder and Northeast Multispecies FMPs.

The implementation of this alternative would not allow for aging vessels or engines (as determined by the owner) to be replaced when they become inefficient or increasingly unsafe. Therefore, the potential loss of fishermen lives due to unsafe vessels and/or engines will not be reduced as it would likely be with the implementation of the preferred alternative.

5.1.4. Alternative 4. Expiration of the Moratorium Permit

Biological Impacts

The requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit would be deleted from the regulations. This regulation, which has been in effect since 1993, has not resulted in the loss of any summer flounder permits. The is no information/data available on the number of vessels or amount of effort that these vessels put into the fishery in order to land marginal quantities of summer flounder to retain moratorium permits. However, this requirement could force vessel owners to fish for summer flounder simply to maintain the permit and, as such, result in an increase in fishing effort. Thus, deleting this requirement could allow for a decrease in potential fishing effort each year. Reduced fishing effort directed at summer flounder would decrease the bycatch and discard of non-commercial finfish species as well as the takes of some species of turtles. Anderson *et al.* (1983) observed non-marketable species including sand flounder, fourspot flounder, cunner, Northern and striped searobin, bay and striped anchovy, sand lance, conger eel and smooth dogfish to be taken in association with summer flounder. Most, if not all, of these animals would be discarded dead. Thus, positive ecological consequences through decreased mortality of non-target species, including sea turtles, could occur if effort in the summer flounder fishery were to decrease due to this management measure.

Economic Impacts

With the implementation of this alternative, vessels owners that marginally land summer flounder in order to retain the moratorium permit would be allowed to maintain their permits without incurring in an increase in fishing effort. Therefore, operating costs for some of these vessels could potentially decrease.

Social Impacts

This alternative would allow vessels with a moratorium permit to stay in the fishery even if they do not land summer flounder during a 52 week period. Therefore, fishermen will not have to employ time and effort landing summer flounder in order to maintain their moratorium permit. This will have a positive social effect on fishermen and their communities.

Other Possible Options for Alternative 4:

Option 1. No Action. Take no Action Regarding the Expiration of the Commercial Moratorium Permit

Biological Impacts

This would mean that the current regulations would remain in effect, i.e., a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit.

The requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit would not be deleted from the regulations. This regulation, which has been in effect since 1993, has not resulted in the loss of any summer flounder permits. The is no information/data available on the number of vessels or amount of effort that these vessels put into the fishery in order to land marginal quantities of summer flounder to retain moratorium permits. However, this requirement could force vessel owners to fish for summer flounder simply to maintain the permit and, as such, result in an increase in fishing effort. Increased fishing effort directed at summer flounder would increase the bycatch and discard of non-commercial finfish species as well as the takes of some species of turtles. Anderson *et al.* (1983) observed non-marketable species including sand flounder, fourspot flounder, cunner, Northern and striped searobin, bay and striped anchovy, sand lance, conger eel and smooth dogfish to be taken in association with summer flounder. Most, if not all, of these animals would be discarded dead. Thus, negative ecological consequences through increased mortality of non-target species, including sea turtles, could occur if effort in the summer flounder fishery were to increase due to this management measure.

Economic Impacts

Vessel owners wishing to maintain their summer flounder moratorium permit would have to continue landing summer flounder at some point during a 52 week period in order to retain their moratorium permit. Operating costs for vessels that marginally land summer flounder in order to retain the moratorium permit may be higher under this option versus the preferred alternative simply due to the effort required to land summer flounder in order to maintain the permit.

Social Impacts

Under this option vessels with a moratorium permit will have to continue landing summer flounder at some point during a 52 week period in order to maintain the permit. Therefore, some fishermen will have to continue employing time and effort landing summer flounder in order to maintain their moratorium permit. Thus, increased effort could have negative consequences for fishermen and their communities.

5.1.5. Alternative 5. *De Minimus* Status for States

Biological Impacts

Under the current FMP, several states receive less than 0.1% of the coastwide summer flounder quota, resulting in allocations of only 51 to 5,284 pounds in 1997. However, these states are expected to comply with all provisions of the FMP. The administrative burden of implementing a real-time quota monitoring system far exceeds the economic value of the fishery in these states. Allowing them a small allocation of 0.1% is of no conservation risk to the stock as a whole. However, if regulatory demands become so great that the state is forced to prohibit commercial landings of summer flounder, the few fish that are currently landed could be tossed overboard as discards.

Based on 1996 landings and quota data, Maine, New Hampshire, and Delaware could qualify for *de minimus* status using the 0.1% or less criteria. New Hampshire, which received an allocation of 51 pounds in 1996, currently prohibits commercial landings of summer flounder. Allowing a *de minimus* classification would allow bycatch landings of summer flounder in New Hampshire.

Under the current FMP, the states of Maine, New Hampshire, and Delaware in aggregate receive 0.066% of the coastwide quota, which amounted to 7,312 pounds in 1996. The remaining states received 99.934% of the coastwide quota. If, instead, the three eligible states claimed *de minimus* status in 1996 and were allocated 0.1% of the coastwide quota, they would have each been allocated 11,111 pounds. All three

would have accounted for 33,333 pounds, or 0.3% of the coastwide quota, and the remaining 99.7% would have been allocated to the other states. The net loss of 0.234% (0.3 - 0.066) or 26,021 pounds in 1996 would have reduced the quota in North Carolina, which receives the highest percentage, by 7,140 out of 3,049,589 pounds and in Maryland, which receives the smallest share greater than 0.1%, by 520 out of 226,570 pounds. Overall, each state would be giving up 0.029% of its quota if all three eligible states were declared *de minimus.*

Allowing qualifying states to claim *de minimus* status would relieve them of an excessive monitoring burden for essentially a bycatch fishery, and would provide them with a small, but more manageable quota. In the case of New Hampshire, it could allow bycatch to be landed rather than discarded. In the case of Delaware, it could allow them to maintain their current strict restrictions on fishing in state waters rather than ultimately prohibiting all landings of summer flounder to avoid exceeding a quota of approximately a thousand pounds. Since summer flounder are a bycatch fishery to Delaware inshore gill net fishermen, these fish would still be caught and killed. Unfortunately, rather than be sold for income, they would be needlessly discarded.

Under this management alternative and current quota level, three states would be required to report the necessary information to NMFS to qualify for *de minimus* status. Currently, the summer flounder quota is distributed among 11 states. It is not anticipated that the quota level will be reduced to the extent that will considerably alter the number of states applying for *de minimus* status. Since the number of reporting entities is lower than nine, OMB clearance under Paper Reduction Act is not necessary.

Requiring an annual request by the state and review by the Monitoring Committee would assure that if landings increased in a *de minimus* state, they would be required to comply with all quota management and reporting provisions the following year. An annual landings and regulatory report is already required by the Commission, so the reporting requirements will not increase. Requiring *de minimus* states to close their fishery if their allocation is landed would prevent a sudden increase in landings.

Economic Impacts

The action dealing with *de minimus* status for states would allow states with very small quotas not to implement a full array of management measures for what is essentially a bycatch fishery. States with *de minimus* status have stated that their catch is so small that there is no conservation reason to incur the governmental costs associated with preparing and promulgating regulations. States with *de minimus* status would be required to monitor the fishery and close the fishery when their quota was reached. This action can be expected to provide positive benefits by avoiding government costs associated with preparing and promulgating regulations for these states. Under the current FMP, the states of Maine, New Hampshire, and Delaware in aggregate receive 0.066% of the coastwide quota, which amounted to 7,312 pounds in 1996. If these three states had claimed *de minimus* status in 1996, the provision would have increased summer flounder landings in Maine, New Hampshire, and Delaware in aggregate 26,021 pounds in 1996. At the same time, landings for the remaining states would have decreased in aggregate 26,021 pounds in 1996. Taking into consideration the average price for summer flounder in 1995 (Unpublished Weighout data), summer flounder vessels landing in states qualifying for *de minimus* status would have increased annual gross revenue by $48,052 in aggregate. While, summer flounder vessels landing in the remaining states would have decreased annual gross revenue by $48,052 in aggregate.

Social Impacts

This action would allow fishermen from states with small quotas (less than 1% of the coastwide quota) to continue landing summer flounder in what is predominantly a bycatch fishery. Rather than discarding summer flounder, it could be sold for income. Therefore, fishermen and their communities would benefit. This action would be viewed as a fair management alternative in those states that may qualify for *de minimus* status. Thus, confidence in the overall management program for summer flounder should be reinforced.

Other Possible Options for Alternative 5:

Option 1. No Action. Take no Action Regarding *De Minimus* Status

Biological Impacts

This would mean that states would not have the option of being declared *de minimus* and as such would be required to implement the management measures pertaining to the quota.

The Summer Flounder FMP is a joint plan prepared under both the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, and the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Under the ACFCMA, if a state does not implement measures required by an FMP, the Federal government may impose a moratorium on the landing of the species covered by the FMP in that state.

Under the current FMP, three states, Maine, New Hampshire and Delaware, receive less than 0.1% of the coastwide summer flounder quota, resulting in allocations of only 51 to 5,284 pounds in 1997. However, these states are expected to comply with all provisions of the FMP.

If the three eligible states claimed *de minimus* status in 1996 and were allocated 0.1% of the coastwide quota, they would have each been allocated 11,111 pounds. All three would have accounted for 33,333 pounds or 0.3% of the coastwide quota. The other 99.7% would have been allocated to the other states. The loss of 0.3% would have reduced the quota in North Carolina, which receives the highest percentage, by 9,153 pounds and in Maryland, which receives the smallest share by 680 pounds.

The administrative burden of implementing a real-time quota monitoring system far exceeds the economic value of the fishery in these states. Allowing them a small allocation of 0.1% is of no conservation risk to the stock as a whole. However, if regulatory demands become so great that the state is forced to prohibit commercial landings of summer flounder, the fish that are currently landed could be tossed overboard as discards.

Economic Impacts

This option would require a full array of management measures to be implemented for states in which summer flounder is essentially a bycatch fishery. This will create burdensome administrative procedures and expenses for the affected states, which may force some of them to close the summer flounder fishery to avoid the administrative burden of implementing a real-time monitoring system. In addition, some summer flounder caught would have to be discarded rather than be sold for income.

Social Impacts

With this no action option, fishermen from states with small quotas (less than 1% of the coastwide quota) may have to discard summer flounder caught, instead of selling it for income. This action will not be viewed as a fair management alternative in those states that may qualify for *de minimus* status. This is likely to affect the confidence that some fishermen may have in the overall management program for summer flounder in a negative way.

5.1.6. Alternative 6. Commercial Quota System

Biological Impacts

Amendment 2 presents a thorough analysis and discussion of the current state-by-state quota system including an analysis of the biological, social and economic impacts as well as how the current system complies with the National Standards. An analysis of several alternatives to the current state-by-state quota system is presented below under other possible options for alternative 5.1.6.

After careful consideration of the public comments and after additional debate, the Council and Commission decided to retain the current state-by-state quota system. The state-by-state quota system has been in place since 1993. Over the years, many of the states have refined their management systems to allow for an equitable allocation of summer flounder to the fishermen that land summer flounder in their state. These systems account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them.

The Council and Commission considered two coastwide alternatives to the current state-by-state quota system. These coastwide systems would have had associated coastwide quotas in the winter or over the entire year. The Council and Commission determined that a coastwide quota during the winter or over the entire year may not provide the same level of equity or flexibility to summer flounder fishermen as the current state-by-state system. The Council and Commission determined that it would be difficult to design a coastwide system that was better than the current state-by-state system, i.e., one that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. They noted that the uniform landing limits associated with a coastwide system may not be suitable for all vessels, gears or areas along the coast.

Economic Impacts

The current state-by-state quota system has been refined by the states over the years. These systems account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them. Many of the states have refined their management systems to allow for an equitable allocation of summer flounder to the fishermen that land summer flounder in their state. The continuation of the current state-by-state system is expected to have a positive economic effect of fishermen. In addition, the Council and Commission thought that if any of the options to the current system were carried out, it would create derby-style fishing and/or early closure of the fishery during the coastwide periods. As a result, the Council and Commission were concerned that the options to the current state-by-state system would decrease annual gross revenues and net benefits in the short and long-term for many fishery participants. Furthermore, they noted that the options to the state-by-state commercial quota system evaluated in this amendment would require a graduated system of landing limits that would demand extensive administrative effort and cost associated with the notice to federal permit holders.

Social Impacts

The current state-by-state system has been refined by the states over the years. This has allowed for the development systems that account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them and fishing practices. Maintaining the current state-by-state system will allow fishermen and their communities to continue operating according to traditional patterns of harvesting, distribution, and consumption of this resource.

Other Possible Options for Alternative 6:

Option 1. Commercial Quota System That Establishes Three Periods: Two Winter Coastwide Periods (January-April and November-December) and a State-by-State Summer Period (May-October).

Biological Impacts

This option would allocate the annual quota into three unequal periods (Table 1). In the two winter periods, January-April and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits. In the summer period, May-October, a state-by-state quota system similar to the current state-by-state system would be implemented.

A coastwide system during the winter would allow fishermen to land in any port along the coast. All commercial landings during the winter period would count toward that quota for that period. When the quota has been landed, fishing for and/or landing summer flounder would be prohibited for the remainder

of the period. Landings in excess of the allocation for the period would be subtracted from the following year's quota for the same period.

During the winter periods, coastwide landing limits would have to be implemented. Allocations without landing limits would encourage derby-style fishing practices that would allow the quota to be landed by larger, more mobile vessels at the beginning of each period. As a result, supplies of summer flounder would be discontinuous and smaller boats would be disadvantaged.

A coastwide quota system would require a carefully designed system of landing limits that will have to change each year in order to account for changes in the fishery. Different landing limits could be implemented for each period to ensure equitable distribution over each period. Landing limits would be implemented by the states and the NMFS and could change over the period. The landing limits for each period would be based on the recommendations of the Summer Flounder Monitoring Committee to the Council and Commission. The states would be responsible for notification of state and federal permit holders of initial period landing limits, in period landing limit adjustments, and closures. The fishery would be closed before the end of the period based on projections by NMFS that the quota would be taken. Vessels with moratorium permits could only land summer flounder caught in the EEZ in coastal states from Maine to North Carolina.

During the summer months, a state-by-state system would be in effect. In a state-by-state system, quotas would be distributed to the states based on their percentage share of commercial landings for the period May to October. These state specific shares are specified in Table 2 for various base periods. The state shares during the summer period could be revised based on the recommendations of the Commission to account for any changes in the landings data for the base years. All summer flounder landed for sale in a state would be applied against the state's annual commercial quota regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in a state would be deducted from that state's annual quota for the following year. Vessel's with moratorium permits could not land summer flounder in any state that had not been allocated a commercial quota.

States would have the responsibility for closures in their state and the Regional Administrator would be required to prohibit landings by federally permitted vessels in any state that had reached its quota. States would be allowed to transfer or combine quotas and the states could impose trip limits or other measures to manage their quotas.

This option was evaluated by the Council and Commission as an option to the existing state-by-state quota system. In the two winter periods, January-April and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits. In the summer period, May-October, a state-by-state quota system similar to the current state-by-state system would be implemented.

The annual quota will be allocated into three periods based on historical landings (Table 1). The percent of landings associated with each period would vary depending upon the base years used. For example, based on data for the 1990-1992 period, the allocations periods and the associated percent of the total quota would be: January-April (38.95 %), May-October (36.14 %), and November-December (24.90%). The allocation to each period would be based on past landings to minimize effects on traditional landings patterns.

In the two winter periods, January-April and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits. A coastwide system during the winter would allow fishermen to land in any port along the coast as long as the landings were consistent with the regulations at the state of landing. All commercial landings during a winter period would count toward that quota for that period. When the quota had been landed, fishing for and/or landing summer flounder would be prohibited for the remainder of the period. Landings in excess of the allocation for the period would be subtracted from the following years's quota for the same period.

During the winter period, coastwide landing limits would have to be implemented. Allocations without landing limits would encourage derby-style fishing practices that would allow the quota to be landed by

larger, more mobile vessels at the beginning of each period. As a result, supplies of summer flounder would be discontinuous and smaller boats would be disadvantaged.

Different landing limits could be implemented for each period to ensure equitable distribution over each period. Landing limits would be implemented by the states and the NMFS and could change over the period. The landing limit for each period would be based on the recommendations of the Summer Flounder Monitoring Committee to the Council and Commission. The states would be responsible for notification of state and federal permit holders of initial period landing limits, in period landing limit adjustments, and closures. The fishery would be required to close before the end of the period based on projections by NMFS that the quota would be taken. Vessels with moratorium permits could only land summer flounder caught in the EEZ in coastal states from Maine to North Carolina.

To assess the impacts of the quota during the winter period, the following example was developed. Based on a quota of 11.11 million lbs and using allocation percentages based on 1990-1992 data, 4,327,500 lbs would be allocated to the January-April period, and 2,766,800 would be allocated to the November-December period (Table 3).

During the first winter period (Jan-Apr), a landing limit of 6,000 lbs could achieve the equitable distribution of summer flounder over the period. According to NMFS weighout data for the 1990-1992 period, a landing limit of 6,000 lbs would allow for 55% (2,380,125 lbs) of the summer flounder to be harvested by trips not affected by this landing limit (Table 4). If it is assumed that the trips affected by the implementation of this landing limit will harvest the maximum amount of summer flounder given this landing limit, then an additional 1,947,375 lbs (4,327,500 lbs - 2,380,125 lbs) of summer flounder would be harvested at the 6,000 lbs level. That is, 324 trips (1,947,375 lbs/6,000 lbs per trip) of summer flounder would be made at the 6,000 lbs level. Based on 1990-1992 weighout data, on average, 155 trips were made at or above this level (Table 4). Given the above assumptions, the proposed landing limit would allow for over a two fold increase in the number of trips made at the 6,000 lbs level. When 85% of that period's allocation was projected to be reached, the landing limit would be reduced to 200 lbs.

