16.8.1503 for disapproval. Therefore, this notice repeals the proposed disapproval of ARM 16.8.1503.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Particulate matter.

Authority: 42 U.S.C. 7401-7642.

Dated: August 5, 1992 Kerrigan Clough, Acting Regional Administrator.

40 CFR part 52, Subpart BB is amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart BB-Montana

Section 52.1384 is revised to read as follows:

§ 52.1384 Emission control regulations.

The provisions and emission standards for wood-waste burners in Administrative Rules of Montana (ARM) 16.8.1407, which were submitted by the Governor on June 14, 1989, are disapproved because: They do not satisfy the enforcement imperatives of section 110 of the Clean Air Act (Act); they relax the control of emissions without any accompanying analysis demonstrating that these relaxations will not interfere with the attainment and maintenance of the PM-10 National Ambient Air Quality Standards, as required by section 110(1) of the Act; and they modify emission control requirements without any demonstration that equivalent or greater emissions reductions will be obtained in PM-10 nonattainment areas, as required by section 193 of the Act.

[FR Doc. 92-29450 Filed 12-3-92; 8:45 am] BILLING CODE 6560-50-M

40 CFR Part 70

[FRL-4532-6]

Operating Permit Program; OMB Approval of Information Requirements; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

SUMMARY: In the preamble to the Operating Permit Program, 40 CFR part 70, July 21, 1992, 57 FR 32250, the EPA noted that the information collection requirements were under review at the Office of Management and Budget (OMB). In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), those provisions are not effective until OMB approval has been obtained. The Agency is announcing the approval of these information requirements by the OMB. In conformance with this approval, the Agency will include the OMB control number in the body of the rule.

FOR FURTHER INFORMATION CONTACT: Kirt Cox (telephone 919/541-5399).

List of Subjects in 40 CFR Part 70

Administrative practices and procedure, Air pollution control, Intergovernmental relations.

Dated: November 3, 1992 Michael Shapire,

Acting Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, part 70 of title 40 of the Code of Federal Regulations is amended as follows:

PART 70-[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, et. seq.

Section 70.1 is amended by adding paragraph (f) to read as follows:

§ 70.1 Program overview.

(f) The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 2060–0243.

[FR Doc. 92-27290 Filed 12-3-92; 8:45 am] BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-163; RM-8037]

Radio Broadcasting Services; Clinton, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237C3 for Channel 237A at Clinton, Missouri, and modifies the license for Station KDKD(FM), in response to a proposal filed by Clinton Radio Co. See 57 FR 36971, August 17, 1992. The coordinates for Channel 237C3 are 38–24–32 and 93–46–50. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–163, adopted October 19, 1992, and released 57348

November 30, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73-[AMENDED]

The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 237A and adding Channel 237C3 at Clinton.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-29486 Filed 12-3-92; 8:45 am]

47 CFR Part 73

[MM Docket No. 92-128; RM-8002]

Radio Broadcasting Services; South Hill and Lawrenceville, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Old Belt Broadcasting Corporation, licensee of Station WSHV-FM, Channel 288A, South Hill, Virginia, exchanges channels between Station WSHV-FM, Channel 288A, South Hill, Virginia, and Station WHFD-FM, Channel 255A, Lawrenceville, Virginia, and modifies the authorizations of both stations. See 57 FR 28167, June 24, 1992. Channel 255A can be allotted to South Hill and Channel 288A can be allotted to Lawrenceville, Virginia, in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter sites specified in Station WSHV-FM's and Station WHFD-FM's authorizations, respectively. The coordinates for Channel 255A at South Hill are 36-44-39 and 78-09-42. The coordinates for Channel 288A at Lawrenceville are 36-45-10 and 77-51-49. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

supplementary information: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–128, adopted November 12, 1992, and released December 1, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73-[AMENDED]

The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 288A and adding Channel 255A at South Hill, and by removing Channel 255A and adding Channel 288A at Lawrenceville.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-29487 Filed 12-3-92; 8:45 am] BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 910779-2317]

RIN 0648-AE12

Threatened Fish and Wildlife;
Threatened Marine Reptiles; Revisions to Enhance and Facilitate Compliance With Sea Turtie Conservation
Requirements Applicable to Shrimp Trawlers; Restrictions Applicable to Shrimp Trawlers and Other Fisheries