For the second winter period (Nov-Dec), a landing limit of 8,000 lbs could achieve the equitable distribution of summer flounder over the period. According to NMFS weighout data for the 1990-1992 period, a landing limit of 8,000 lbs would allow for 64% (1,770,752 lbs) of summer flounder to be harvested by trips not affected by this landing limit (Table 5). If it is assumed that the trips affected by the implementation of this landing limit will harvest the maximum amount of summer flounder, then an additional 996,048 pounds (2,766,800 lbs - 1,770,752 lbs) of summer flounder would be harvested at 8,000 lbs level. That is, 124 trips (996,048 lbs/8,000 lbs per trip) of summer flounder would be harvested at 8,000 lbs level. Based on 1990-1992 weighout data, on average, 54 trips were made at or above this level (Table 5). Given the above assumptions, the proposed landing limit would allow for over a two fold increase in the number of trips made at the 8,000 lbs level. When 85% of the period's allocation was projected to be reached, the landing limit would be reduced to 200 lbs.

The proposed landing limit system for both winter periods may allow both small and large vessels to continue landing summer flounder according to traditional fishing patterns. However, the landing limits developed in the above example may be too high or too low for some fishermen. For example, during the first winter period (Jan-Apr) a landing limit of 6,000 lbs might appear too low for a large vessels and too high for a small vessel. This difference in vessel size will make the establishment of landing limits during the coastwide periods problematic.

Landings limits are expected to increase the likelihood that the landings would be distributed over the entire period. Ideally, landing limits would decrease the negative effects associated with unrestricted fishing under a quota management system, such as irregular supplies or market gluts, and exvessel price fluctuations associated with derby style fishing practices.

A coastwide quota during the winter may not provide the same level of equity or flexibility to summer flounder fishermen as the current state-by-state system. Over the years, personnel from several states have spent a lot of time developing quota management systems that account for seasonal variations in

abundance of summer flounder as well as changes in the size of vessels that harvest them. These systems have been designed to allow for an equitable allocation of the state quota to all the commercial fishermen landing summer flounder in their state. It may be difficult to design a coastwide system that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. In addition, uniform landing limits may not be suitable for all vessels, gears or areas.

Also, it is important to note, that, any graduated system of landing limits would have to account for the administrative burden associated with notice to permit holders. Specially, NMFS and the states would be responsible for notifying fishermen of closures when the quota was projected to be reached. In addition, the states would be responsible for notification of changes in landing limits during the period. If several changes in the landing limits were planned for a period, notification to each permit holder would have to occur a significant number of times during the period. In addition, NMFS staff have indicated that notification to permit holders would require approximately two weeks. Another week would be required to allow vessels that are fishing for summer flounder to return to port before a change in landing limit or a closure. Thus, approximately three weeks would be required to change landing limits and close the fishery for that period. This notification period would be an important consideration in establishing the threshold triggers that would be used for each period to change landing limits. Also, time constraints coupled with the short two month period associated with the second winter period would make the establishment of a graduated system for this period problematic.

During the summer months, May through October, a state-by-state system would be in effect. In a state-by-state system, quotas would be distributed to the states based on their percentage share of commercial landings for the period May to October (Table 2). For example, based on landing data for the 1990-1992 period, an annual quota of 11.11 million pounds, 4.0157 million pounds would be allocated to the summer fishery (Table 3). State allocations would range from 0 to 1.1 million pounds (Table 6).

The state shares during the summer period could be revised based on the recommendations of the Commission to account for any changes in the landings data for the base years. Vessel's with moratorium permits could not land summer flounder in any state that had not been allocated a commercial quota.

A state-by-state quota system would allow for the most equitable distribution of the commercial quota to fishermen during the summer months when smaller boats account for a larger portion of the harvest. States would be allocated quota based on historic landings patterns.

During the summer period, states would have the responsibility of managing their quota for the greatest benefit of the commercial summer flounder industry in their state. States could design allocation systems based on trip limits and seasons. States would also have the ability to transfer or combine quota increasing the flexibility of the system to respond to year to year variations in fishing practices or landings patterns.

Economic Impacts

The implementation of this option (commercial quota system that establishes three periods: two winter coastwide periods [Jan-Apr and Nov-Dec]) and a state-by-state summer period [May-Oct], as well as the next option (coastwide commercial quota system allocated into three periods [Jan-Apr, May-Oct, and Nov-Dec]) were rejected because the Council and the Commission thought that the current management system (state-by-state allocations) has been refined over the years to the extent that it allows for an equitable allocation of summer flounder to the fishermen that land summer flounder in their states Over the years, personnel from several states have spent a lot of time developing quota management systems that account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them. These systems have been designed to allow for an equitable allocation of the state quota to all the commercial fishermen landing summer flounder in their state. It may be difficult to design a coastwide system that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. In addition, uniform landing limits may not be suitable for all vessels, gears or areas. The result could be a redistribution of

the summer flounder catch geographically and between vessel types.

In addition, the Council and Commission thought that if any of the options to the current system were carried out, it would create derby-style-fishing and/or early closure of the fishery during the coastwide periods. As a result, the Council and Commission were concerned that the options to the current state-by-state system would decrease annual gross revenues and net benefits in the short and long-term for many fishery participants. Furthermore, they noted that the options to the state-by-state commercial quota system evaluated in this amendment would require a graduated system of landing limits that would demand extensive administrative effort and cost associated with the notice to federal permit holders.

Social Impacts

The implementation of this option (commercial quota system that establishes three periods: two winter coastwide periods [Jan-Apr and Nov-Dec]) and a state-by-state summer period [May-Oct], as well as the next option (coastwide commercial quota system allocated into three periods [Jan-Apr, May-Oct, and Nov-Dec]) will not allow fishermen and their communities to operate according to traditional patterns of harvesting, distribution, and possibly consumption of this resource. Thus, it is likely that the fishing communities which have traditionally depended on summer flounder would be negatively affected by the options to the preferred alternative.

Option 2. Coastwide Commercial Quota System Allocated Into Three Periods (January-April, May-October, and November-December)

Biological Impacts

This option would allocate the annual quota into three unequal periods. In all periods, January-April, May-October and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits.

A coastwide system would allow fishermen to land in any port along the coast. All commercial landings during each period would count toward that quota for that period. When the quota has been landed, fishing for and/or landing summer flounder would be prohibited for the remainder of the period. Landings in excess of the allocation for the period would be subtracted from the following year's quota for the same period.

Coastwide landing limits would have to be implemented for each period. Allocations without landing limits would encourage derby-style fishing practices that would allow the quota to be landed by larger, more mobile vessels at the beginning of each period. As a result, supplies of summer flounder would be discontinuous and smaller boats would be disadvantaged.

A coastwide quota system would require a carefully designed system of landing limits that will have to change each year in order to account for changes in the fishery. Different landing limits could be implemented for each period to ensure equitable distribution over each period. Landing limits would be implemented by the states and the NMFS and could change over the period. The landing limits for each period would be based on the recommendations of the Summer Flounder Monitoring Committee to the Council and Commission. The states would be responsible for notification of state and federal permit holders of initial period landing limits, in period landing limit adjustments, and closures. The fishery would require to be closed before the end of the period based on projections by NMFS that the quota would be taken. Vessels with moratorium permits could only land summer flounder caught in the EEZ in coastal states from Maine to North Carolina.

This option was evaluated by the Council and Commission as an option to the existing state-by-state quota system. In all periods, January-April, May-October and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits.

The annual quota will be allocated into three periods based on historical landings (Table 1). The percent

of landings associated with each period would vary depending upon the based years used. For example, based on data for the 1990-1992 period, the allocations periods and the associated percent of the total quota would be: January-April (38.95 %), May-October (36.14 %), and November-December (24.90%). The allocation to each period would be based on past landings to minimize effects on traditional landings patterns.

In all three periods, January-April, May-October and November-December, a coastwide quota system would be implemented in conjunction with a system of landing limits. A coastwide system would allow fishermen to land in any port along the coast. All commercial landings during a specific period would count toward that quota for that period. When the quota had been landed, fishing for and/or landing summer flounder would be prohibited for the remainder of the period. Landings in excess of the allocation for the period would be subtracted from the following years's quota for the same period.

In all three periods, coastwide landing limits would have to be implemented. Allocations without landing limits would encourage derby-style fishing practices that would allow the quota to be landed by larger, more mobile vessels at the beginning of each period. As a result, supplies of summer flounder would be discontinuous and smaller boats would be disadvantaged.

Different landing limits could be implemented for each period to ensure equitable distribution over each period. Landing limits would be implemented by the states and the NMFS and could change over the period. The landing limit for each period would be based on the recommendations of the Summer Flounder Monitoring Committee to the Council and Commission. The states would be responsible for notification of state and federal permit holders of initial period landing limits, in period landing limit adjustments, and closures. The fishery would be required to close before the end of the period based on projections by NMFS that the quota would be taken. Vessels with moratorium permits could only land summer flounder caught in the EEZ in coastal states from Maine to North Carolina.

To assess the impacts of the quota, the following example was developed. Based on a quota of 11.11 million lbs and using allocation percentages based on 1990-1992 data, 4,327,500 lbs would be allocated to the January-April period, 4,015,700 lbs would be allocated to the May-October period, and 2,766,800 would be allocated to the November-December period (Table 3).

During the first winter period (Jan-Apr), a landing limit of 6,000 lbs could achieve the equitable distribution of summer flounder over the period. According to NMFS weighout data for the 1990-1992 period, a landing limit of 6,000 lbs would allow for 55% (2,380,125 lbs) of the summer flounder to be harvested by trips not affected by this landing limit (Table 4). If it is assumed that the trips affected by the implementation of this landing limit will harvest the maximum amount of summer flounder given this landing limit, then an additional 1,947,375 lbs (4,327,500 lbs - 2,380,125 lbs) of summer flounder would be harvested at the 6,000 lbs level. That is, 324 trips (1,947,375 lbs/6,000 lbs per trip) of summer flounder would be made at the 6,000 lbs level. Based on 1990-1992 weighout data, on average, 155 trips were made at or above this level (Table 4). Given the above assumptions, the proposed landing limit would allow for over a two fold increase in the number of trips made at the 6,000 lbs level. When 85% of that period's allocation was projected to be reached, the landing limit would be reduced to 200 lbs.

For the summer period (May-Oct), a landing limit of 3,500 lbs could achieve the equitable distribution of summer flounder over the period. According to NMFS weighout data for the 1990-1992 period, a landing limit of 3,500 lbs would allow for 29% (1,164,553 lbs) of the summer flounder to be harvested by trips not affected by this landing limit (Table 7). If it is assumed that the trips affected by the implementation of this landing limit will harvest the maximum amount of summer flounder, then an additional 2,851,147 lbs (4,015,700 lbs - 1,164,553 lbs) of summer flounder would be harvested at the 3,500 lbs level. That is, 814 trips (2,851,147 lbs/3,500 lbs per trip) of summer flounder would be made at the 3,500 lbs level. Based on 1990-1992 weighout data, on average, 331 trips were made at or above this level (Table 7). Given the above assumptions, the proposed landing limit would allow for over a two fold increase in the number of trips made at the 3,500 lbs level. When 85% of that period's allocation was projected to be reached, the landing limit would be reduced to 100 lbs.

During the second winter period (Nov-Dec), a landing limit of 8,000 lbs could achieve the equitable distribution of summer flounder over the period. According to NMFS weighout data for the 1990-1992 period, a landing limit of 8,000 lbs would allow for 64% (1,770,752 lbs) of summer flounder to be harvested by trips not affected by this landing limit (Table 5). If it is assumed that the trips affected by the implementation of this landing limit will harvest the maximum amount of summer flounder, then an additional 996,048 pounds (2,766,800 lbs - 1,770,752 lbs) of summer flounder would be harvested at 8,000 lbs level. That is, 124 trips (996,048 lbs/8,000 lbs per trip) of summer flounder would be harvested at 8,000 lbs level. Based on 1990-1992 weighout data, on average, 54 trips were made at or above this level (Table 5). Given the above assumptions, the proposed landing limit would allow for over a two fold increase in the number of trips made at the 6,000 lbs level. When 85% of the period's allocation was projected to be reached, the landing limit would be reduced to 200 lbs.

The proposed landing limit system for all three periods is expected to allow both small and large vessels to continue landing summer flounder according to traditional fishing patterns. However, the landing limits developed in the above example may be too high or too low for some fishermen. For example, during the first winter period (Jan-Apr) a landing limit of 6,000 lbs might appear too low for a large vessels and too high for a small vessel. This difference in vessel size will make the establishment of landing limits during the coastwide periods problematic. Furthermore, a coastwide landing limit for the summer period (May-October) will not take into consideration the variation in the inshore summer flounder fishery for vessels landing summer flounder along the coast. More specifically, a homogeneous landing limit along the coast in the summer time will not account for variations in the fishery along the coast. Specifically, implementation of a coastwide landing limit will not account for differences in summer flounder availability or variations in gear or fishing practices.

Landings limits are expected to increase the likelihood that the landings would be distributed over the entire period. Ideally, landing limits would decrease the negative effects associated with unrestricted fishing under a quota management system, such as irregular supplies or market gluts, and exvessel price fluctuations associated with derby style fishing practices.

It is important to note, however, any graduated system of landing limits would have to account for the administrative burden associated with notice to permit holders. Specially, NMFS and the states would be responsible for notifying fishermen of closures when the quota was projected to be reached. In addition, the states would be responsible for notification of changes in landing limits during the period. If several changes in the landing limits were planned for a period, notification to each permit holder would have to occur a significant number of times during the period. In addition, NMFS staff have indicated that notification to permit holders would require approximately two weeks. Another week would be required to allow vessels that are fishing for summer flounder to return to port before a change in landing limit or a closure. Thus, approximately three weeks would be required to change landing limits and close the fishery for that period. This notification period would be an important consideration in establishing the threshold triggers that would be used for each period to change landing limits. Also, time constraints coupled with the short two month period associated with the second winter period would make the establishment of a graduated system for this period problematic.

A coastwide quota during the winter may not provide the same level of equity or flexibility to summer flounder fishermen as the current state-by-state system. Over the years, personnel from several states have spent a lot of time developing quota management systems that account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them. These systems have been designed to allow for an equitable allocation of the state quota to all the commercial fishermen landing summer flounder in their state. It may be difficult to design a coastwide system that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. In addition, uniform landing limits may not be suitable for all vessels, gears or areas.

Economic Impacts

Similar economic impacts as those discussed under option 1, section 5.1.6 are expected.

Social Impacts

Similar social impacts as those discussed under option 1, section 5.1.6 are expected.

Option 3. Revise the Formula Used to Allocate the Commercial Quota to the States

Biological Impacts

This option would revise the allocation formula used to distribute quotas to the states.

The Council and the Commission considered two allocation periods (1980-1992, and 1990-1992) to revise the existing summer flounder quota system. The state allocations for each of these periods are presented in Table 8.

The years 1990 to 1992 would represent a more recent time period as well as the time period immediately prior to quota implementation. As such, the state allocations based on these years could be more representative of recent fishing patterns. The years 1980 to 1992 would represent a longer time series that included years in which summer flounder were more abundant. As such, use of these years could allow for a more equitable distribution of the summer flounder quota to the states.

The state-by-state quota allocations would vary depending upon the base years employed in the analysis. More specifically, based on 1990-1992, the percentage of summer flounder landings by state ranged from 0.0003% (NH) to 27.8451% (VA). Based on 1980-1992, allocations ranged from 0.0004% (NH) to 26.8187% (NC).

Economic Impacts

The Council believes that the allocation periods considered to revise the existing summer flounder quota system would provide a less equitable allocation of the resource. As a result, same fishermen would receive less than their fair share of the resource and their gross revenues would be negatively affected.

Social Impacts

The Council believes that the allocation periods considered to revise the existing summer flounder quota system would provide a less equitable allocation of the resource. An unequitable allocation would negatively impact the communities that rely on summer flounder.

5.1.7. Alternative 7. Transfer of Summer Flounder at Sea

Biological Impacts

Currently, there are regulations that prohibit vessels with multispecies or scallop permits from transferring any fish (including summer flounder) at sea. These regulations also specify that a vessel cannot transfer any species managed under the Northeast Multispecies FMP. The extent to which summer flounder are transferred at sea is unknown. However, such transfers would allow vessels to circumvent regulations such as trip limits and federal and/or state permit requirements thereby increasing effort in the summer flounder fishery. For example, if a fishing vessel lacks a state landing permit, it could transfer its catch at sea to a vessel that does have such a permit. This would circumvent state landing laws and allow the state's quota to be filled more rapidly than anticipated, to the detriment of legitimately licensed vessels. In addition, if a vessel lacks a federal moratorium permit, it could transfer its catch of summer flounder to a federally permitted vessel. This would circumvent federal law and diminish the effectiveness of the commercial moratorium.

Fishing effort outside of the quota system would amount to increased effort directed at summer flounder beyond the level necessary to achieve the target fishing mortality rate. This will result in increased discards not only of summer flounder but also of other non-target species that are landed as a bycatch. These non-

target species include those of commercial value and "trash" species which are unmarketable. Anderson *et al.* (1983) examined the selection properties of small versus large mesh for summer flounder and associated species in New York waters. Results of their study indicated a significant reduction in the retention of small individuals of both marketable and non-marketable species taken in association with summer flounder in tows using large (5.5 in) versus small (3.0 inch) mesh. In addition to improved escapement of small individuals of marketable species (scup, butterfish and black seabass), they observed a 47% reduction by weight of non-marketable species including sand flounder, fourspot flounder, cunner, Northern and striped searobin, bay and striped anchovy, sand lance, conger eel and smooth dogfish. Most, if not all, of these animals would be discarded dead when taken in the commercial summer flounder fishery. Thus, negative ecological consequences are expected as a result of increased effort in the summer flounder fishery beyond the level necessary to achieve the target fishing mortality rate.