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

SUMMARY: NMFS amends the sea turtle conservation measures and the interim final rule currently in effect. As of December 1, 1992, this final rule requires shrimp trawlers to comply with sea turtle conservation measures throughout the year in all areas. Where limited tow-times may be used as an alternative to turtle excluder devices (TEDs), tows must be limited to 55 minutes or less from April 1 though October 31; at other times of the year tows must be limited to no more than 75 minutes. As of January 1, 1993, shrimp trawlers under 25 feet (7.6 meters (m)) in offshore waters can no longer use limited tow-times as an alternative to using turtle excluder devices (TEDs). Also, as of January 1, 1993, all shrimp trawlers in inshore waters must use TEDs, except those equipped with a single net with a headrope length of less than 35 feet (10.7 m) and a footrope length of less than 44 feet (13.4 m), which may use the tow-time alternative under December 1. 1994. This final rule also makes various other technical corrections and minor changes to the sea turtle conservation measures.

EFFECTIVE DATES: This rule is effective on December 1, 1992, except for a registration provision contained in § 227.72(e) (3)(v) and (6)(iv), which requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and which is not yet effective. When OMB approval is received, the effective date of § 227.72(e) (3)(v) and (6)(iv) will be announced in the Federal Register. ADDRESSES: Dr. Michael F. Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the collection-ofinformation requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA. FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator, 301-713-2319, or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Regional Office, 813-893-3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). Kemp's ridley, leatherback, and hawksbill turtles are listed as endangered. Loggerhead and green turtles are listed as threatened,

except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. The incidental take and mortality of these species by shrimp trawlers has been documented in the Gulf of Mexico and along the Atlantic seaboard.

Under the ESA and its implementing regulations, it is prohibited to take sea turtles. The incidental taking of turtles by shrimp trawlers in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is exempted from the prohibition if trawlers employ specified sea turtle conservation measures. Generally, these conservation measures include requiring shrimp trawlers to use TEDs in inshore and offshore waters or, in a few circumstances, to limit the duration of tow-times as an alternative to using TEDs.

Proposed Regulations

NMFS issued regulations amending 50 CFR part 217, 222, and 227 to protect endangered and threatened sea turtles on June 29, 1987 (52 FR 24244). NMFS later determined that there was a need to amend those regulations to conserve and prevent further declines in the populations of listed sea turtles and to enhance and facilitate compliance and enforcement. NMFS published proposed regulations on April 30, 1992 (57 FR 18446) and held public hearings on the regulations in each state where shrimp trawlers would be affected. NMFS extended the comment period on the proposed rule through October 23, 1992.

Interim Final Regulations

On September 8, 1992, (57 FR 40861) NMFS issued an interim final rule, effective September 1, 1992, that implemented some of the provisions of the April 30, 1992, proposed rule. The interim final rule extended the sea turtle conservation requirements in the Atlantic area to year-round, rather than from May 1 through August 31. Beginning November 1, 1992, in all areas where limited tow times could be used as an alternative to the use of TEDs, tow times were reduced from 90 minutes to 75 minutes. The exemption from the TED requirement for rock shrimp in the Atlantic was eliminated and exemptions were provided for vertical barred beam trawls, roller trawls, wing nets, skimmer trawls, pusher-head trawls and bait shrimpers. Procedures were established for restricting shrimp trawling and other types of fishing activities when found necessary to protect sea turtles or when special environmental conditions made trawling with TED-equipped nets

impracticable. Definitions were added and prohibitions were revised to clarify sea turtle conservation measures and improve enforcement measures. The sale of non-approved TEDs was prohibited. Generic standards applicable to all hard TEDs were specified. Unnecessary elements concerning the construction requirements for the Morrison "soft" TED were removed. Allowable modifications to approved TEDs were clarified and all other modifications were prohibited. NMFS accepted comments on the interim final regulations until October 16, 1992.

Comments and Responses on the Proposed and Interim Final Regulations

NMFS received over 18,000 comments on the proposed and interim final amendments to the sea turtle conservation regulations, both from participants in the public hearings and by letter. NMFS reviewed all the comments and combined them under general categories provided below. Comments to which responses were provided in the interim final rule are not re-addressed here.