Economic Impacts

As such, this prohibition may reduce gross revenues for vessels currently engaged in this activity. It is not known how many vessels are involved in transferring summer flounder at sea. However, it can be inferred from anecdotal reports that only a small number of vessels in the industry are involved in this type of activity.

Social Impacts

The action dealing with transfer of summer flounder at sea is expected to reduce the possibility of vessels circumventing state and federal laws. This management action will protect legitimately licensed vessels, and increase the effectiveness of the commercial quota. The implementation of this alternative could potentially reduce social conflicts fishermen participating in the summer flounder fishery legitimately and the individuals involved in the fishery illegally.

Other Possible Options for Alternative 7:

Option 1. No Action. Take no Action Regarding the Transfer of Summer Flounder at Sea

This would mean that summer flounder could be transferred at sea.

Currently, there are regulations that prohibit vessels with multispecies or scallop permits from transferring any fish (including summer flounder) at sea. These regulations also specify that a vessel cannot transfer any species managed under the Northeast Multispecies FMP. The extent to which summer flounder are transferred at sea is unknown. However, such transfers would allow vessels to circumvent regulations such as trip limits and federal and/or state permit requirements thereby increasing effort in the summer flounder fishery. For example, if a fishing vessel lacks a state landing permit, it could transfer its catch at sea to a vessel that does have such a permit. This would circumvent state landing laws and allow the state's quota to be filled more rapidly than anticipated, to the detriment of legitimately licensed vessels. In addition, if a vessel lacks a federal moratorium permit, it could transfer its catch of summer flounder to a federally permitted vessel. This would circumvent federal law and diminish the effectiveness of the commercial moratorium.

Fishing effort outside of the quota system would amount to increased effort directed at summer flounder beyond the level necessary to achieve the target fishing mortality rate. This will result in increased discards not only of summer flounder but also of other non-target species that are landed as a bycatch. These non-target species include those of commercial value and "trash" species which are unmarketable. Anderson *et al.* (1983) examined the selection properties of small versus large mesh for summer flounder and associated species in New York waters. Results of their study indicated a significant reduction in the retention of small individuals of both marketable and non-marketable species taken in association with summer flounder in tows using large (5.5 in) versus small (3.0 inch) mesh. In addition to improved escapement of small individuals of marketable species (scup, butterfish and black seabass), they observed a 47% reduction by weight of non-marketable species including sand flounder, fourspot flounder, cunner, Northern and striped searobin, bay and striped anchovy, sand lance, conger eel and smooth dogfish.

Most, if not all, of these animals would be discarded dead when taken in the commercial summer flounder fishery. Thus, negative ecological consequences are expected as a result of increased effort in the summer flounder fishery beyond the level necessary to achieve the target fishing mortality rate.

Economic Impacts

Without prohibition on transfers of summer flounder at sea, some vessels would continue circumventing state and or federal laws. This would diminish the effectiveness of management regulations as well as increase effort in the fishery. This option would potentially result in a decrease of revenues for fishermen that do not circumvent state and federal laws, with a possible decrease in net benefits in the long-term.

Social Impacts

This option will not be expected to reduce the possibility of vessels circumventing state and federal laws. Thus, legitimately licensed vessels will not be protected from this type of activity, and a decrease in the effectiveness of the commercial quota may occur. Those who are legitimately involved in the fishery may be placed at a competitive disadvantage. This could undermine the overall efficiency of the management system. This option will not reduce potential social conflicts between fishermen participating in the summer flounder fishery legitimately and the individuals involved in the fishery illegally.

5.1.8. Alternative 8. State Landings

Biological Impacts

The summer flounder quota applies to all summer flounder landed for sale, regardless of the place of harvest. A significant portion of the summer flounder fishery occurs in state waters. For example, in 1995, 32% of all summer flounder landings were reported as harvested in state waters (0 to 3 miles). Further, 22% of all landings were harvested by gear likely to be deployed in state waters, such as pound nets, traps and pots, gill nets, seines, and spears. These landings can be attributed to both federally permitted vessels and state permitted vessels and fishermen. If a state does not require reporting by the state permit holders, then the actual landings in state waters may be underestimated.

While most states require that fishermen report landings from state waters, not all states provide this data to the NMFS. Those that provide landings information do so voluntarily. Requiring reporting of landings from state waters will ensure that all states collect the information, and provide it to NMFS. This will make evaluation of landings equal in all states and increase the effectiveness of the quota management system. While the Magnuson-Stevens Act does not allow the NMFS to require reporting of fish landings from state waters, the Commission can establish such requirements under the Atlantic Coastal Act. Establishment of compliance criteria by the Commission will ensure that all states report their landings, both now and in the future.

The NMFS has in place a system that handles state waters landing's data provided by states from Maine to North Carolina. Since only a few states do not currently submit state data voluntarily, then this measure should not have a significant burden on this agency.

States would be expected to develop a vessel or dealer reporting system for summer flounder landings from state waters and to provide landings information to the NMFS. They would need to cooperate with the NMFS to prevent double counting of any landings. Some states currently require that all fishermen submit NMFS landings reports for summer flounder landings directly to the NMFS, regardless of whether the fish were landed in the EEZ or in state waters. Such a system decreases both the paperwork required and the chance of duplicate reporting.

These measures will affect any state between Maine and North Carolina that does not currently require documentation of all landings or does not report such data to the NMFS. Currently, all states require a commercial permit to land or sell as well as reporting of landings by all vessels fishing in state waters. Therefore, the regulations will impact states that do not provide that data to the NMFS. The regulations will

also prevent any state from discontinuing their state water reporting systems.

Economic Impacts

The state landing measure will allow for a more complete documentation and record keeping of harvested summer flounder. This management alternative will reduce the potential for harvesting summer flounder above the quota, thus increasing the potential for timely recovery of the stock. The implementation of this alternative will prevent states from landing more than their quota and may increase net economic benefits in the long-term.

Social Impacts

With the implementation of this alternative, all summer flounder landed in state waters will be reported to NMFS. This will make evaluation of landings equal in all states and increase the accuracy of the quota management system. Implementation of this regulation will ensure that all legal and reported summer flounder landings are counted against the quota. This will prevent states from landing more than their quota through failing to document landings from state waters by non-federally permitted vessels. Improving the management of the resource will benefit fishermen and their communities in the long-term.

Other Possible Options for Alternative 8:

Option 1. No Action. Take no Action Regarding the Documentation of Summer Flounder Landings by State Permitted Vessels

Biological Impacts

This would mean that some of the landings of summer flounder from state waters would not be reported to NMFS.

The summer flounder quota applies to all summer flounder landed for sale, regardless of the place of harvest. However, states are not required to document and report summer flounder landings from state waters, and instead rely solely on federal reporting requirements to determine landings. Since previous stock assessments have indicated that there may be significant underreporting of landings in the summer flounder commercial fishery, it is important that every effort is made to account for all commercial landings regardless of whether fish are caught in federal or state waters.

A significant portion of the summer flounder fishery occurs in state waters. For example, in 1995, 32% of all summer flounder landings were reported as harvested in state waters (0 to 3 miles). Furthermore, 22% of all landings were harvested by gear likely to be deployed in state waters, such as pound nets, traps and pots, gill nets, seines, and spears.

While most states require that fishermen report landings from state waters, not all states provide this data to the NMFS. Those that provide landings information do so voluntarily. If states are not required to report, some states could exceed their quota without being penalized by failing to document landings from state waters by non-federally permitted vessels.

Economic Impacts

This option would potentially allow for summer flounder caught in state waters to be unreported and not count against the quota. Furthermore, If states are not required to report, some states could exceed their quota without being penalized by failing to document landings from state waters by non-federally permitted vessels. This will affect in a negative manner the rate of stock recovery and as a result, the short and long-term economic benefits to fishermen.

Social Impacts

This option would not allow for all commercial landings of summer flounder caught in state waters to be reported. In some instances states could land summer flounder in excess of their quota. This could jeopardize the rate of stock recovery. This would have negative consequences for fishermen and communities which depend on summer flounder for employment and income.

5.1.9. Alternative 9. Special Permits for Party/Charter Vessels

Biological Impacts

Under the current regulations, filleting at sea is not allowed if the resultant body parts will be smaller than the minimum size. Summer flounder party and charter boats could be placed at a competitive disadvantage if they are not allowed to provide filleting services. Furthermore, if they are forced to fillet at the dock, they may be forced to make fewer trips.

Most states currently prohibit all filleting at sea, while others allow it under certain circumstances. New Jersey allows filleting at sea by party and charter boat operations if they have a state issued permit. Implementing this regulation, and requiring a state permit, allows each state to decide whether to allow the practice or not. The state can then weigh the benefit of filleting at sea to their party/charter fleet against the burden of implementing and enforcing a permit system.

The permits would be issued by the state, reviewed and approved by the Commission, and recognized by NMFS in the EEZ. A similar provision was approved in Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass FMP.

This measure would impact any states deciding to allow a fillet-at-sea permit for summer flounder. The state would be expected to impose the restrictions and requirements noted above. As an additional measure, states could establish a minimum fillet length requirement to help ensure that fishermen comply with the minimum size. Research necessary to determine appropriate minimum fillet sizes should be conducted by any state considering this measure.

Economic Impacts

This action is expected to have a positive net economic benefit by allowing states to implement regulations that will protect the resource and allow party/charter operators to be competitive and efficient in their operations.

Social Impacts

The measure dealing with special permits for party/charter vessels would allow states to implement regulations pertaining to summer flounder filleting at sea by party and charter boat operations. Implementing this regulation, and requiring a state permit, allows each state to decide whether to allow the practice or not. The state can then weigh the benefit of filleting at sea to their party/charter fleet against the burden of implementing and enforcing a permit system. Allowing party/charter operators to fillet summer flounder at sea would permit industry participants to operate in the fishery in a competitive manner. This may in turn maintain and/or increase demand for the services provided by party/charter. This will positively impact these type of vessels and the communities where they operate.

Other Possible Options for Alternative 9:

Option 1. No Action. Take no Action Regarding Special Permits for Party/Charter Vessels

Biological Impacts

This would mean that there would be no special permits to allow party/charter vessels to fillet at sea.

Under the current regulations, filleting at sea is not allowed if the resultant body parts will be smaller than the minimum size. Summer flounder party and charter boats could be placed at a competitive disadvantage if they are not allowed to provide filleting services. Furthermore, if they are forced to fillet at the dock, they may be forced to make fewer trips.

Economic Impacts

This option may place summer flounder party and charter boats at a competitive disadvantage if they are not allowed to provide filleting services. Potential loss of patronage and thus decrease in revenues could result due to the lack of filleting services.

Social Impacts

Impacts opposite to those discussed under Alternative 9, section 5.1.9 are expected.

5.2. WILL THE ALTERNATIVES BE REASONABLY EXPECTED TO JEOPARDIZE THE LONG-TERM PRODUCTIVE CAPABILITY OF ANY STOCKS THAT MAY BE AFFECTED BY THE ACTION?

5.2.1. Proposed Action

The proposed action would: require minimum mesh throughout the body, extension and codend, delay implementation of this mesh requirement for 6 months after final regulations are published, modify the commercial minimum mesh regulations such that a minimum mesh size can be specified for any portion of the net, continue the moratorium on entry of additional vessels into the summer flounder fishery, implement new vessel replacement criteria, remove the language regarding expiration of the commercial moratorium permit, allow *de minimus* status for states for the commercial quota, retain the current state-by-state commercial quota system, prohibit transfer of summer flounder at sea, require states to document all landings of summer flounder in their state that are not otherwise included in the federal monitoring of permit holders, and allow states to issue special permits for party/charter vessels. The proposed actions of this Amendment will place the summer flounder resource under a management regime that will allow for solutions to the various problems that have been identified by the Council and Commission in this fishery since the original FMP was implemented. The minimum mesh and fish size regulations adopted in Amendment 2 were developed to reduce mortality of small summer flounder and to minimize waste. However, since the implementation of mesh regulations in the summer flounder fishery, anecdotal reports indicate that fishermen have been circumventing the mesh regulations by using legal codends but constricting the net forward of the regulated portion of the net. Since meshes smaller than 5.5" are currently allowed forward of the regulated portion of the net, the escapement of summer flounder less than 14" TL may be greatly reduced. The result is that a higher proportion of 13 to 14" TL fish will be retained by the net. Depending on the size of the meshes used in the body and extension, a significant portion of summer flounder less than 13" TL may be retained as well, many of which will not survive when discarded. Poor compliance with mesh regulations will result in higher than expected fishing mortality rates on sublegal summer flounder. As a result, the age distribution may not expand as quickly as expected and the rate of stock recovery will slow.

The requirement of 5.5" mesh in the body, extension(s), and codend portions of the net will decrease the use of small mesh by improving compliance with the mesh regulations. The change to the FMP to require the minimum mesh throughout these portions of the net should have a positive enforcement impact relative to the current regulations, which applies only to the codend. Enhanced enforcement and compliance with the mesh regulation will result in reduced mortality on immature summer flounder and reduce the discard of fish below the minimum legal size. Reduced mortality on small summer flounder will increase the contribution of incoming year classes to the spawning stock biomass which will enhance stock rebuilding.

Summer flounder are part of an overall mixed bottom trawl fishery that generally includes *Loligo*, scup, butterfish, black sea bass, whiting, other flatfishes and other species. It is likely that some fishermen will experience a change in the size of marketable, bycatch species caught as a result of the implementation of this alternative. The degree to which changes in the size composition of marketable species harvested as

a bycatch with summer flounder will depend on fishing practices (e.g., season, area, etc.), the selection characteristics of a 5.5" diamond (6" square) mesh for the particular species landed with summer flounder and the degree to which fishermen are following the minimum mesh size regulations adopted in Amendment 2. The result will be reduced discards not only of summer flounder but also of other non-target species that are landed as a bycatch. These non-target species include those of commercial value and "trash" species which are unmarketable. Anderson *et al* (1983) examined the selection properties of small versus large mesh for summer flounder and associated species in New York waters. Results of their study indicated a significant reduction in the retention of small individuals of both marketable and non-marketable species taken in association with summer flounder in tows using large (5.5 inch) versus small (3.0 inch) mesh. In addition to improved escapement of small individuals of marketable species (scup, butterfish and black seabass), they observed a 47% reduction by weight of non-marketable species including sand flounder, fourspot flounder, cunner, Northern and striped searobin, bay and striped anchovy, sand lance, conger eel and smooth dogfish. Most, if not all, of these animals would be discarded dead when taken in the commercial summer flounder fishery. Thus, additional ecological benefits could be realized through the improved enforcement of the summer flounder mesh regulations through reduced mortality on non-target species. This action is expected to have a positive effect on all of the species/stocks mentioned above which are taken in association with summer flounder by reducing mortality of small individuals of marketable and unmarketable species in addition to summer flounder. Therefore, there should not be any adverse effect to the reproductive capability of summer flounder or any other stock.

The proposed mesh regulations would become effective 6 months after the final regulations are published in the Federal Register. This will allow for enough time for net manufacturers to obtain the appropriate webbing and construct nets, and for fishermen to obtain nets and rig their vessels benefiting both fishermen and their communities.

This amendment will allow the Council and Commission to recommend changes in mesh size for any portion of the trawl net. These recommendations will result from the Summer Flounder FMP Monitoring Committee process that is conducted each year. This flexibility will allow for modifications in mesh size that are responsive to changes in stock dynamics and/or fishermen behavior.

The continuation of the existing commercial moratorium will not allow the number of vessels that participate in the summer flounder fishery to increase. However, if the moratorium was lifted, the number of fishermen participating in the summer flounder fishery could would increase substantially. In some instances, even though the quotas are managed through a state-by-state system, an increase in effort and derby-style fishing practices could still occur. This type of behavior could potentially increase the bycatch and discard of non-commercial finfish species as well as the takes of some species of turtles. Anderson *et al.* (1983) observed non-marketable species including sand flounder, fourspot flounder, cunner, Northern and striped searobin, bay and striped anchovy, sand lance, conger eel and smooth dogfish to be taken in association with summer flounder. Most, if not all, of these animals would be discarded dead. Thus, negative ecological consequences through increased mortality of non-target species, including sea turtles, could occur if derby style effort in the summer flounder fishery were to increase dramatically due to reversion to open access conditions.

Amendment 2 to the summer flounder fishery established a five year moratorium on new entry into the fishery. This moratorium has been in place for five years. At the time that the moratorium was established, the summer flounder stock was overexploited. One of the primary reasons for establishing a moratorium in this fishery was to help control fishing mortality. Eventhough fishing mortality is controlled by an annual quota in this fishery, control of additional entry into the fishery was also necessary. As the number of participants attempting to take the quota increases it is expected that the amount of discarding could also increase. This in turn would increase mortality and jeopardize the reproductive capacity of summer flounder and a number of species taken in association with summer flounder. When the moratorium was initially implemented one of the indirect effects was that it may have placed additional pressure on unregulated species such as spiny dogfish, Atlantic croaker, and monkfish. However, since the moratorium has been in effect for five years, its continuation should have no additional effect on these unregulated species as effort shifts into these fisheries have already occurred over the past five years.

The vessel replacement criteria could allow for aging vessels or engines (as determined by the owner) to be replaced when they become inefficient or increasingly unsafe. This will in turn have a positive social impact as the potential loss of fishermen lives due to unsafe vessels or engines will be reduced. The proposed alternative would allow for the vessel replacement criteria to be identical in the Summer Flounder and Northeast Multispecies FMPs. This measure is expected to improve vessel replacement monitoring by the NMFS and reduce management costs due to standardization between FMPs. The fishing power of the fleet is not expected to significantly change as the result of the implementation of this action. Therefore, there should not be any adverse effect to the reproductive capability of the summer flounder or any other stock.

The current moratorium permit regulations require that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit. The deletion of the expiration of the moratorium permit will allow vessel owners to maintain their permits without expending additional fishing effort directed at summer flounder just to maintain their permits. A decrease in effort in the fishery may be expected to have a positive impact not only on summer flounder and associated finfish species identified above, but also on protected resources by reducing the possibility of net encounter with such species (e.g., sea turtles).

The alternatives dealing with *de minimus* status for states, commercial quota system and special permits for Party/Charter vessels are not expected to affect the long-term reproductive capability of any stocks that may be affected by these actions. The filleting at sea provision will only impact states deciding to allow a fillet-at-sea permit for summer flounder. The states would be expected to impose restrictions and requirements to help ensure that fishermen comply with the minimum size limit.

The alternative dealing with the prohibition of transfer of summer flounder at sea is expected to reduce the possibility of vessels circumventing state and federal laws (e.g., trip limits and federal and/or state permit requirements), thus reducing effort in the fishery. It is not known how many vessels are involved in transferring summer flounder at sea. A decrease in effort in the fishery may be expected to have a positive impact on protected resources by reducing the possibility of encounter of such species (e.g., some species of turtles), as well as a reduction in the take, and discard of non-commercial finfish species.

The requirement of states to document all landings of summer flounder in their state that are not otherwise included in the federal monitoring of permit holders will allow for a more complete documentation and record keeping of harvested summer flounder. Therefore, making evaluation of landings equal in all states and increase the accuracy of the quota management system. Implementation of this regulation will ensure that all legal and reported summer flounder landings are counted against the quota. This will prevent states from landing more than their quota through failing to document landings from state waters by non-federally permitted vessels. As a result, it is more likely effort directed at summer flounder will cease when the quota is actually reached. This will result in less effort directed at summer flounder. A decrease in effort in the fishery may be expected to have a positive impact not only on summer flounder and associated finfish species identified above, but also on protected resources by reducing the possibility of net encounter with them (e.g., sea turtles).

The proposed action also addresses the problems of a decline in species diversity and abundance that have been occurring over the past decade. The proposed action will enable summer flounder stocks to maintain themselves, and will hopefully prevent the type of species replacement (by less desirable species like skates and rays) that has occurred on Georges Bank and elsewhere after major targeted species have been cropped by fishing pressure. The problem of species replacement is becoming a great concern. The 1994 autumn bottom trawl survey conducted by NEFC showed a continuing dominance of cartilaginous fish (dogfish, skates, and rays). Nearly three fourths of the survey's total weight was of cartilaginous species whereas catches of the three "traditional" groundfish species (cod, haddock, and yellowtail flounder) comprised only 3% of the total (USDC 1994a).

The importance of biological diversity cannot be understated. The synergistic effects of the sum of the world's biota is directly responsible for maintaining the gaseous composition of the atmosphere, regulating the world's hydrology, generating and maintaining soils and nutrients, detoxifying wastes, driving

biogeochemical cycles, controlling pest epidemics, and providing plant pollination, thus making human life on Earth possible. In addition, select species are used by humans to enhance the quality of life. For example, many plants contain active ingredients which are used in pharmaceuticals. Humans also use species for food and shelter. Almost all of these "ecosystem services" are at present irreplaceable by technology. Technologies to replace lost elements of biological diversity are extremely limited if not non-existent (Atlantic Biodiversity Center 1994).

At this moment, human activities are inadvertently forcing species and populations into extinction at an unprecedented rate. How fast is this diversity disappearing? Harvard's Cradoord Laureate ecologist E. O. Wilson, conservatively estimated that the annual extinction rate in 1990 was 4,000 to 6,000 species per year. To put this into perspective, this rate of extinction is 10,000 times faster than the "background" or normal rate of extinction. Moreover, this may even be faster than the rate of extinction that occurred during the Cretaceous-Triassic extinctions (i.e. the dinosaur extinctions) over 65 million years ago. Biodiversity is in a constant state of being created and destroyed through the process of extinction and speciation. But speciation, a process which takes thousands of years, is not keeping pace with extinction. The result is our present state of increasing global biotic impoverishment (Atlantic Biodiversity Center 1994).

The issue of biological diversity, or biodiversity, is a general term referring to an extremely complex ecological issue. It is often defined simply as "the variety and variability of life" or "the diversity of genes, species, and ecosystems" (Council on Environmental Quality 1993). In fact, biodiversity does comprise the variation between and among major ecological elements, but the significance of that diversity is not communicated by these definitions.

Biodiversity is a new and more explicit expression of one of the fundamental concepts of ecology, popularly stated as "everything is connected to everything else." Emerging concern about biodiversity reflects an empirically based recognition of the fundamental interconnections within and among various levels of ecological organization. Ecological organization, and therefore biodiversity, is a hierarchically arranged continuum, and reduction of diversity at any level will have effects at the other levels (CEQ 1993).

Fundamental to our understanding of biodiversity is the recognition that the biological world is not a series of unconnected elements, and that the richness of the mix of elements and the connections between those elements are what sustains the system as a whole (CEQ 1993).

In the past, biologists relied upon measurements of species diversity or species richness -- simple measures of the number or distribution of species in a given area -- to describe biodiversity. However, these measures do not consider the issues of ecosystem and genetic diversity and typically treat all species alike, whether native or introduced, common or rare (CEQ 1993).

Concern for biodiversity is often misinterpreted as a desire to maximize the diversity (usually species diversity) of every area. In fact, managing for maximum diversity might actually impoverish natural biodiversity. For example, introducing small-scale habitat disturbances might increase local biodiversity by favoring the spread of opportunistic, "weedy" species. However, the same activity may decrease the available habitat for species at risk regionally, and regional or global biodiversity may be diminished (CEQ 1993).

The major goal of the FMP and its amendments is to prevent the overfishing of the summer flounder resource. The preferred measures described above all act to improve the efficacy of the FMP. As a result, the reproductive capacity of summer flounder and associated species is expected to be enhanced by these actions.

5.2.2. No Action

The no action option to each of the preferred alternatives are expected to have effects opposite to those discussed above. The no action alternative will diminish the effectiveness of the overall FMP, increase

effort in the fishery, allow fishermen to continue circumventing state and federal laws, and will not provide managers with the information and tools needed to manage the fishery effectively. All of these factors are expected to have a negative effect on the reproductive capacity of summer flounder and other species taken in association with summer flounder. Of particular concern is the effect of increased effort in this fishery on the reproductive capacity of protected sea turtles. Any action which causes an unnecessary increase in fishing effort in the summer flounder fishery will increase the chance of net encounter with sea turtles and other protected or threatened/ endangered species described in section 5.5 below.

5.2.3. Other Options

The other possible options for the various alternatives evaluated in this EA are discussed in section 5.1. They are not expected to have any impact on the reproductive capacity of summer flounder or associated species.

5.3. WILL THE ALTERNATIVES BE REASONABLY EXPECTED TO ALLOW SUBSTANTIAL DAMAGE TO THE OCEAN AND COASTAL HABITATS?

5.3.1. Proposed Action

Habitat alteration by fishing activities is perhaps the least understood of the important environmental effects of fishing (National Research Council 1994). Alterations to resource habitats due to fishing may result from the loss of habitats of non-target species, such as species encrusting cobbles, or of other epibenthic habitats, which may be important nursery areas for juvenile fish; from the alteration of nutrient levels and bottom sediment, including destruction of habitat by bottom trawling, dredging, and other fishing and processing operations; and from the generation of suspended debris that can have lethal effects long after fishing activities have ceased. The principal gear used to harvest summer flounder is the bottom otter trawl. There are potential impacts of otter trawling on the ocean bottom habitat. However, quantification of specific gear types on various bottom types is poorly understood. The effects on ocean bottom habitat of trawling is largely an unknown at this time. The very few published papers that do exist deal with specific habitats, mostly hard bottom habitat.

No studies exist about the effects on habitat of trawling on open ocean bottom in the Mid-Atlantic region which is where most of the summer flounder fishery is prosecuted. However, whatever the consequences for habitat, it can be assumed that increased trawling effort would tend to have greater negative consequences. Conversely, any action which acts to reduce fishing effort would tend to reduce the negative impacts of trawling on the physical environment. Based on this analysis, the preferred alternatives described in section 5.1 which will effectively reduce fishing effort relative to the status quo (no action alternatives) are expected to reduce the negative effects, if any, of trawling on the habitat of summer flounder and associated species. Thus, it can be concluded that the measures described in section 5.1 which would reduce fishing effort in this fishery would have positive benefits for the habitat of summer flounder and associated species.

In addition to the issue of general habitat degradation, several habitats within the summer flounder management unit are protected under the National Marine Sanctuaries Act of 1973. National marine sanctuaries are allowed to be established under the National Marine Sanctuaries Act of 1973. Currently there are 11 designated marine sanctuaries that creates a system that protects over 14,000 square miles (National Marine Sanctuary Program 1993).

There are two designated 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. There are currently five additional proposed sanctuaries, but only one, the Norfolk Canyon is on the east coast.

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. Correspondence for this sanctuary should be addressed to: *Monitor* NMS, NOAA, Building 1519, Fort Eustis, VA 23604.

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) became effective March 1994. Commercial fishing is not specifically regulated by Stellwagen Bank regulations. The regulations do however call for consultation between Federal agencies and the Secretary of Commerce on proposed agency actions in the vicinity of the Sanctuary that "may affect" sanctuary resources. Correspondence for this sanctuary should be addressed to: Stellwagen Bank NMS, 14 Union Street, Plymouth, MA 02360.

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.

5.3.2. No Action

The result of all of these no action options will be an increase in effort relative to the preferred alternatives. By effectively increasing fishing effort relative to the preferred alternatives, the no action options are expected to increase the negative effects, if any, of trawling on the habitat of summer flounder and associated species. Thus, it can be concluded that the no action options to those measures described in section 5.1 (which would reduce fishing effort in this fishery) would have negative effects on the habitat of summer flounder and associated species.

5.3.3. Other Options

None of the other possible options for the various alternatives evaluated in this EA are expected to have any effect on or cause substantial damage to the ocean and coastal habitats of summer flounder and associated species.

5.4. WILL THE ALTERNATIVES BE REASONABLY EXPECTED TO HAVE A SUBSTANTIAL ADVERSE IMPACT ON PUBLIC HEALTH AND SAFETY?

None of the preferred alternatives are expected to have an adverse impact on public health or safety. Summer flounder are afflicted with various parasites and disease. Fin rot disease may be the most common among fish and is most often associated with stressful environmental conditions. Fish from polluted waters are subject to increased prevalence of disease. Summer flounder are exposed to the full range of human activities during their lifetime. They are exposed to extensive, detrimental amounts of toxic organic and inorganic contaminants, such as heavy metals, PCBs, and petroleum hydrocarbons in the various physical compartments of the marine ecosystem (FMP section 6.2). Most research on the toxicological effects of various contaminants in fish in general is recent and ongoing. While more research is certainly necessary on toxicological effects associated with these species none of the alternatives are expected to have a differential adverse impact on public health or safety. In fact, heightened awareness and improved data collection will occur with the implementation of this Amendment. The alternatives will not create situations that would have an adverse impact on public health and safety.

The proposed amendment will have a positive effect on safety at sea. Since enforcement of the mesh regulations will be made easier, fishermen will have greater assurance that everyone involved in the fishery is abiding by the mesh regulations. This should decrease the likelihood that fishermen will engage in behavior that could be dangerous because they feel they are placed at a competitive disadvantage by those who circumvent the mesh regulations.

This amendment will prohibit new entry into the summer flounder fishery which is already severely

overcapitalized. The current summer flounder fleet is capable of taking the entire annual quota in less than 12 months. If this fishery were to revert to open access, it is likely that a flood of speculative entry into the fishery would occur thus worsening the overcapitalization problem. The fishery would likely become an intense derby style fishery with the associated unsafe behavior displayed by fishermen at sea as they attempt to catch some portion of the quota before the fishery is closed. The continuation of the moratorium will help prevent derby style fisheries by maintaining a cap on effort and thus will have a positive effect on safety at sea.

This amendment will modify the vessel replacement criteria to allow fishermen to replace their vessels voluntarily. This will promote safety at sea since fishermen will not have to wait until a vessel is declared unseaworthy before it can be replaced. In addition, removing the requirement that a vessel with a permit must land summer flounder at some point during a 52-week period would have a positive effect on safety at sea. Fishermen would not be forced to fish simply to retain the permit.

5.5 WILL THE ALTERNATIVES BE REASONABLY EXPECTED TO ADVERSELY AFFECT AN ENDANGERED OR THREATENED SPECIES OR MARINE MAMMAL POPULATION?

5.5.1. Proposed Action

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 26 November and 7 December 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 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 a Turtle Excluder Device (TED) was developed, in conjunction with the NMFS Pascagoula Laboratory, for use on summer flounder bottom trawlers. Experimental tows conducted without TEDs during this time indicated that about 0.14 sea turtles were taken per hour for each net towed off Ocracoke in December 1990. On 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 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 were incorporated in the final version of Amendment 2 (section 9.1.2.5). They were also implemented by NMFS emergency action effective 2 December 1991.

A voluntary observer program was also implemented to monitor the incidental take level to prevent surpassing the allowance of 5 observed lethal takes of an endangered species or 15 loggerheads, assuming observer coverage on at least 10 percent of the vessels fishing in the conservation area. The

North Carolina Division of Marine Fisheries and the NMFS Southeast Fisheries Center (SEFC) Beaufort Laboratory were able to provide real-time monitoring and assessment of sea turtles in the sea turtle conservation area, however cooperation of the fishing industry was variable and prevented confidence in NMFS' ability to monitor incidental take. Mandatory observer coverage was imposed from 24 January to 14 February 1992.

A total of 2,840 hours of fishing were observed in the sea turtle conservation area during the winter of 1991-1992). Eighty three sea turtles were captured, including 50 loggerheads (5 dead, 1 dead prior to observed take) 30 Kemp's ridleys (1 dead prior to observed take), 2 green turtles, and a hawksbill. The catch rate for the entire observed area was about 0.03 turtles per hour per net. Observed takes in the nearshore waters south of Cape Hatteras in December were as high as 0.15 turtles per hour per net. This is comparable to December 1990 catch rates in the same area. Over 75% of the sea turtles observed taken during the 1992 season were caught south of Cape Hatteras. Sixty percent (26) of those turtles observed south of Cape Hatteras in November and December were Kemp's ridleys.

Sea turtles were sighted on aerial surveys conducted out to 15 miles off North Carolina through the winter and into March of 1991-1992. Archived sea surface temperature data analyzed for 1976 to the present revealed a consistent pattern of warm water influenced by the Gulf Stream in nearshore waters of North Carolina throughout the winter (Cross pers. comm. and Epperly pers. comm.). This refutes earlier assessments that takes would occur through mid-January (USDC 1991), and clearly extends the time for which protective measures should be in place.

Although observed mortality was low for trips where observers recorded the condition of released turtles, twenty percent of the observed sea turtles taken on vessels complying with 75 minute tow times required resuscitation. Seventy percent of those turtles that required resuscitation were Kemp's ridleys. Some of these turtles would probably have died without treatment and should be counted as lethal takes for management purposes. The National Research Council, in their report "Decline of the Sea Turtles: Causes and Prevention", recommends that comatose sea turtles be considered mortalities due to recent observations that indicate that most of these turtles die after release (NRC 1990).

In summary, sea turtles are taken by the winter trawl fishery for summer flounder off North Carolina and southern Virginia throughout the winter fishing season at overall rates comparable to that documented in the shrimp fishery in the southeast US (Henwood and Stuntz 1987). During the two years for which direct observations were made, incidental takes of Kemp's ridleys were high south of Cape Hatteras through December.

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

Attempts were made to put this summer flounder fishery/sea turtle interaction into perspective of other sources of mortality for these endangered species. The Congressionally mandated report *Decline of the Sea Turtles: Causes and Prevention* (NRC 1990) states that "Of all the known factors, by far the most important source of deaths was the incidental capture of turtles (especially loggerheads and Kemp's ridleys) in shrimp trawling. This factor acts on the life stages with the greatest reproductive value for the recovery of sea turtle populations."

Mortality associated with other fisheries and with lost or discarded fishing gear is much more difficult to estimate than that associated with shrimp trawling, and there is a need to improve these estimates (NRC 1990). This report identified possible turtle losses from the winter flounder trawl fishery north of Cape Hatteras (about 50-200 turtles per year); the historical Atlantic sturgeon fishery, now closed, off the Carolinas (about 200 to 800 turtles per year); and the Chesapeake Bay passive-gear fisheries (about 25 turtles per year). Considering the large numbers of fisheries from Maine to Texas that have not been evaluated and the problems of estimating the numbers of turtles entangled in the 135,000 metric tons of plastic nets, lines, and buoys lost or discarded annually, it seems likely that more than 500 loggerheads and 50 Kemp's ridleys are killed annually by nonshrimp fisheries (NRC 1990). These other fishery

operations, lost fishing gear, and marine debris are known to kill sea turtles, but the reported deaths are only about 10% of those caused by shrimp trawling. Dredging, entrainment in power-plants intake pipes, collisions with boats, and the effects of petroleum-platform removal all are potentially and locally serious causes of sea turtle deaths. However these collectively amount to less than 5% of the mortality caused by shrimp trawling (NRC 1990).