By far the most controversial provision was the proposal to require shrimp trawlers to use TEDs in both inshore and offshore waters throughout the year and to eliminate the tow-time option, except in limited situations. The proposed provisions were strongly supported by the general public and environmental community and were strongly opposed by the commercial shrimp trawl industry. Few offshore shrimp fishermen objected to the requirement to use TEDs all year, but most inshore shrimp fishermen objected to using TEDs instead of restricting tow times in inshore waters. Some of the most commonly voiced comments on this issue follow:

Comment: TEDs will not work in inshore waters because they will become clogged with seagrasses, debris, crab traps and other trash. A large number of commenters from Louisiana, Texas and Mississippi stated that TEDs would not work in areas where they normally shrimp. The biggest complaint concerned abandoned crab traps, which purportedly would become tangled in TEDs and release shrimp through the turtle escape opening. North Carolina inshore shrimp fishermen expressed concerns about clogging of TEDs with seagrasses.

Response: NMFS has received reports of clogging of TEDs with seagrasses and various types of trash. As discussed below, the final rule provides for a phase-in of the requirement to use TEDs in inshore waters. Full implementation

of the requirement to use TEDs in inshore waters is delayed until December 1, 1994. Until that time, a shrimp trawler pulling a single net that has a headrope length of less than 35 feet (10.7 m) and a footrope length of less than 44 feet (13.4 m) may restrict tow times instead of using a TED. Furthermore, the option of restricting tow times is available for all shrimp trawlers operating in inshore waters, and small trawlers in offshore waters, until January 1, 1993. During this time, inshore fishermen will have an opportunity to experiment with different TEDs under different conditions to determine what works effectively. At least one approved TED, the Anthony weedless TED, was designed specifically to deal with seagrass and algae problems. Several other approved TEDs also can exclude algae and seagrass. Based on information available, NMFS believes that there are very few historical shrimping areas where seagrass or algal concentrations make it impossible to harvest shrimp economically with a TED installed.

NMFS recognizes that crab traps could potentially lodge in the turtle escape opening, resulting in a loss of shrimp. This is something that NMFS cannot address in these regulations because it is a resource user conflict within state waters, which would be appropriately addressed by state regulation.

Comment: TEDs have not been adequately tested in small nets, and placing full-sized TEDs in small nets will result in a significant loss of shrimp. Many commenters suggested that NMFS was placing an unfair burden on inshore fishermen without adequately testing TEDs in small nets. Many pointed out that years of TED testing were conducted in the offshore fleet before the requirement to use TEDs in offshore waters was implemented

in offshore waters was implemented.

Response: Based on test results and other information, NMFS believes that all currently approved TEDs will function properly in nets with a headrope length of 35 feet (10.7 m) or longer. A small TED known as the NMFS mini grid TED works well in trawls with nets having a headrope length as small as 25 feet (7.6 m). The Georgia and Matagorda TEDs, based on their construction and configuration, should work in nets with a headrope length of 30 feet (9.1 m). In some situations, especially with respect to smaller and lighter nets used in some inshore areas, there may be problems in adapting and using some types of TEDs. For example, twisting and stretching of lighter nets have been identified as

possible problems. These problems are not expected to affect nets with a headrope length of 35 feet (10.7 m) or longer or the heavier type of nets that are usually used offshore.

In this final rule, a shrimp trawler using a single net that has a headrope length of less than 35 feet (10.7 m) and a footrope length of less than 44 feet (13.4 m) may restrict tow times instead of using a TED until December 1, 1994. This will allow additional time for testing of TEDs in smaller nets. When tow-time limits are used, trawlers must restrict their tows to no more than 55 minutes during warm-water months (April 1 through October 31) and to no more than 75 minutes during cold-water months (November 1 through March

Comment: In general, the commercial shrimping industry claims that tow-time limitations are a viable alternative to TEDs and this option should remain in effect in inshore waters. Shrimp fishermen argue that 90-minute tow times have proven successful in protecting sea turtles and that this option is the only thing that will work in inshore waters. Comments from other sectors, which constitute the majority of comments on this issue, favor elimination of restricted tow times as an