The NRC report (1990) concludes that all species of marine turtles need increased protection under the Endangered Species Act and other relevant legislation. While the report does not recommend specific conservation measures for the summer flounder fishery, the recommendations for the shrimp trawling are germane. The NRC report (1990) recommended TEDs, 60 minute winter tow-time limits, and limited time/area closure for turtle "hot spots". At this time, there is only a Recovery Plan for the loggerhead turtle (The Loggerhead/Green Turtle Recovery Team 1991). Other Recovery Plans for other species of sea turtles are in preliminary draft form and not yet ready for distribution. Of the six "Actions Needed" that are identified by the Recovery Plan to achieve recovery of loggerheads is item 5: "minimize mortality from commercial fisheries."

The preferred options described in section 5.1 which will effectively reduce fishing effort relative to the status quo (no action alternatives) are expected to reduce the level of lethal takes of sea turtles compared to taking no action. As a result of this reduction in lethal takes, implementation of this Amendment will be beneficial to Kemp's ridleys.

Marine mammals are managed under the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973. Thirty-five species of marine mammals range the US Atlantic and Gulf of Mexico waters (32 whales, dolphins and porpoises, two seal species and one manatee). Their status is poorly known, but some, like the right whale, Mid-Atlantic coastal bottlenose dolphin, and harbor porpoise, are under stresses that may affect their survival (USDC 1993). Brief summaries below for selected species give data on distribution, current and historical abundance and population trends.

Bottlenose Dolphin.

The number of discrete stocks of bottlenose dolphins is unknown, although there appear to be offshore and coastal types, possibly forming two distinct populations. There are no comprehensive population estimates, but abundance in the Gulf of Mexico is 35,000 - 40,000 in waters of 100 fathoms or less. Nearshore aerial surveys between Cape Hatteras and Nova Scotia in 1979 -82 suggest a northeast US total of 10,000 - 13,000 individuals. However, a large die-off of bottlenose dolphins in 1987 - 88 may have resulted in a 50% or greater decline in the nearshore and offshore types. An offshore survey from New Jersey to Cape Hatteras in 1987 found about 1,050 - 7,500 which were assumed to be of the coastal type (USDC 1993).

Pilot Whale.

Two species of pilot whales occur in the North Atlantic, the shortfin pilot whale in the south and the longfin in the north. The range of the two species overlaps seasonally in the Mid-Atlantic region of the western North Atlantic. The longfin pilot whale occurs northward into Canadian and the Greenland waters and eastward to Europe: it is subject to an ongoing harvest around the Faroe Islands and incidental capture in several fisheries in the US and Canadian waters. The shortfin pilot whale may be subject to a low level of bycatch in several US fisheries. Population structure and general life history of both species is very poorly known. Abundance has been estimated for the longfin pilot whale in the eastern North Atlantic (750,000) and for the continental shelf region of the western North Atlantic (roughly 11,000; USDC 1993).

Fin Whale.

Fin whales, listed as endangered under the ESA, are probably the most numerous large cetaceans in temperate waters of the western North Atlantic Ocean. They range widely throughout the continental shelf in all seasons, but most sightings occur from the Great South Channel on Cape Cod, north throughout the southwest Gulf of Maine. Stock structure and total abundance are unknown. An estimate of abundance

off the northeast coast in 1979 - 82 was 5,200 in spring and 1,500 in winter. Important research and management questions are whether separate stocks exist, the location of calving grounds and annual calf production, and the location of the wintering grounds for the northwest Atlantic population.

Humpback Whale.

The humpback whale is listed as endangered. Reasonably discrete summer stocks occur in the Gulf of Maine, Gulf of St. Lawrence, and the waters of Newfoundland-Labrador, west Greenland, Iceland, and Norway. The estimated population is about 5,100 whales. Along the northeast coast, humpbacks frequent the Great South Channel, Georges Bank, Stellwagon Bank, and Jeffreys Ledge during summer. A minimum estimate of the population prior to commercial whaling (about 1865) was 4,400 - 4,700 humpbacks. Entanglement with fishing gear and sporadic toxin-induced die-offs are problems for the species. In recent years the number of sightings of young humpbacks in the Mid-Atlantic region has increased, generally in the areas of the Chesapeake and Delaware Bays (USDC 1993). There is a recovery plan for this species.

Right Whale.

Northern right whales occur on the continental shelf from Florida to Nova Scotia. The endangered western Northern Atlantic stock is the only northern hemisphere right whale population with a significant number of individuals (300 - 350) -- the other stocks being virtually extinct. The pre-eighteenth century population may have been as high as 10,000, and, if so, the current population is more than 95% depleted. Individual identification, satellite tagging, genetic analysis, and the use of video cameras to document behavior are new research methods that have been applied in recent years. Many questions, however, remain. Among them are the location of the summering grounds for 30% of the population and wintering grounds for 80% of the population. Human impacts (net entanglements and ship strikes) are affecting some 60% of the population and may be inhibiting recovery. Two areas important to the northern right whale, the summer feeding grounds off the New England coast and the winter calving area along the Georgia and northern Florida coast, have been proposed as critical habitat (USDC 1993). There is a recovery plan for this species. A final rule was published in June 1994, designating right whale critical habitat for summer feeding grounds in New England and winter calving grounds off the Georgia and Florida coasts.

Harbor Porpoise.

The northwestern Atlantic harbor porpoise is found from Newfoundland, Canada, to Florida. It is hypothesized that there are three populations: Newfoundland, Gulf of St. Lawrence, and Gulf of Maine-Bay of Fundy. However, there is not enough evidence to test this hypothesis against the alternative of a single population. Summer aggregations occur in the Gulf of Maine, Gulf of St. Lawrence, and the east coast of Newfoundland. The winter distribution is poorly understood. The 1991 - 92 population estimate of the Gulf of Maine population is 47,200 (95% CI 32,800 - 68,000). No useful estimates of abundance for the other populations exist. The average estimate of annual mortality by the US Gulf of Maine sink gillnet fishery from 1990 and 1992 is about 1,700 (range 900 - 2,400). These estimates do not include bycatch from fisheries south of Cape Cod or north of the US border. The estimated bycatch of the other two populations is largely unknown, though some new data do exist for the Bay of Fundy, which are currently being analyzed (USDC 1993).

Harbor Seal.

Harbor seals, year-round residents of Maine and eastern Canada, are seasonal-winter residents in southern New England. Harbor seal numbers have apparently increased in recent years, due primarily to protection under the MMPA. Recent surveys suggest that 26,000 harbor seals occur in the Gulf of Maine, and they are increasing. Bycatch levels are relatively low, and major concerns are competition with fisheries and periodic disease outbreaks (USDC 1993).

Beaked Whales.

There are four species of beaked whales in the northwest Atlantic, however little is known on their distribution, biology, and population structure. Based on cetacean surveys conducted during the early 1980's and 1990's, these species are distributed along the shelf edge (2,000 m), principally along the southern edge of Georges Bank and associated with oceanographic fronts and Gulf Stream meanders. Population estimates for this species are not available. Determination of minimum abundance estimates will require substantial survey effort in shelf-edge waters and waters seaward to at least the Gulf Stream off the northeast US and eastern Canada coasts (USDC 1993).

The gears managed under this FMP are all in the third category or not listed at all for the final List of Fisheries for 1994 for the taking of marine mammals by commercial fishing operations under section 114 of the Marine Mammal Protection Act (MMPA) of 1972 (*Federal Register* 43818-43826). Section 114 of the MMPA establishes an interim exemption for the taking of marine mammals incidental to commercial fishing operations and requires NMFS to publish and annually update the List of Fisheries, along with the marine mammals and the number of vessels or persons involved in each fishery, arranging them according to categories, as follows:

1. A fishery that has a frequent incidental taking of marine mammals;

2. A fishery that has an occasional incidental taking of marine mammals; or

3. A fishery that has a remote likelihood, or no known incidental taking, of marine mammals.

In Category I there is documented information indicating a "frequent" incidental taking of marine mammals in the fishery. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period. No summer flounder fisheries are in this category.

In Category II there is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken. No summer flounder fisheries are in this category.

In Category III there is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery or in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is no more than a remote likelihood of an incidental take in the fishery. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period. The mixed species trawl fishery (where most summer flounder are caught) is considered a Category III fishery. This fishery has greater than 1000 vessels. This fishery had no documented marine mammal species involved, according to the *Federal Register* notice. The actions described in section 5.2.1 which effectively reduce fishing effort in the summer flounder fisheries relative to no action should provide a beneficial impact on the marine mammal populations of the east coast.

The summer flounder fishery has no known impacts on any other protected species.

5.5.2. No Action

The no action alternative will likely result in increased effort in the summer flounder fisheries. This will

increase the probability of net encounter with Kemp's ridley turtles which may jeopardize the continued existence of the Kemp's ridley population. Sea turtle conservation measures are considered necessary to protect turtles from October through mid-January to allow fishing activities to continue in a manner consistent with the Endangered Species Act. Increased effort during this period would exacerbate this problem.

5.5.3. Other Options

None of the other possible options for the various alternatives evaluated in this EA are expected to have any effect on threatened or protected species.

5.6. WILL THE ALTERNATIVES BE REASONABLY EXPECTED TO RESULT IN CUMULATIVE ADVERSE EFFECTS THAT COULD HAVE A SUBSTANTIAL EFFECT ON THE TARGET RESOURCE SPECIES OR ANY RELATED STOCKS THAT MAY BE AFFECTED BY THE ACTION?

5.6.1. Proposed Action

The preferred alternatives described in section 5.1 which will effectively reduce fishing effort relative to the status quo (no action options) are expected to result in cumulative beneficial effects on the target resource and other associated non targeted species. These benefits will accrue to the summer flounder resource because it is expected that the summer flounder quota will be taken while minimizing the catch and discard of small summer flounder and non-target species of commercial and non-commercial value. In addition, minimizing effort to take the summer flounder quota will reduce the incidental capture and mortality of non-target species taken during summer flounder trawling operations. By minimizing unnecessary mortality on summer flounder and associated species, the preferred alternatives will increase the cumulative beneficial effects on the target resource and other associated non targeted species

5.6.2. No Action

The result of all of the no action alternatives will be an increase in effort relative to the preferred alternatives. By effectively increasing fishing effort relative to the preferred alternatives, the no action alternatives are expected to the reduce cumulative beneficial effects on the target resource and other associated non-target species

5.6.3. Other Options

None of the other possible options for the various alternatives evaluated in this EA are expected to have any cumulative effects on the summer flounder resource or associated species.

6.0. FEDERAL AGENCIES THAT MAY BE AFFECTED.

The Federal Agencies that may be affected by this proposed FMP include:

Dept. of Army Civil Works: scheduling of dredging projects, discharge of dredged materials, identification of aquatic borrow sites.

Dept. of Army Regulatory 1404 Program: issuing of permits for water development projects (e.g. dredging, filling, bulkheading, construction of piers, and installation of piles).

Environmental Protection Agency: Section 401 -- individual state review of 404 discharges, Section 402 -- point source discharges, Section 404 -- discharge of dredge or fill into waters of the U.S., Section 208 -- nonpoint source pollution control. Marine Protection, Research, and Sanctuaries Act. Ocean Dumping, RCA, Superfund.

Minerals Management Service: Outer Continental Shelf Land Act, Hydrocarbon Exploration and Development, Hard Mineral Mining.

Dept. of Commerce: Endangered Species Act, Marine Mammals Protection Act, Coastal Zone Management Act.

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

In preparing this regulatory 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, Virginia, and North Carolina through their membership on the Council. In addition to the States that are members of this Council, Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut were also consulted through the Coastal Zone Management Program consistency process.

8.0. LIST OF PREPARERS OF THE ENVIRONMENTAL ASSESSMENT

This 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 Richard Cole (Chair, DE), Dusty Rhodes (Vice Chair, NJ), Jack Travelstead (VA), Charlie Bergmann (NJ), Tom McCloy (NJ), Gordon Colvin (NY), James Gilford (MD), Alan Weiss (PA), Robert Hamilton (NY), and Jack Dunnigan (ASMFC); South Atlantic Council member Dennis Spitsbergen; and New England Council member James McCauley.

ASMFC Summer Flounder Management Board - Ernest Beckwith (CT), David Borden (RI), Wayne Brewer (NY), A. C. Carpenter (Potomac River Fisheries Comm.), Phil Coates (MA), Rick Cole (DE), Gordon Colvin (NY), Tom McCloy (NJ), James Geiger (USFWS), W. Peter Jensen (MD), Sen. Owen Johnson (NY), Harry Mears (NMFS), William Pruitt (VA), and Dennis Spitsbergen (NC).

Summer Flounder Monitoring Committee - David Keifer (Chair, MAFMC), Phil Harring (NEFMC), Gregg Waugh (SAFMC), Hannah Goodale (NMFS NERO), Mark Terceiro (NMFS NEFC), John Merriner (NMFS SEFC), John Carmichael (ASMFC), Dick Sisson (RI), Rick Monaghan (NC), John Mason (NY), David Pierce (MA), Bruce Halgren (NJ), Herb Austin (VIMS), and Wilson Laney (USFWS).

MAFMC staff - David R. Keifer, Christopher M. Moore, Richard Seagraves, and José L. Monteñez.

9.0. FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

Having reviewed the environmental assessment and the available information relating to the proposed action, I have determined that there will be no significant adverse environmental impact resulting from the action and that preparation of an environmental impact statement on the action is not required by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

_____ _____

Assistant Administrator for Fisheries, NOAA — Date

APPENDIX 5. REGULATORY IMPACT REVIEW

1. INTRODUCTION

The National Marine Fisheries Service (NMFS) requires the preparation of a Regulatory Impact Review (RIR) for all regulatory actions that either implement a new Fishery Management Plan (FMP) or significantly amend an existing plan. The RIR is part of the process of preparing and reviewing FMPs and provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way.

The RIR addresses many items in the regulatory philosophy and principles of Executive Order (E.O.) 12866. The RIR also serves as the basis for determining whether any proposed regulation is a "significant regulatory action" under certain criteria provided in E.O. 12866.

1.1. Description of User Groups

The description of fishing activities is presented in section 7, the economic characteristics of the fishery and the fishery impact statement are described in sections 8 and 9.2.6 of this amendment, respectively.

1.2. Problems Addressed by the Amendment

The problems to be addressed are discussed in section 4.2 of this Amendment.

1.3. Management Objectives

The objectives of the Amendment are described in section 4.3 of this Amendment.

2. METHODOLOGY AND FRAMEWORK FOR ANALYSIS

The basic approach adopted in this RIR is an assessment of management measures from the standpoint of determining the resulting changes in costs and benefits to society. Net effects are stated in terms of producer and consumer surpluses for the summer flounder commercial fishery. The effects of actions were analyzed by employing quantitative approaches to the extent possible. Otherwise, qualitative analysis were conducted.

3. IMPACTS OF PROPOSED ALTERNATIVES

3.1. Preferred Alternatives

3.1.1. 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" diamond (or 6.0" square) minimum mesh, inside measure, applied throughout the body, extension(s) and codend of the net. 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 amendment are encouraged to maintain them.

The minimum mesh and fish size regulations originally adopted in Amendment 2 were developed to reduce mortality of small summer flounder and to minimize waste. A 5.5" mesh retains about 70% of

the 14" TL summer flounder that encounter the net. During the development of Amendment 2 it was recognized that 5.5" mesh would also retain a portion of the 13" TL summer flounder that encountered the net. The Council and Commission decided to reduce the minimum fish size to 13" TL to avoid the wasteful discard of any 13 to 14" TL fish retained in legal summer flounder nets.

These regulations were developed in the belief that fishermen would target 14" TL and larger summer flounder. However, since the implementation of mesh regulations in the summer flounder fishery, anecdotal reports indicate that fishermen have been circumventing the mesh regulations by using legal codends but constricting the net forward of the regulated portion of the net. Since meshes smaller than 5.5" are currently allowed forward of the regulated portion of the net, the escapement of summer flounder less than 14" TL may be greatly reduced. The result is that a higher proportion of 13 to 14" TL fish will be retained by the net. Depending on the size of the meshes used in the body and extension, a significant portion of summer flounder less than 13" TL may be retained as well, many of which will not survive when discarded. Mesh selectivity data (Gillikin *et al.* 1981) indicate that there is no escapement of fish 13" TL or larger for a mesh less than 4". Although mesh selectivity data for summer flounder are based on studies done with codends, it is probable that retention levels for a given mesh size would be similar in other portions of the net.

Poor compliance with mesh regulations will result in higher than expected fishing mortality rates on sublegal summer flounder. As a result, the age distribution may not expand as quickly as expected and the rate of stock recovery will slow.

The requirement of 5.5" mesh in the body, extension(s), and codend portions of the net will decrease the use of small mesh by improving compliance with the mesh regulations. The change to the FMP to require the minimum mesh throughout these portions of the net should have a positive enforcement impact relative to the current FMP, which applies only to the codend. Enhanced enforcement and compliance with the mesh regulation will result in reduced mortality on immature summer flounder and reduce the discard of fish below the minimum legal size. Reduced mortality on small summer flounder will increase the contribution of incoming year classes to the spawning stock biomass which will enhance stock rebuilding.

This amendment will allow the Council and Commission to recommend changes in mesh size for any portion of the trawl net. These recommendations will result from the Summer Flounder FMP Monitoring Committee process that is conducted each year. This flexibility will allow for modifications in mesh size that are responsive to changes in stock dynamics and/or fishermen behavior.

This amendment would allow the Council and Commission to recommend to the Regional Administrator a delay in implementation of any changes in the mesh provisions. In general, once an FMP or an amendment is approved by NMFS, the regulations become effective 1 to 2 months after approval. However, this may not allow enough time for net manufacturers to obtain the appropriate webbing and construct the nets. In addition, fishermen need time to obtain the nets and rig their vessels.

The proposed mesh regulation of 5.5" mesh in the body, extension(s), and codend portions of the net would become effective 6 months after the final regulations were published in the Federal Register. This will allow enough time for net manufacturers to obtain the appropriate webbing and construct the nets, and for fishermen to obtain the nets and rig their vessels benefiting both fishermen and their communities.

Based on an informal survey of 4 net manufacturers conducted by Council staff, 5.5 inch webbing to build trawl net bodies is not currently available in quantities necessary to provide nets for the entire summer flounder fleet. Net manufacturers in Rhode Island and New Jersey indicated that at least 3 to 6 months would be required to order 5.5" twine and build the new nets. However, the Wanchese Fish Company in North Carolina indicated that they had more than enough twine to supply the North Carolina summer flounder trawl fleet if the whole net mesh requirement was put in place (J. Daniels pers. comm.). Thus, although enough net material is available in some localized areas, the shortage of 5.5" twine could require that implementation of the net regulation be delayed for 6 months.

The costs associated with gear conversion would vary for inshore and offshore vessels. More specifically these costs would vary according to the various features that can be incorporated into the gear and the horsepower (hp) or size of the fishing vessel. For vessels operating in the inshore fishery (assume 250 hp) a 5.5" diamond mesh in the body, extension and codend would cost approximately $775. For vessels operating in the offshore fishery (assume 670 hp) a 5.5" diamond mesh in the body, extension and codend would cost approximately $1,354 (M. O'Rourke pers. comm.). These costs are considered direct costs associated with the required gear conversion. Any gear replacement costs for those vessels that participate in the summer flounder fishery and need to comply with the mesh size criteria described in this section would be incurred in year one (1998) of the implementation of this management action. Currently, 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 fish only with a 5.5" minimum diamond, or a 6.0" minimum square mesh codend. Because otter trawl vessels harvesting summer flounder at the above specified threshold levels already posses the minimum size required codend, then the costs attributed to the mesh size restriction described in this document would be lower for these vessels.

Permit data files from the NMFS indicate that as of 29 October 1996, there were 1,063 commercial vessels holding summer flounder permits. Of these vessels, 620 (58%) also hold Multispecies Days-at-Sea (Individual or Fleet) permits. All these vessels must fish with a minimum mesh size of 6.0" when fishing under a Multispecies Days at Sea in the SNE or GOM/GB regulated mesh areas. Vessels fishing in the Mid-Atlantic regulated mesh area are subject to the summer flounder minimum mesh size, which is currently 5.5" (S. Murphy pers. comm.). Given the number of commercial vessels holding summer flounder permits that also hold Multispecies "Days-at-Sea" permits, it is expected that approximately 42% of the vessels (1,063 - 620) participating in the summer flounder fishery would be affected by this management alternative.

Summer flounder are part of an overall mixed bottom trawl fishery that generally includes: *Loligo*, scup, butterfish, black sea bass, whiting, other flat fishes and other species. It is likely that some fishermen will experience a change in the size of marketable, bycatch species caught as a result of the implementation of this alternative. The degree to which changes in the size composition of marketable species harvested as a bycatch with summer flounder will depend on fishing practices (e.g., season, area, etc.), the selection characteristics of a 5.5" diamond (6" square) mesh for the particular species landed with summer flounder and the degree to which fishermen are following the minimum mesh size regulations adopted in Amendment 2. Specific information to address this issue is not available. Therefore, changes in revenues cannot be determined. However, it can be expected that because there is a price differential for the species caught as a bycatch with summer flounder, then revenues from those species will increase due to price increases from harvesting larger fish. Therefore, any loss in annual gross revenues from the decrease in the harvesting of small fish as a consequence of the implementation of this alternative will be compensated due to the increase in revenues due to price differentials. The overall effect of this management action will increase net benefits in the long-term.

3.1.2. Commercial Moratorium

Amendment 2 to the FMP for the summer flounder fishery established a moratorium on entry of additional commercial vessels into the summer flounder fishery in the EEZ for 5 years. The summer flounder moratorium expires in 1997 unless extended by plan amendment. Given the pressure that exits in most of the major fisheries in the Atlantic coast, the expiration of the summer flounder moratorium on entry will allow fishermen that have traditionally participated in other fisheries to fish for summer flounder in order to alleviate some of the economic adversities they are currently facing. According to NMFS data permit files (29 October 1996) there were 1,063 vessels holding summer flounder moratorium permits. The same data file indicates that 4,088 vessels hold Multispecies, Scallop, and Squid, Atlantic Mackerel and Butterfish (SMB) permits. One thousand fifty one vessels of the 4,088 vessels holding Multispecies, Scallop, and SMB permits also hold Summer flounder moratorium permits. This indicates that 3,037 additional vessels could potentially apply for a summer flounder permit and participate in the fishery if the moratorium is allowed to expire. If this were to

occur, the number of participants in the summer flounder fishery could potentially increase four fold relative to the 1996 level.

In addition, there was a moratorium permit application deadline of November 30, 1993. As of mid-April, 1997, approximately 290 applications were received too late to be considered for the moratorium permit. If the moratorium expired, it is probable that these vessels, some of which are probably included in the 3,037 vessels noted above, would enter the fishery.

The current summer flounder fleet is capable of taking the quota in total. An increase in the number of vessels in the summer flounder fishery would have adverse economic impacts. Summer flounder gross revenues per vessel would, on average, decrease and overcapitalization would be intensified. According to unpublished NMFS weighout data (Maine-Virginia) 832 known vessels landed summer flounder in 1994; 52 (6.25%) were tonnage class I (vessels less than 5 GRTs), 255 (30.65%) were tonnage class II (vessels 5-50 GRTs), 371 (44.59%) were tonnage class III (vessels 51-150 GRTs), and 154 (18.51%) were tonnage class IV (vessels greater than 151 GRTs). On average summer flounder accounted for 11.63% of the total gross revenue (based on weighout data of all species landed with summer flounder) for the vessels that landed summer flounder in 1994. The percentage of total gross revenues derived from summer flounder by vessel's tonnage class were 12.30% for tonnage class I, 17.49% for tonnage class II, 17.57% for tonnage class III, and 3.74% for tonnage class IV. These percentages indicate that summer flounder gross revenues as a percentage of the total gross revenues for vessels that participated in the summer flounder fishery in 1994 were significant for tonnage class II and III vessels, and moderate for tonnage class I vessels.

A potential increase in the number of participants in the summer flounder fishery would cause economic hardship for the summer flounder vessels that have traditionally participated in the fishery. The extent of the economic pressure would depend on the ability of the vessels that currently fish for summer flounder to compete in other fisheries. Taking into consideration the overall level of competition for the existing fishery resources of the Atlantic coast, it is likely that the number of alternatives for those vessels would be very small. Therefore, the expiration of the summer flounder moratorium permit would have negative economic impacts for vessels currently participating in the fishery. Assuming the degree of vessel participation in the summer flounder fishery in 1994, it would be expected that vessels of tonnage class II and III would likely be affected the most from the expiration of the summer flounder moratorium permit. These tonnage class vessels represented over 75% of the total number of vessels that landed summer flounder in 1994.

As the level of participation of additional vessels into the summer flounder fishery increases, it is expected that, on average, the gross revenue from summer flounder for the vessels under the current moratorium of entry would decrease. The continuation of the moratorium will provide an opportunity for participants in the fishery to benefit as the resource rebuilds as a result of the fishing mortality reduction program. This is likely to increase net benefits in the long-term.

3.1.3. Vessel Replacement Criteria

Vessels with moratorium permits could be replaced by another vessel and the permit transferred to the new vessel. The replacement vessel can be upgraded such that the vessel's horsepower may not exceed 20% of the horsepower of the replaced vessel and the vessel's length, GRT, and NT may not exceed 10% of the respective specification of the replaced vessel.

This regulation would make vessel replacement criteria in the summer flounder fishery identical to those specified in the Northeast Multispecies FMP for vessel replacement. Permit data files from the NMFS indicate that as of 29 October 1996, 58% of the vessels holding summer flounder permits also hold Multispecies Days-at-Sea (Individual or Fleet) permits. If the vessel replacement criteria for summer flounder was not changed, the holder of a Northeast Multispecies Permit and a Summer Flounder Permit would have been restricted to the summer flounder regulations (i.e., no voluntary replacement and no upgrade) when a vessel was replaced.

Since the vessel replacement criteria for the Northeast Multispecies FMP took effect in May 1994, 109 vessels (D. Gouveia pers. comm.), or 6% of the permitted vessels, have applied for transfer of permits or replacement of vessels. If this measure is approved, there is no indication of how many summer flounder permitted vessels will employ the vessel replacement criteria as a way to increase either their length, GRT, NT or horsepower. However, based on the percentage of vessels transferred or replaced in the Northeast Multispecies fishery, it may be expected that approximately 64 vessels may be replaced in a four year period in the summer flounder fishery. Even if all these vessels were to be increased in length, GRT, NT, and horsepower as allowed in this alternative, the fishing power of the fleet as a whole would not significantly increase.

This alternative would allow for the vessel replacement criteria to be identical in the Summer Flounder and Northeast Multispecies FMPs. Furthermore, any replacement of aging vessels or engines will be performed as determined by the owner. At that time individual owners will have to address the benefits of replacing inefficient or increasingly unsafe vessels versus the costs of such changes. This alternative is not expected to change the fishing power of the fleet in a significant way. Therefore, exvessel revenues as a consequence of the implementation of this action are not expected to change. In addition, this measure is expected to improve vessel replacement monitoring by the NMFS and reduce management costs due to standardization among FMPs.

3.1.4. Expiration of the Moratorium Permit

The requirement that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit would be deleted from the regulations. This regulation, which has been in effect since 1993, has not resulted in the loss of any summer flounder permits. However, this requirement could force vessel owners to fish for summer flounder simply to maintain the permit and, as such, result in an increase in fishing effort. Thus, deleting this requirement could allow for a decrease in potential fishing effort each year.

3.1.5. *De Minimus* Status for States

Under the current FMP, several states receive less than 0.1% of the coastwide summer flounder quota, resulting in allocations of only 51 to 5,284 pounds in 1997. However, these states are expected to comply with all provisions of the FMP. The administrative burden of implementing a real-time quota monitoring system far exceeds the economic value of the fishery in these states. Allowing them a small allocation of 0.1% is of no conservation risk to the stock as a whole. However, if regulatory demands become so great that the state is forced to prohibit commercial landings of summer flounder, the few fish that are currently landed could be tossed overboard as discards.

Based on 1996 landings and quota data, Maine, New Hampshire, and Delaware could qualify for *de minimus* status using the 0.1% or less criteria. New Hampshire, which received an allocation of 51 pounds in 1996, currently prohibits commercial landings of summer flounder. Allowing a *de minimus* classification would allow bycatch landings of summer flounder in New Hampshire.

Under the current FMP, the states of Maine, New Hampshire, and Delaware in aggregate receive 0.066% of the coastwide quota, which amounted to 7,312 pounds in 1996. The remaining states received 99.934% of the coastwide quota. If, instead, the three eligible states claimed *de minimus* status in 1996 and were allocated 0.1% of the coastwide quota, they would have each been allocated 11,111 pounds. All three would have accounted for 33,333 pounds, or 0.3% of the coastwide quota, and the remaining 99.7% would have been allocated to the other states. The net loss of 0.234% (0.3 - 0.066) or 26,021 pounds in 1996 would have reduced the quota in North Carolina, which receives the highest percentage, by 7,140 out of 3,049,589 pounds and in Maryland, which receives the smallest share greater than 0.1%, by 520 out of 226,570 pounds. Overall, each state would be giving up 0.029% of its quota if all three eligible states were declared *de minimus.*

Allowing qualifying states to claim *de minimus* status would relieve them of an excessive monitoring burden for essentially a bycatch fishery, and would provide them with a small, but more manageable

quota. In the case of New Hampshire, it could allow bycatch to be landed rather than discarded. In the case of Delaware, it could allow them to maintain their current strict restrictions on fishing in state waters rather than ultimately prohibiting all landings of summer flounder to avoid exceeding a quota of approximately a thousand pounds. Since summer flounder are a bycatch fishery to Delaware inshore gill net fishermen, these fish would still be caught and killed. Unfortunately, rather than be sold for income, they would be discarded.

Under this management alternative and current quota level, three states would be required to report the necessary information to NMFS to qualify for *de minimus* status. Currently, the summer flounder quota is distributed among 11 states. It is not anticipated that the quota level will be reduced to the extent that will considerably alter the number of states applying for *de minimus* status. Since the number of reporting entities is lower than nine, OMB clearance under Paper Reduction Act is not necessary.

Requiring an annual request by the state and review by the Monitoring Committee would assure that if landings increased in a *de minimus* state, they would be required to comply with all quota management and reporting provisions the following year. An annual landings and regulatory report is already required by the Commission, so the reporting requirements will not increase. Requiring *de minimus* states to close their fishery if their allocation is landed would prevent a sudden increase in landings.

3.1.6. Commercial Quota System

Amendment 2 presents a thorough analysis and discussion of the current state-by-state quota system including an analysis of the biological, social and economic impacts as well as how the current system complies with the National Standards. An analysis of several alternatives to the current state-by-state quota system is presented in Appendix 1 of this document.

After careful consideration of the public comments and after additional debate, the Council and Commission decided to retain the current state-by-state quota system. The state-by-state quota system has been in place since 1993. Over the years, many of the states have refined their management systems to allow for an equitable allocation of summer flounder to the fishermen that land summer flounder in their state. These systems account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them.

The Council and Commission considered two coastwide alternatives to the current state-by-state quota system. These coastwide systems would have had associated coastwide quotas in the winter or over the entire year. The Council and Commission determined that a coastwide quota during the winter or over the entire year may not provide the same level of equity or flexibility to summer flounder fishermen as the current state-by-state system. The Council and Commission determined that it would be difficult to design a coastwide system that was better than the current state-by-state system, i.e., one that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. They noted that the uniform landing limits associated with a coastwide system may not be suitable for all vessels, gears or areas along the coast.

In addition, the Council and Commission thought that if any of the alternatives to the current system were carried out, it would create derby-style-fishing and/or early closure of the fishery during the coastwide periods. As a result, the Council and Commission were concerned that the alternatives to the current state-by-state system would decrease annual gross revenues and net benefits in the short and long-term for many fishery participants. Furthermore, they noted that the alternatives to the state-by-state commercial quota system evaluated in this amendment would require a graduated system of landing limits that would demand extensive administrative effort and cost associated with the notice to federal permit holders.

3.1.7. Transfer of Summer Flounder at Sea

Currently, there are regulations that prohibit vessels with multispecies or scallop permits from transferring any fish (including summer flounder) at sea. These regulations also specify that a vessel

cannot transfer any species managed under the Northeast Multispecies FMP. The extent to which summer flounder are transferred at sea is unknown. However, such transfers would allow vessels to circumvent regulations such as trip limits and federal and/or state permit requirements thereby increasing effort in the summer flounder fishery. For example, if a fishing vessel lacks a state landing permit, it could transfer its catch at sea to a vessel that does have such a permit. This would circumvent state landing laws and allow the state's quota to be filled more rapidly than anticipated, to the detriment of legitimately licensed vessels. In addition, if a vessel lacks a federal moratorium permit, it could transfer its catch of summer flounder to a federally permitted vessel. This would circumvent federal law and diminish the effectiveness of the commercial quota.

3.1.8. State Landings

The summer flounder quota applies to all summer flounder landed for sale, regardless of the place of harvest. A significant portion of the summer flounder fishery occurs in state waters. For example, in 1995, 32% of all summer flounder landings were reported as harvested in state waters (0 to 3 miles). Further, 22% of all landings were harvested by gear likely to be deployed in state waters, such as pound nets, traps and pots, gill nets, seines, and spears. These landings can be attributed to both federally permitted vessels and state permitted vessels and fishermen. If a state does not require reporting by the state permit holders, then the actual landings in state waters may be underestimated.

While most states require that fishermen report landings from state waters, not all states provide this data to the NMFS. Those that provide landings information do so voluntarily. Requiring reporting of landings from state waters will ensure that all states collect the information, and provide it to NMFS. This will make evaluation of landings equal in all states and increase the accuracy of the quota management system. While the Magnuson-Stevens Act does not allow the NMFS to require reporting of fish landings from state waters, the Commission can establish such requirements under the Atlantic Coastal Act. Establishment of compliance criteria by the Commission will ensure that all states report their landings, both now and in the future.

The NMFS has in place a system that handles state waters landing's data provided by states from Maine to North Carolina. Since only a few states do not currently submit state data voluntarily, then this measure should not have a significant burden on this agency.

States would be expected to develop a vessel or dealer reporting system for summer flounder landings from state waters and to provide landings information to the NMFS. They would need to cooperate with the NMFS to prevent double counting of any landings. Some states currently require that all fishermen submit NMFS landings reports for summer flounder landings directly to the NMFS, regardless of whether the fish were landed in the EEZ or in state waters. Such a system decreases both the paperwork required and the chance of duplicate reporting.

Implementation of this regulation will ensure that all legal and reported summer flounder landings are counted against the quota. This will prevent states from landing more than their quota through failing to document landings from state waters by non-federally permitted vessels.

These measures will affect any state between Maine and North Carolina that does not currently require documentation of all landings or does not report such data to the NMFS. Currently, all states require a commercial permit to land or sell as well as reporting of landings by all vessels fishing in state waters. Therefore, the regulations will impact states that do not provide that data to the NMFS. The regulations will also prevent any state from discontinuing their state water reporting systems.

3.1.9. Special Permits for Party/Charter Vessels

Under the current regulations, filleting at sea is not allowed if the resultant body parts will be smaller than the minimum size. Summer flounder party and charter boats could be placed at a competitive disadvantage if they are not allowed to provide filleting services. Furthermore, if they are forced to fillet at the dock, they may be forced to make fewer trips.

Most states currently prohibit all filleting at sea, while others allow it under certain circumstances. New Jersey allows filleting at sea by party and charter boat operations if they have a state issued permit. Implementing this regulation, and requiring a state permit, allows each state to decide whether to allow the practice or not. The state can then weigh the benefit of filleting at sea to their party/charter fleet against the burden of implementing and enforcing a permit system.