Response: The NMFS decision to eliminate the tow-time option, with the exceptions noted, was based upon several considerations. First, the National Academy of Sciences, in its 1990 report, Decline of the Sea Turtles: Causes and Prevention, concluded that 90-minute tow times are inadequate to provide sea turtle protection comparable to that provided by TED use and recommended 40- and 60-minute tows (actual bottom fishing time) for warmand cold-water months, respectively. Second, tow-time restrictions do not eliminate stress and trauma to turtles associated with their capture and forced submergence. Physiologists suggest that full recovery from such a capture could require days or even weeks, and that multiple captures of the same turtle could result in death, even when short tows are used. TEDs, on the other hand, minimize stress by releasing the turtle as soon as the TED is encountered. Third, enforcement of tow-time limitations is problematic. An insignificant number of cases involving a violation of the tow-time regulations have been prosecuted, despite the fact that many commenters readily admit to tows in excess of 90 minutes. Information from observers confirms that compliance has been poor. NMFS believes that TEDs are a more effective option to ensure adequate turtle

protection. Furthermore, it may be economically advantageous to use TEDs. rather than limiting tow times.

Comment: Existing data do not justify requiring TEDs in all inshore waters or in all places at all times. There are areas and seasons when turtles are not present and TEDs are not needed. A number of commenters thought that the NMFS requirements for TEDs in virtually all shrimp trawls were unnecessary. Other commenters favored this action because it increases the protection of sea turtles. Response: Even though there is less

evidence regarding the distribution of sea turtles in inshore waters than there is regarding their distribution in offshore waters, available information makes clear that sea turtles are present in inshore areas where trawling takes place. They are, therefore, vulnerable to capture and mortality in trawls. While turtles may be present at low abundance levels or even absent in certain areas at certain times of the year, the best available data and information do not allow NMFS to predict accurately when and where this will occur. Consequently, NMFS has determined that protective measures for sea turtles should be implemented throughout the year in all areas (inshore and offshore) off the coast of the southeastern United States in the Atlantic and the Gulf of Mexico. Turtle movements appear to be linked with changing water temperatures, but a number of other factors, including availability of food, probably also play a role in determining distribution and abundance. Further, the numbers of turtles are severely depressed in all areas because of human activities, resulting in their threatened and endangered status, and protections may be necessary to allow turtles to repopulate some areas. NMFS will continue research efforts, and if it is demonstrated that there are areas and times when turtles are never present, NMFS will consider eliminating sea turtle conservation measures in those areas at those times. However, no such areas or times can be delineated at the present time.

Comment: Of the 3,000 additional comments received on the interim final rule, the overwhelming majority of commenters objected to the interim final rule and favored full implementation of the April 30, 1992, proposed rule. The most commonly voiced criticism of the interim rule was that it failed to ensure adequate protection of sea turtles in inshore waters by allowing a tow-line option instead of mandatory TED requirements.

Response: NMFS recognizes that the interim final rule would not provide an adequate long-term solution to the

problem of sea turtle mortality in the shrimp fishery. The primary purpose of the interim final rule was to implement immediately turtle protection measures in the Atlantic area, while providing an opportunity for additional public comment on the proposed rule. NMFS agrees that the additional provisions contained in the proposed rule are necessary to ensure that sea turtles are adequately protected as mandated under the ESA

Comment: Most commenters opposed the use of limited tow times as a substitute for TED requirements under any circumstances, and especially when environmental conditions make TED use impracticable. Most commenters argued that tow times are difficult to enforce and that such an exemption would allow fishermen to circumvent the TED regulations. Many cited past experiences where fishermen ignored tow-time limitations, even with NMFS observers aboard, as evidence of the ineffectiveness of tow times as an alternative to TEDs. Many of the commenters recommended that NMFS further clarify the conditions under which such an exemption would be granted. In general, the commercial shrimp industry favored the use of restricted tow times.