The permits would be issued by the state, reviewed and approved by the Commission, and recognized by NMFS in the EEZ. A similar provision was approved in Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass FMP.

This measure would impact any states deciding to allow a fillet-at-sea permit for summer flounder. The state would be expected to impose the restrictions and requirements noted above. As an additional measure, states could establish a minimum fillet length requirement to help ensure that fishermen comply with the minimum size. Research necessary to determine appropriate minimum fillet sizes should be conducted by any state considering this measure.

3.2. Alternatives to the Amendment

The alternatives to the Amendment are described and evaluated in Appendix 1 of this document. A summary of these alternatives and expected economic impacts are presented below.

Alternative 1.1 (retain the current mesh requirement) would likely lead for the continuation of poor compliance with mesh regulations which has resulted in higher than expected fishing mortality rates on immature summer flounder. As a result, the age distribution will not expand as quickly as expected and the rate of stock recovery will slow. This will decrease net benefits in the long-term.

Alternative 1.2 (do not continue the moratorium on entry of additional vessels into the summer flounder fishery) would mean that the moratorium of entry of additional vessels into the summer flounder commercial fishery, implemented in Amendment 2, would expire in 1997. If the moratorium is allowed to lapse, the fishery will revert to open access and new vessels will enter the fishery. This alternative was rejected because the number of participants in the summer flounder fishery could potentially increase four fold relative to the 1996 level. An increase in effort and additional capitalization of the fishery would occur if this option was implemented. As the level of participation of additional vessels into the summer flounder fishery increases, on average, the gross revenue from summer flounder for the vessels under the current moratorium of entry would decrease.

Alternatives 1.3 (take no action regarding the expiration of the commercial moratorium permit) was rejected because it would likely increase effort in the fishery. As a result, net benefits in the long-term would decrease.

Alternative 1.4 (take no action regarding the documentation of summer flounder landings by state permitted vessels) would potentially allow for some summer flounder caught in state waters to be unreported in federal logbook reports and not count against the quota. Furthermore, if states are not required to report, some states could exceed their quota without being penalized by failing to document landings from state waters by non-federally permitted vessels. This will affect in a negative manner the rate of stock recovery of the fishery.

Alternative 1.5 (take no action regarding d*e minimus* status for states for the commercial quota) would require the full array of management measures for states in which summer flounder is essentially a bycatch fishery. This will create burdensome administrative procedures and expenses for the affected states, which may force some of them to close the summer flounder fishery to avoid the administrative burden of implementing a real-time monitoring system. Therefore, summer flounder caught, rather than sold for income, would have to be needlessly discarded.

Alternative 1.6 (take no action regarding the transfer of summer flounder at sea) was rejected because vessel could circumvent state and or federal laws and diminish the effectiveness of management

regulations. This alternative would potentially result in a decrease of revenues for fishermen that do not circumvent state and federal laws, with possible decrease in benefits in the long-term.

Alternative 1.7 (take no action regarding special permits for party/charter vessels) was rejected because summer flounder party and charter boats could be placed at a competitive disadvantage if they are not allowed to provide filleting services. This would potentially result in a decrease in annual gross revenues.

Alternative 2 is nearly identical to the preferred alternative dealing with the minimum mesh requirement. This alternative would delay implementation of the minimum mesh requirement for up to one year after the mesh provision was approved by NMFS. Based on an informal survey of 4 net manufacturers conducted by Council staff, 5.5 inch webbing to build trawl net bodies is not currently available in quantities necessary to provide nets for the entire summer flounder fleet. Net manufacturers in Rhode Island and New Jersey indicated that at least 3 to 6 months would be required to order 5.5" twine and build the new nets. However, the Wanchese Fish Company in North Carolina indicated that they had more than enough twine to supply the North Carolina summer flounder trawl fleet if the whole net mesh requirement was put in place (J. Daniels pers. comm.). Delaying implementation of the minimum mesh requirements for 12 months would not address the problem associated with mortality of small summer flounder in a timely manner.

Alternative 3 (commercial quota system that establishes three periods: two winter coastwide periods [Jan-Apr and Nov-Dec] and a state-by-state summer period [May-Oct], and Alternative 4 (coastwide commercial quota system allocated into three periods [Jan-Apr, May-Oct, and Nov-Dec]) were rejected because the Council and the Commission thought that the current management system (state-by-state allocations) has been refined over the years to the extent that it allows for an equitable allocation of summer flounder to the fishermen that land summer flounder in their states Over the years, personnel from several states have spent a lot of time developing quota management systems that account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them. These systems have been designed to allow for an equitable allocation of the state quota to all the commercial fishermen landing summer flounder in their state. It may be difficult to design a coastwide system that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. In addition, uniform landing limits may not be suitable for all vessels, gears or areas. The result could be a redistribution of the summer flounder catch geographically and between vessel types.

In addition, the Council and Commission thought that if any of the alternatives to the current system were carried out, it would create derby-style-fishing and/or early closure of the fishery during the coastwide periods. As a result, the Council and Commission were concerned that the alternatives to the current state-by-state system would decrease annual gross revenues and net benefits in the short and long-term for many fishery participants. Furthermore, they noted that the alternatives to the state-by-state commercial quota system evaluated in this amendment would require a graduated system of landing limits that would demand extensive administrative effort and cost associated with the notice to federal permit holders.

Alternative 5 (revise the formula to allocate the commercial quota to the states) was rejected because the Council believes that the allocation periods considered to revise the existing summer flounder quota system would provide a less equitable allocation of the resource. As a result, same fishermen would receive less than their fair share of the resource and their gross revenues would be negatively affected.

3.3. Summary of Impacts of the Proposed Action

Amendment 10 would: 1) require minimum mesh throughout the body, extension and codend delaying implementation of this mesh requirement for 6 months after final regulations are published, and modifies the commercial minimum mesh regulations such that a minimum mesh size can be specified for any portion of the net; 2) continue the moratorium on entry of additional vessels into the summer flounder fishery; 3) implement new vessel replacement criteria; 4) remove the language regarding expiration of

the commercial moratorium permit; 5) allow *de minimus* status for states for the commercial quota; 6) retain the current state-by-state commercial quota system; 7) prohibit transfer of summer flounder at sea; 8) require states to document all landings of summer flounder in their state that are not otherwise included in the federal monitoring of permit holders; and 9) allow states to issue special permits for party/charter vessels. The purpose of this summary is to briefly describe the expected economic impacts of the preferred actions considered in this Amendment. The analysis utilized to evaluate the economic impact of the various proposed alternatives is for the most part qualitative in nature. However, it provides the basis for making well reasoned management decisions.

The first management alternative requires a minimum 5.5" mesh in the body, extension(s), and codend portions of the net, not just the codend. This preferred alternative would result in better compliance with mesh regulations which in turn will result in lower fishing mortality rates for sublegal summer flounder. Given the criteria discussed in section 3.1.1 of this document, the yearly cost of a new mesh would range from $775 for inshore vessels to $1,354 for offshore vessels.

The implementation of this alternative will not alter the bycatch composition of vessels participating in the summer flounder fishery. However, it is likely that some fishermen will experience a change in the size of marketable species caught as a result of the implementation of this alternative. The degree to which changes in the size composition of marketable species harvested as a bycatch with summer flounder will depend on fishing practices (e.g., season, area, etc.), the selection characteristics of a 5.5" diamond mesh (6" square mesh) for the particular species landed with summer flounder and the degree to which fishermen are following the minimum mesh size regulations adopted in Amendment 2. More specifically, the size composition of the bycatch for fishermen that are circumventing Amendment 2 minimum mesh size regulations (through the use of liners, smaller codends, or by using legal codends but constricting the net forward of the regulated portion of the net) may change when they meet the proposed minimum mesh requirements. The degree to which the size composition of marketable bycatch will change for these vessels cannot be estimated due to lack of data. Specific selectivity information to address this issue is not available. Therefore, changes in revenues cannot be determined. However, it can be expected that because there is a price differential for the species caught as a bycatch with summer flounder, then revenues from those species will increase due to price increases from harvesting larger size fish. Therefore, any loss in annual gross revenues from the decrease in the harvesting of small size animals as a consequence of the implementation of this alternative will be compensated due to the increase in revenues due to price differentials. On the other hand, it is expected that the bycatch composition and size composition of marketable species caught for fishermen employing codends with a 5.5" diamond mesh (which are not circumventing Amendment 2 regulations) will not be altered as a result of the implementation of this alternative. Theoretically, the otter trawl catch is sorted in the codend. Therefore, the requirement that the 5.5" mesh is extended throughout the codend and body are not likely to change the bycatch or size composition for those vessels. Thus, annual gross revenues for these vessels will not change. Reduced mortality on small summer flounder will increase the contribution of incoming year classes to the spawning stock biomass which will enhance stock recovery.

The proposed mesh regulations would become effective 6 months after the final regulations are published in the Federal Register. This will allow for enough time for net manufacturers to obtain the appropriate webbing and construct nets, and for fishermen to obtain nets and rig their vessels benefiting both fishermen and their communities.

The framework provision would allow for modifications to this management alternative based on updated stock assessments as well as other information such as changes in fishing practices and activities. The economic impact of future actions on fishery participants cannot be evaluated until the action(s) are proposed and evaluated. However, such actions are likely to add flexibility to the management process. This added flexibility would allow for rapid management response which in turn should benefit user groups at some future period. The overall net benefit of the framework provision is expected to be positive.

Alternative 2 requires the continuation of moratorium on entry of additional vessels into the summer flounder fishery. The intent of this provision is to avoid the potential increase of summer flounder participants of up to four fold relative to the 1996 level. If the level of participation in the summer flounder fishery was allowed to increase, it would be expected that, on average, the gross revenue from summer flounder for the vessels under the current moratorium of entry would decrease. The continuation of the moratorium will provide an opportunity for participants in the fishery to benefit as the resource rebuilds as a result of the fishing mortality reduction program. This action is expected to result in positive benefits by avoiding additional overcapitalization and potential dissipation of revenues.

Alternative 3 deals with the implementation of a new vessel replacement criteria. This alternative would allow for aging vessels or engines (as determined by the owner) to be replaced when they become inefficient or increasingly unsafe. The replacement vessel can be upgraded such that the vessel's horsepower may not exceed 20% of the horsepower of the replaced vessel and the vessel's length, GRT, and NT may not exceed 10% of the respective specification of the replaced vessel. This regulation would make vessel replacement criteria in the summer flounder fishery identical to those specified in the Northeast Multispecies FMP for vessel replacement. Based on the percentage of vessels transferred or replaced in the Northeast Multispecies fishery, it may be expected that approximately 64 vessels may be replaced in a four year period in the summer flounder fishery. Even if all these vessels were to be increased in length, GRT, NT, and horsepower as allowed in this alternative, the fishing power of the fleet as a whole would not significantly increase. This action is not expected to affect exvessel revenues.

The fourth preferred management alternative deals with removing the language regarding expiration of the commercial moratorium permit. This provision has been in effect since 1993, and was originally intended to reduce harvesting capacity over time. However, some have suggested that this provision could force fishermen to participate in the fishery only to keep their eligibility thereby increasing effort. With the implementation of this alternative, vessels owners that marginally land summer flounder in order to retain the moratorium permit would be allowed to maintain their permits without incurring in an increase in fishing effort. Therefore, operating costs for some of these vessels could potentially decrease. This action is expected to provide positive net benefits in the long-term by avoiding unnecessary increases in effort.

The fifth management alternative establishes *de minimus* status for states. Under *de minimus* status, states that have had very small commercial summer flounder fisheries (therefore receiving very small quota allocations) would not be required to impose a full array of management measures for what is essentially a bycatch fishery. These states argue that when the catch is small that there is no conservation reason to incur the governmental costs associated with preparing and promulgating regulations. Under this process, the *de minimus* states would still be required to monitor landings and close when their quota was reached. Under this management alternative and current quota level, three states would be required to report annual landings to NMFS to qualify for *de minimus* status. Currently, the summer flounder quota is distributed among 11 states. It is not anticipated that the quota level will be reduced to the extent that will considerably alter the number of states applying for *de minimus* status. Since the number of reporting entities is lower than nine, OMB clearance under Paper Reduction Act is not necessary. Under the current FMP, the states of Maine, New Hampshire, and Delaware in aggregate receive 0.066% of the coastwide quota, which accounted to 7,312 pounds in 1996. If these three states had claimed *de minimus* status in 1996, the provision would have increased summer flounder landings in Maine, New Hampshire, and Delaware in aggregate 26,021 pounds in 1996. At the same time, landings for the remaining states would have decreased in aggregate 26,021 pounds in 1996. Taking into consideration the average price for summer flounder in 1995 (Unpublished Weighout data), summer flounder vessels landing in states qualifying for *de minimus* status would have increased annual gross revenue by $48,052 in aggregate. While, summer flounder vessels landing in the remaining states would have decreased annual gross revenue by $48,052 in aggregate.

Alternative 6 deals with retaining the current state-by-state commercial quota system. The state-by-state quota system has been in effect since 1993. Since its implementation, the current state-by-state commercial quota system has evolved as a system that closely manages the summer flounder resource

throughout the coast. The importance of this system is that it recognizes and accounts for variations in the fishery which in turn allows for economic stability. It is expected that the continuation of this system would allow for the rebuilding of the summer flounder fishery without discriminating between the various size vessels participating in the fishery. The continuation of the state-by-state system will not affect revenues of the current participants of the fishery, other factors held constant.

Alternative 7 deals with the transfer of summer flounder at sea. The extent to which summer flounder are transferred at sea is unknown. However, such transfers allow vessels to circumvent regulations such as trip limits and federal and/or state permit requirements thereby increasing effort in the summer flounder fishery. This action is expected to reduce the possibility of vessels circumventing state and federal laws. This management action will protect legitimately licensed vessels as well as increase the effectiveness of the commercial quota.

Because this amendment has been prepared by both the Council and Commission, there are additional management measures in the amendment that will be implemented by the Commission as part of their interstate management process. Defined as compliance criteria, these management measures are not part of the federal regulatory process. These management measures include a requirement that states document all summer flounder commercial landings in their state (Alternative 8) and also allow a state to issue a special permit for party/charter vessels to allow the possession of summer flounder parts smaller than the minimum size (Alternative 9).

Alternative 8 establishes that states would be required to document all landings of summer flounder in their state that are not otherwise included in the federal monitoring of permit holders. The intent of this provision is to aid in the documentation of all summer flounder that is harvested. This management alternative will reduce the potential for harvesting summer flounder above the quota, thus increasing the potential for timely recovery of the stock. The implementation of this alternative will prevent states from landing more than their quota and may increase net economic benefits in the long-term.

Alternative 9 deals with the establishment of special permits to allow party/charter vessels to fillet summer flounder at sea. Implementing this regulation, and requiring a state permit, allows each state to decide whether to allow the practice or not. The state can then weigh the benefit of filleting at sea to their party/charter fleet against the burden of implementing and enforcing a permit system. This action is expected to have a positive net benefit by allowing states to implement regulations that will protect the resource and allow party/charter operators to be competitive and efficient in their operations.

4. DETERMINATIONS OF A SIGNIFICANT REGULATORY ACTION

The proposed action does not constitute a significant regulatory action under Executive Order 12866 for the following reasons. (1) It will not have an annual effect on the economy of more than $100 million. Based on unpublished NMFS preliminary data (Maine-North Carolina) the total commercial value for summer flounder was estimated at $34 million in 1995. The measures considered in this Amendment will not affect total revenues generated by the commercial to the extent that a $100 million annual economic impact will occur. The proposed actions are necessary to enhance the rate of recovery of the summer flounder stock, avoid additional overcapitalization and effort in the fishery, and allow for management practices that accounts for variations in the fishery among others. The proposed action benefits in a material way the economy, productivity, competition and jobs. The proposed action will not adversely affect, in the long-term, competition, jobs, the environment, public health or safety, or sate, local, or tribal government communities. (2) The proposed actions will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect the summer flounder fishery in the EEZ. (3) The proposed actions will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their participants. (4) The proposed actions do not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

5. REVIEW OF IMPACTS RELATIVE TO THE REGULATORY FLEXIBILITY ACT

5.1. Introduction

The purpose of the Regulatory Flexibility Act (RFA) is to minimize the adverse impacts from burdensome regulations and record keeping requirements on small businesses, small organizations, and small government entities. The category of small entities likely to be affected by the proposed plan is that of commercial summer flounder fishermen. The impacts of the proposed action on the fishing industry and the economy as a whole were discussed above. The following discussion of impacts centers specifically on the effects of the proposed actions on the mentioned small businesses entities.

5.2. Determination of Significant Economic Impact on a Substantial Number of Small Entities

The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing activity, as a firm with receipts (gross revenues) of up to $2.0 and $3.0 million, respectively. According to NMFS data permit files (29 October 1996) 1,063 commercial vessels are holding summer flounder permits. All these vessels readily fall within the definition of small business.

According to guidelines on regulatory analysis of fishery management actions, a "substantial number" of small entities is more than 20 percent of those small entities engaged in the fishery (NMFS 1994). Since the proposed action will directly and indirectly affect most of these vessels, the "substantial number" criterion will be met.

Economic impacts on small business entities are considered to be "significant" if the proposed action would result in any of the following: a) a reduction in annual gross revenues by more than 5 percent; b) an increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; c) an increase in compliance costs as a percent of sales for small entities at least 10 percent higher than compliance costs as a percent of sales for large entities; d) capital costs of compliance represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or, e) as a "rule of thumb," 2 percent of small businesses entities being forced to cease business operations (NMFS 1994).