Response: NMFS agrees that in most instances where tow-time limitations were substituted for TED requirements. available evidence indicates that compliance has been poor. For example, poor compliance was documented when shrimpers were allowed to use limited tow times off Louisiana in the aftermath of Hurricane Andrew during September 1992, and when fishermen in the summer flounder fishery off North Carolina were required to use limited tow times from November 1991 through February 1992

However, NMFS believes that there may be isolated areas and times when adverse environmental conditions (algae, seagrasses, etc.) make it impracticable to trawl with TEDs. Where adequate enforcement is possible, limited tow times may be an appropriate alternative. For example, in a very restricted nearshore area off North Carolina, tow-time limitations have been substituted for TED requirements because of excessive algal concentrations. North Carolina law enforcement personnel have reported one violation. Restricted tow times may be an effective option if fishermen cooperate and a strong law enforcement presence can be maintained. Under most circumstances, however, enforcement is not practicable and atsea monitoring of tow times is costly, ineffective and requires significant

diversion of limited enforcement resources from other areas. In any case, NMFS does not intend to allow compliance with restricted tow times as a permanent alternative to the use of TEDs, except where environmental problems have been well documented. and there is a basis for concluding that, in the particular circumstances, sea

turtles would be adequately protected.

Other comments: Several commenters provided technical suggestions and recommendations regarding gear

descriptions.

Response: NMFS considered these suggestions and incorporated recommended changes where appropriate.

Final Regulations and Changes From the Proposed and Interim Final Rules

As a result of comments and recommendations received, the final amendments differ from the proposed and interim final amendments in several areas. Specific changes are summarized below

1. Although the interim final rule extended sea turtle conservation measures throughout the year in the Atlantic area, it did not implement yearround protections in the Gulf of Mexico. This final rule extends sea turtle conservation measures throughout the Gulf of Mexico after November 30, 1992, in order to protect sea turtles where protective measures otherwise would not exist. This means that shrimp trawlers 25 feet (7.6 m) or longer in length must use TEDs in all offshore waters throughout the Gulf of Mexico and shrimp trawlers less than 25 feet (7.6 m) in length in offshore waters and all trawlers in inshore waters must use TEDs or abide by restricted tow times. It is essential to take immediate action to avoid a high risk that sea turtles will be injured or killed after November 30, 1992. While fishing effort is expected to decrease somewhat during winter months, fishing effort, nonetheless, is significant and the duration of tows is often long, presenting a substantial risk of injury or mortality to sea turtles. NMFS estimates that unless sea turtle conservation measures are required throughout the Gulf of Mexico during the months of December, January, and February, approximately 700 sea turtles may be killed by shrimp trawlers.

2. Generally, this final rule requires all shrimp trawlers to use TEDs beginning January 1, 1993. At that time, all shrimp trawlers in offshore waters and most inshore shrimp trawlers (with the exception discussed below) will be required to use TEDs in their nets. The proposed rule would have generally eliminated restricted tow times as an

alternative to the use of TEDs. The interim final rule did not implement

3. The proposed rule did not provide an exemption from the TED requirement for small trawlers or for trawlers equipped with small nets. NMFS has determined that a phase-in of the new requirements is likely to minimize disruptions to the shrimp fishery, while providing adequate protections for sea turtles. Therefore, until December 1, 1994, a shrimp trawler operating in inshore waters and using a single net with a headrope of less than 35 feet (10.7 m) in length and a footrope of less than 44 feet (13.4 m) in length may limit tow times to no more than 55 minutes from April 1 through October 31, and to no more than 75 minutes from November 1 through March 31, as an alternative to using a TED. A single net is required to prevent shrimpers from switching from relatively large single nets to two or more smaller nets to avoid having to use TEDs. Some fishermen, where state regulations allow, may want to use two trawls in inshore waters, especially during the brown shrimp season. NMFS encourages fishermen to experiment with approved TEDs in smaller nets, and will provide such fishermen with technical assistance. Recent gear research has shown that 25-foot (7.6-m) nets can be modified to accommodate grid TEDs. This final rule also specifies a maximum footrope length to discourage attempts to distort nets to evade the requirement to use TEDs.

A headrope length of 35 feet (10.7 m) was selected because virtually all existing TEDs can be accommodated in nets this size or larger. Some types of TEDs can be used in many smaller nets, including most nets with headropes of 30 feet (9.1 m), and many nets with headropes as small as 25 feet (7.6 m). In some cases, additional time, experience, or instruction may be necessary to make TEDs function properly in small inshore nets. Also, NMFS believes that additional testing and evaluation of TEDs, especially soft TEDs, may provide more and better options for shrimp fishermen using small or lightweight nets. The December 1, 1994, date of applicability of this requirement will provide sufficient time for this additional testing and allow fishermen time to gain experience with TEDs.

The headrope length of 35 feet (10.7 m) also is based, in part, on new information on the inshore shrimp fleet and fishery. When the original TED regulations were implemented, NMFS knew relatively little about the gear, vessels or fishing conditions of this inshore fishery. Virtually all vessel

observer coverage and most TED research efforts were conducted on offshore trawlers. More recent information indicates there are more variations in the gear, equipment, and boats used in the inshore shrimp fishery, as well as unique fishing conditions in some areas. For example, light twine nets are commonly used inshore. These nets are often constructed of weaker materials than those used offshore. Some of the inshore nets with headropes of less than 35 feet (10.7 m) may stretch and twist when TEDs are installed, or may be more difficult to use in some inshore areas that have special fishing conditions. NMFS gear specialists are investigating existing and new TEDs that could be used in these nets and in these areas, without reducing either fishing efficiency or turtle exclusion capabilities. At this time, NMFS gear specialists are confident that TEDs will work effectively inshore in nets that have a headrope length of 35 feet (10.7 m) or more.

This approach differs from the interim final sea turtle conservation regulations, which exempted shrimp trawlers less than 25 feet (7.6 m) in length from using TEDs in offshore waters. Taking all factors into consideration, NMFS believes that net size is a better criterion than trawler length for determining whether TEDs are required in inshore waters. Offshore trawlers, designed to optimize seaworthiness, are relatively consistent in design from vessel to vessel. Inshore, in protected waters, trawler designs tend to vary greatly. Also, the trawl towing capability of an inshore trawler is more a function of engine power than length. The propulsion system of inshore trawlers is often optimized for towing power as opposed to running speed, because traveling distances are normally not as great, and there may be less need to seek a speedy refuge from an approaching

NMFS recognizes that enforcement of tow-time restrictions is problematic and that using headrope length as the basis for the requirement to use TEDs may present special enforcement problems. These enforcement difficulties will be ameliorated somewhat by allowing only shrimp trawlers with one net rigged for fishing to use the restricted tow-time option. A more concentrated enforcement effort may be necessary in many inshore areas. Nonetheless, if there is widespread noncompliance with the tow-time restrictions in inshore waters, or with other requirements, the interim final rule established new procedures to facilitate a quick response.

This final rule does not extend the limited exemption for trawlers using a single small net to vessels operating offshore because, unlike some trawlers operating with a small net in inshore waters, trawlers operating in offshore waters should be able to equip their nets to operate efficiently with TEDs by January 1, 1993. TEDs have been thoroughly tested and extensively used in offshore waters.

In some cases, small trawlers that normally operate inshore will be required to use TEDs when they are fishing in offshore waters. NMFS expects that most nets used by these trawlers can be equipped with TEDs, using current technology. Additionally, when operating offshore, these smaller trawlers often fish near the coast. Available evidence suggests that mortalities of the critically endangered Kemp's ridley sea turtle often occur when shrimping operations are conducted in these coastal offshore waters. Thus, NMFS has determined that all shrimp trawlers, regardless of length or net size, should be required to use TEDs in offshore waters as soon as practicable to maximize sea turtle protection.

4. This final rule corrects, clarifies, and makes minor amendments to the regulations implemented by the interim rule. For example, technical changes in describing allowable modifications and generic grid TED descriptions are made on the recommendation of NMFS gear specialists. Specifically, the attachment of an accelerator funnel to the TED extension webbing or grid bars opposite the escape opening reduces shrimp loss, and is recommended by gear specialists. This provision in no way hinders turtle release. This specification and others are designed to clarify and explain gear terms and to enhance enforceability of

the regulations.

5. This final rule adds registration provisions that may be required for emergency TED exemption programs or temporary sea turtle conservation measures in NMFS-designated restricted areas. The need for the registration of fishermen was identified in the use of the emergency TED exemption provision of the interim final rule in 1992, both off North Carolina and Louisiana. Registration is needed to monitor fishing effort, to monitor incidental capture of turtles, to facilitate placement of observers, and for enforcement purposes. NMFS would be unable to respond to future emergency conditions requiring TED exemptions. temporary observer requirements, and other conservation measures, without the ability to identify and register the participants. While approval for

registration of fishermen was granted by OMB in North Carolina and Louisiana, prior OMB approval for registration would allow NMFS to respond more quickly to emergency situations. NMFS has requested comprehensive authorization from OMB to collect registration information through brief telephone interviews, if necessary, to implement several potential emergency actions.