5.3. Analysis of Economic Impacts

Cost associated with gear conversion (minimum mesh requirement) for vessels currently participating in the summer flounder fishery (but not fishing under Multispecies Days at Sea) would range from $775 for inshore vessels to $1,354 for offshore vessels. These would be the compliance costs according to the specifications discussed in this document (section 3.1).

Estimates of vessel costs based on sea sampling data of otter trawl vessels that carried on-board observers from 1989-91 by tonnage class were developed by Walden (1993). In Walden's study, costs were broken down into trip costs or variable costs (fuel, ice and food, etc.) and yearly costs or fixed costs (gear, insurance, engine and gear repair, electronic equipment expenses, etc.). Labor costs were not included in the analysis because labor is generally paid as a percentage of the total revenue after certain expenses are subtracted. The total estimated cost was $39,695 for vessels with 5-50 GRTs, $93,233 for vessels with 51-150 GRTs, and $171,692 for vessels with greater than 150 GRTs. From this information it can be estimated that the costs of a new body and codend as a percentage of the total estimated cost for otter trawl vessels ranges from 0.63% for offshore vessels (>150 GRTs vessel with 670 hp) to 1.45% for inshore vessels (5-50 GRTs vessel with 250 hp). (Note: estimated vessel costs provided in Walden's study were presented as annual costs averaged over the 1989-91 period in constant 1987-dollars. For comparison purposes, 1997 nominal values associated with gear conversion were adjusted or deflated to constant 1987-dollars using the GDP implicit price deflator.) These percentages would represent full costs attributed to the mesh size restriction.

According to NMFS data permit files (29 October 1996) 1,063 commercial vessels are holding summer flounder permits. Of these vessels, 620 (58%) also hold Multispecies Days-at-Sea (Individual or Fleet)

permits. These vessels would not be affected by the proposed measure because they already fish with the mesh size requirements proposed in this document (section 3.1). The proposed mesh size regulation would affect the remaining 443 commercial vessels holding summer flounder permits.

The framework provision would allow for modifications to this management alternative based on updated stock assessments as well as other information such as changes in fishing practices and activities. The economic impact of future actions on fishery participants cannot be evaluated until the action(s) are proposed and evaluated. However, such actions are likely to add flexibility to the management process. This added flexibility would allow for rapid management response which in turn should benefit user groups at some future period. The overall net benefit of the framework provision is expected to be positive.

The implementation of this alternative will not alter the bycatch composition of vessels participating in the summer flounder fishery. However, it is likely that some fishermen will experience a change in the size of marketable species caught as a result of the implementation of this alternative. The degree to which changes in the size composition of marketable species harvested as a bycatch with summer flounder will depend on fishing practices (e.g., season, area, etc.), the selection characteristics of a 5.5" diamond mesh (6" square mesh) for the particular species landed with summer flounder and the degree to which fishermen are following the minimum mesh size regulations adopted in Amendment 2. More specifically, the size composition of the bycatch for fishermen that are circumventing Amendment 2 minimum mesh size regulations (through the use of liners, smaller codends, or by using legal codends but constricting the net forward of the regulated portion of the net) may change when they meet the proposed minimum mesh requirements. The degree to which the size composition of marketable bycatch will change for these vessels cannot be estimated due to lack of data. Specific selectivity information to address this issue is not available. Therefore, changes in revenues cannot be determined. However, it can be expected that because there is a price differential for the species caught as a bycatch with summer flounder, then revenues from those species will increase due to price increases from harvesting larger size fish. Therefore, any loss in annual gross revenues from the decrease in the harvesting of small size animals as a consequence of the implementation of this alternative will be compensated due to the increase in revenues due to price differentials. On the other hand, it is expected that the bycatch composition and size composition of marketable species caught for fishermen employing codends with a 5.5" diamond mesh (which are not circumventing Amendment 2 regulations) will not be altered as a result of the implementation of this alternative. Theoretically, the otter trawl catch is sorted in the codend. Therefore, the requirement that the 5.5" mesh is extended throughout the codend and body are not likely to change the bycatch or size composition for those vessels. Thus, annual gross revenues for these vessels will not change.

The proposed mesh regulations would become effective 6 months after the final regulations are published in the Federal Register. This will allow for enough time for net manufacturers to obtain the appropriate webbing and construct nets, and for fishermen to obtain nets and rig their vessels benefiting both fishermen and their communities.

The commercial moratorium measure would allow the summer flounder moratorium program to continue. This action is intended in order to avoid the potential increase in participation in the summer flounder fishery of up to four folds relative to the 1996 level. This action is expected to result in positive net benefits by avoiding additional overcapitalization and potential dissipation of revenues. This management action will not have an effect on exvessel annual gross revenues.

The alternative dealing with the new vessel replacement criteria would allow for aging vessels or engines (as determined by the owner) to be replaced when they become inefficient or increasingly unsafe. The replacement vessel can be upgraded such that the vessel's horsepower may not exceed 20% of the horsepower of the replaced vessel and the vessel's length, GRT, and NT may not exceed 10% of the respective specification of the replaced vessel. This regulation would make vessel replacement criteria in the summer flounder fishery identical to those specified in the Northeast Multispecies FMP for vessel replacement. Based on the percentage of vessels transferred or replaced in the Northeast Multispecies fishery, it may be expected that approximately 64 vessels may be replaced

in a four year period in the summer flounder fishery. Even if all these vessels were to be increased in length, GRT, NT, and horsepower as allowed in this alternative, the fishing power of the fleet as a whole would not significantly increase. It is not expected that the implementation of this management action will have an effect on exvessel annual gross revenues.

The provision dealing with the expiration of the moratorium permit requires that a vessel with a moratorium permit must land summer flounder at some point during a 52 week period to retain the moratorium permit. The deletion of this requirement is expected to avoid the potential participation of fishermen in the summer flounder fishery only to keep eligibility in the fishery. This action may decrease exvessel gross revenues for those vessels that are no longer required to marginally land summer flounder to retain the moratorium permit. However, since vessels were required to land one or more pounds of summer flounder to retain the moratorium permit, then the effect on revenues for those vessels (that only landed a few pounds of summer flounder in order to retain the moratorium permit) will be small. Furthermore, operating costs for some of these vessels could potentially decrease. This action is expected to provide positive net benefits in the long-term by avoiding unnecessary increases in effort.

The action dealing with *de minimus* status for states would allow states with very small quotas not to implement a full array of management measures for what is essentially a bycatch fishery. States with *de minimus* status have stated that their catch is so small that there is no conservation reason to incur the governmental costs associated with preparing and promulgating regulations. States with *de minimus* status would be required to monitor the fishery and close the fishery when their quota was reached. This action can be expected to provide positive benefits by avoiding government costs associated with preparing and promulgating regulations for these states. Under the current FMP, the states of Maine, New Hampshire, and Delaware in aggregate receive 0.066% of the coastwide quota, which accounted to 7,312 pounds in 1996. If these three states had claimed *de minimus* status in 1996, the provision would have increased summer flounder landings in Maine, New Hampshire, and Delaware in aggregate 26,021 pounds in 1996. At the same time, landings for the remaining states would have decreased in aggregate 26,021 pounds in 1996. Taking into consideration the average price for summer flounder in 1995 (Unpublished Weighout data), summer flounder vessels landing in states qualifying for *de minimus* status would have increased annual gross revenue by $48,052 in aggregate. While, summer flounder vessels landing in the remaining states would have decreased annual gross revenue by $48,052 in aggregate. Given the number of summer flounder vessels operating in the fishery, on average, it is expected that the changes in annual gross revenue for individual vessels would have been less than 5%.

After careful consideration of the public comments and after additional debate, the Council and Commission decided to retain the current state-by-state quota system. The state-by-state quota system has been in place since 1993. Over the years, many states have refined their management systems to allow for an equitable allocation of summer flounder to the fishermen that land summer flounder in their state. These systems account for seasonal variations in abundance of summer flounder as well as changes in the size of vessels that harvest them.

Since the implementation of the current state-by-state quota system in 1993, the states have used trip limits and seasonal allocations to manage the quotas allocated to their state. The quotas are different for each state and the seasonal distribution of the quota and trip limits vary from state to state as well. As the result of these trip limits and seasonal allocations, landings have shifted from the last quarter to the first quarter of the year in more recent years. For example, in 1996, 63.2% of the landings occurred in the first quarter of the year compared to 30.5% in 1992. However, the percent of landings in the second and third quarters were about the same for both years. In 1992, 10.6% and 20.6% of the landings occurred in the second and third quarters, respectively, compared to 11.6% and 18.9% in 1996. In general, summer flounder landings for small tonnage vessels are higher in the summer months, while landings for large tonnage vessels are higher in the winter months. These percents indicate that the quota has not shifted landings away from large vessels to small vessels or vice versa. In addition the state shares which were based on historical landings have maintained the north-south distribution of landings. As such, maintaining the current state-by-state system will allow fishermen

and their communities to continue operating according to traditional patterns of harvesting, distribution, and consumption of this resource.

The Council and Commission determined that a coastwide quota during the winter or over the entire year (alternatives to the current system) may not provide the same level of equity or flexibility to summer flounder fishermen as the current state-by-state system. The Council and Commission determined that designing a coastwide system that was better than the current state-by-state system would be difficult, i.e., one that provides for an equitable distribution of the quota to northern and southern participants as well as between the smaller day boats and larger offshore vessels. In addition, they noted that the uniform landing limits associated with a coastwide system may not be suitable for all vessels, gears or areas along the coast.

In addition, the Council and Commission thought that if any of the alternatives to the current system were carried out, it would create derby-style-fishing and/or early closure of the fishery during the coastwide periods. As a result, the Council and Commission were concerned that the alternatives to the current state-by-state system would decrease annual gross revenues and net benefits in the short and long-term for many fishery participants. Furthermore, they noted that the alternatives to the state-by-state commercial quota system evaluated in this amendment would require a graduated system of landing limits that would demand extensive administrative effort and cost associated with the notice to federal permit holders.

The action dealing with transfer of summer flounder at sea is expected to reduce the possibility of vessels circumventing state and federal laws. This management action will protect legitimately licensed vessels, and increase the effectiveness of the commercial quota. Although not able to quantify, this action may reduce gross revenue for vessels engage in this activity. While, it may be possible that landings and revenues for legitimately licensed vessels will increase. It is not known how many vessels are involved in transferring summer flounder at sea. However, it can be inferred from anecdotal reports that only a small number of vessels in the industry are involved in this type of activity.

Because this amendment has been prepared by both the Council and Commission, there are additional management measures in the amendment that will be implemented by the Commission as part of their interstate management process. Defined as compliance criteria, these management measures are not part of the federal regulatory process. These management measures include a requirement that states document all summer flounder commercial landings in their state and also allow a state to issue a special permit for party/charter vessels to allow the possession of summer flounder parts smaller than the minimum size.

The state landing measure will allow for a more complete documentation and record keeping of harvested summer flounder. This management alternative will reduce the potential for harvesting summer flounder above the quota, thus increasing the potential for timely recovery of the stock. This alternative will not effect annual exvessel gross revenues. However, it would improve the biological integrity of the summer flounder stock and may result in increased net economic benefits in the long-term.

The measure dealing with special permits for party/charter vessels would allow states to implement regulations pertaining to summer flounder filleting at sea by party and charter boat operations. Implementing this regulation, and requiring a state permit, allows each state to decide whether to allow the practice or not. The state can then weigh the benefit of filleting at sea to their party/charter fleet against the burden of implementing and enforcing a permit system. This action is expected to have a positive net benefit by allowing states to implement regulations that will protect the resource and allow party/charter operators to be competitive and efficient in their operations.

The analyses under economic impacts for each of the proposed management measures analyzed in this section do not show that any business will be force to cease operations. On the contrary, the implementation of the proposed commercial moratorium on entry of additional vessels, the deletion of the requirement that vessels with a moratorium permit must land summer flounder at some point during

a 52 week period, and *de minimus* status for states, will in fact allow fishery participants to stay in business.

The potential changes in revenues for each of the management actions evaluated in this amendment are discussed above. Although gross revenues are expected to change as a consequence of some of the proposed actions, it is believed that these actions would neither increase nor decrease annual gross revenues by more than 5%.

Compliance costs were also analyzed. It was found that the only measure associated with some compliance costs is the minimum mesh size alternative. This measure will require some vessels to acquire new equipment. The analysis conducted in this amendment indicates that the costs of a new body, extension, and codend as a percentage of the total estimated trip and yearly costs for inshore and offshore otter trawl vessels would be 0.63% to 1.45%, respectively.

5.4. Explanation of Why The Action is Being Considered

Refer to the section on Problems for Resolution of the Amendment (section 4.2).

5.5. Objectives and Legal Basis for the Rule

Refer to the section on Management Objectives of the Amendment document (section 4.3). The Magnuson-Stevens Fishery Conservation and Management Act (Public Law 94-265) as amended through October 11, 1996 provides the legal basis for the rule.

5.6. Demographic Analysis

Refer to the sections on description of fishing activities (section 7), economic characteristics of the fishery (section 8), and the fishery impact statement (section 9.2.6) of this amendment document.

5.7. Cost Analysis

Refer to the section on Regulatory Impact Analysis.

5.8. Competitive Effects Analysis

There are no large businesses involved in the industry, therefore, there are no disproportional small versus large business effects. There are no disproportional costs of compliance among the affected small entities.

5.9. Identification of Overlapping Regulations

The proposed action does not create regulations that conflict with any state regulations or other federal laws.

5.10. Conclusions

The preceding analysis of impacts relative to the Regulatory Flexibility Act indicates that the proposed regulations in this Amendment do not result in significant economic impacts on small entities.

6. PAPER WORK REDUCTION ACT OF 1995

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.

The Council is not proposing measures under this amendment that will involve increased paper work and consideration under this Act.

7. 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 6. REGULATIONS

50 CFR PART 648

Fisheries of the Northeastern United States; Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Section 648.4 (Vessel permits), paragraph 3(i)(A), is revised to read as follows:

(i) *Moratorium permits*.

(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain summer flounder in excess of the possession limit in Sec. 648.105 in the EEZ, a vessel must have been issued a summer flounder moratorium permit in a previous year or be replacing a vessel that was issued a moratorium permit for a previous year.

3. Section 648.4 (Vessel permits), paragraph 3(i)(B), is revised to read as follows (note that 3(i)(B)(2) would be deleted):

(B) *Application/renewal restriction.* No one may apply for a summer flounder moratorium permit for a vessel after:

(1) The owner retires the vessel from the fishery.

4. Section 648.4 (Vessel permits), paragraph 3(i)(C), is revised to read as follows:

(C) Replacement vessels. To be eligible for a moratorium permit, the replacement vessel must meet the following criteria:

(1) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a moratorium permit as of 13 May 1997.

(2) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel that was initially issued a moratorium permit as of 13 May 1997. For purposes of this paragraph (3)(i)(C)(2), a vessel not required to be documented under title 46 U.S.C. will be considered to be 5 NT. For undocumented vessels, GRT does not apply.

(3) Both the entering and replaced vessels must be owned by the same person.

4. The following would be added to Section 648.13 (Transfers at sea):

(d) All persons are prohibited from transferring or attempting to transfer summer flounder from one vessel to another vessel.

5. The following would be added to Section 648.14 (Prohibitions):

(j)(9) Offload, remove, or otherwise transfer, or attempt to offload, remove or otherwise transfer summer flounder from one vessel to another, unless that vessel has not been issued a summer flounder permit and fishes exclusively in state waters.

6. The following would be added to 648.100 (Catch quotas and other restrictions):

(f) *De minimus* status. Any state in which commercial summer flounder landings during the last preceding calendar year for which data are available were less than 0.1 percent of the total quota for that year could be granted *de minimus* status by the NMFS and ASMFC upon the annual recommendation of the MAFMC and ASMFC, by way of a recommendation from the Monitoring Committee.

(1) The *de minimus* status will be valid only for that year for which the specifications are in effect, and will be effective upon filing by the NMFS of the final specifications for the commercial summer flounder fishery with the Office of the Federal Register.

(2) The total quota allocated to each *de minimus* state will be set equal to 0.1 percent of the total yearly allocation, and will be subtracted from the coastwide quota before the remainder is allocated to the other states.

(3) In applying for *de minimus* status, a state must show that it has implemented reasonable steps to prevent landings from exceeding its *de minimus* allocation.

7. Section 648.103 (Minimum fish sizes), paragraph (c) would be revised to read as follows:

(d) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g. fillets, unless the operator of the vessel has a special permit issued by a state allowing filleting of summer flounder at sea and possession of body parts smaller than the minimum size. These minimum sizes may be adjusted pursuant to the procedures in Section 648.100.

8. Section 648.104 (Gear restrictions), paragraph (a)(1) would be revised to read as follows:

(1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh in the body, extension(s), and codend portion of the net.

9. The following would be added to section 648.104 (Gear restrictions):

(f) The minimum mesh size may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in Section 648.100.

APPENDIX 7. ABBREVIATIONS AND DEFINITIONS OF TERMS

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

ASMFC (Commission) - Atlantic States Marine Fisheries Commission.

Atlantic Coastal Act - the Atlantic Coastal Fisheries Conservation and Management Act of 1993.

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 summer flounder; (b) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of summer flounder; 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.

$F_{0.1}$ - 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".

FMP - fishery management plan.

FR - *Federal Register*.

GRT - gross registered ton, a volume measure of the vessel's hull capacity.

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.

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

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

MRFSS - Marine Recreational Fishery Statistics Surveys.

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.

NT - Net tonnage

OY - Optimum Yield.

Regional Administrator (RA) - the Regional Administrator, 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.

Spawning stock biomass per recruit (SSB/R) - measures the average or expected contribution of any one young fish to the spawning stock biomass over it 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.

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

Take - 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. The length along the mid-line of the fish from the tip of the snout to the tip of the tail.

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

Transfer - to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel.

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.