In order to provide continuity and to avoid confusion, many paragraphs amended by the interim final rule that are not changed by this final rule (e.g., many of the definitions in § 217.12) are republished as a part of the regulatory text of this final rule, together with amended text as explained in this preamble.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is consistent with the ESA and other applicable law. NMFS conducted a consultation under section 7 of the ESA for the 1987 sea turtle conservation regulations (52 FR 24244, June 29, 1987). A biological opinion was prepared analyzing those regulations. Additional consultation has been conducted to analyze the effects of the shrimp trawl fishery in the southeastern United States on sea turtles and other species listed under the ESA. The biological opinion prepared for this consultation, issued on August 19, 1992, concludes that operation of the shrimp trawl fishery, upon implementation of specified measures pursuant to the phase-in schedule specified in this final rule, is not likely to jeopardize the continued existence of sea turtles or other listed species. This final rule is consistent with the terms and conditions of the incidental take statement that is included in the biological opinion.

A regulatory impact review/regulatory flexibility analysis (RIR/RFA) was prepared for the 1987 sea turtle conservation regulations. A combination Environmental Assessment (EA) and supplemental RIR was prepared for the proposed amendments that were not already analyzed in the original analysis. An EA/RIR was also prepared on August 19, 1992. The supplemental RIR indicates that this final rule is not a "major rule" for which a regulatory impact analysis is required under E.O.

An environmental impact statement EIS) was prepared for the listing of

(EIS) was prepared for the listing of three species of sea turtles; the green loggerhead, and olive ridley. The EIS addressed the development of gear and

procedures to reduce the incidental take and mortality of sea turtles in shrimp trawls. An EA that described a voluntary program to encourage the use the TEDs was prepared in 1983. A supplemental EIS covering the mandatory TED and tow-time requirements was prepared in 1987. A combination EA and supplemental RIR was prepared on August 19, 1992. The major provisions of the interim final rule and this final rule were analyzed as the preferred alternative in the EA. This EA concluded that the preferred alternative would not result in an adverse effect on the human environment.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not participate in the Federal coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

Neither this final rule nor the ESA precludes any state from adopting more stringent sea turtle protection measures. This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This final rule contains a collectionof-information requirement subject to the Paperwork Reduction Act (PRA). Section 227.72(e) (3)(v) and (6)(iv) provides for the registration of fishermen to implement emergency TED exemptions or sea turtle conservation measures. A request to make this collection has been submitted to the Office of Management and Budget (OMB). The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see

NMFS has determined that good cause exists to make this final rule effective on December 1, 1992, thereby waiving the 30-day delayed effectiveness date requirement of section 553(d) of the Administrative Procedure Act. Good cause exists because of the need to protect sea turtles

in the Gult of Mexico no later than December 1, 1992. A delay in the implementation of this rule beyond that date may jeopardize the continued existence of endangered and threatened sea turtles and may require the closure of the shrimp fishery. Furthermore, this final rule extends requirements in effect under the interim final rule until January 1, 1993; additional time is not required to comply with the requirements imposed by this final rule since the requirements are substantially similar to those now in effect. Consequently, NMFS has determined that there is good cause to make this final rule effective on December 1, 1992.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: November 30, 1992. William W. Fox, Jr.,

Assistant Administrator for Pisheries.

For the reasons set forth in the preamble, the interim rule amending 50 CFR parts 217 and 227 that was published at 57 FR 40861 on September 8, 1992, is adopted as a final rule with the following changes:

PART 217—GENERAL PROVISIONS

 The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531-1544; and 16 U.S.C. 742a et seq., unless otherwise noted.

2. In § 217.12, the definitions for "Southwest Florida Area" and "Tow time" are removed; the definitions for "Atlantic Area", "Gulf Area", and "Shrimp" are revised; and the definitions of "Accelerator funnel", "Approved TED", "Authorized officer", "Bait shrimper", "Fishing, or to fish", "Footrope", "Footrope length", "Hard TED", "Headrope", "Headrope length", "Pusher-head trawl (chopsticks)", "Shrimp trawler", "Skimmer trawl", "Soft TED", "Stretched mesh size", "Taut", "TED (turtle excluder device)", "Test net, or try net", and "Wing net (butterfly trawl)" are republished to read as follows:

§217.12 Definitions.

Accelerator funnel means a device used to accelerate the flow of water through a shrimp trawl net.

Approved TED means:

(1) A hard TED that complies with the generic design criteria set forth in 50 CFR 227.72(e)(4)(i). (A hard TED may be modified as specifically authorized by 50 CFR 227.72(e)(4)(iii)); or

(2) A soft TED that complies with the provisions of 50 CFR 227.72(e)(4)(ii).

Atlantic Area means all waters of the Atlantic Ocean south of 36°33′00.8″ N. latitude (the line of the North Carolina/ Virginia border) and adjacent seas, other than waters of the Gulf Area, and all waters shoreward thereof (including ports).

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or enforcement officer of the National Marine Pisheries Service;

(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Bait shrimper means a shrimp trawler that fishes for and retains its shrimp catch alive for the purpose of selling it for use as bait.

Fishing, or to fish, means:

(1) The catching, taking, or harvesting of fish or wildlife;

(2) The attempted catching, taking, or harvesting of fish or wildlife;

(3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or wildlife; or

(4) Any operations on any waters in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

Footrope means a weighted rope or cable attached to the lower lip (bottom edge) of the mouth of a trawl net along the forwardmost webbing.

Footrope length means the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forwardmost webbing.

Gulf Area means all waters of the Gulf of Mexico west of 81° W. longitude (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports).

Hard TED means a rigid deflector grid and associated hardware designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Headrope means a rope that is attached to the upper lip (top edge) of the mouth of a trawl net along the forwardmost webbing.

Headrope length means the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forwardmost webbing.

Pusher-head trawl (chopsticks) means a trawl that is spread by poles suspended in a "V" configuration from the bow of the trawler.

Shrimp means any species of marine shrimp (Order Crustacea) found in the Atlantic Area or the Gulf Area, including, but not limited to:

(1) Brown shrimp (Penaeus aztecus); (2) White shrimp (P. setiferus); (3) Pink shrimp (P. duorarum);

(3) Pink shrimp (P. duorarus(4) Rock shrimp (Sicyonia brevirostris);

(5) Royal red shrimp

*

(Hymenopenaeus robustus); and (6) Seabob shrimp (Xiphopenaeus

kroyeri).

Shrimp trawler means any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Skimmer trawl means a trawl that extends from the outrigger of a vessel with a cable and a lead weight holding the trawl mouth open.

Soft TED means a panel of polypropylene or polyethylene netting designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Stretched mesh size means the distance between the centers of the two opposite knots in the same mesh when pulled taut.

Taut means a condition in which there is no slack in the net webbing.

TED (turtle excluder device) means a device designed to be installed in a trawl net forward of the codend for the purpose of excluding sea turtles from the net.

Test net, or try net, means a net pulled for brief periods of time just before, or during, deployment of the primary net(s) in order to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

Wing net (butterfly trawl) means a trawl with a rigid frame, rather than trawl door, holding the trawl mouth open.

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.

4. In § 227.71, paragraphs (a) and (b) are revised and paragraph (c) is republished to read as follows:

§ 227.71 Prohibitions.

(a) Except as provided in § 227.72, the prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to any species of sea turtle enumerated in § 227.4.

(b) Except as provided in § 227.72, it is unlawful for any person subject to the jurisdiction of the United States to do

any of the following:

(1) Own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of § 227.72(e);

(2) Fish for, catch, take, harvest, or possess, fish or wildlife while on board a vessel, except if that vessel is in compliance with all applicable provisions of § 227.72(e);

(3) Fish for, catch, take, harvest, or possess, fish or wildlife contrary to any notice of tow-time or other restriction specified in, or issued under, § 227.72(e) (3) or (6);

(4) Possess fish or wildlife taken in violation of paragraph (b) of this section;

(5) Fail to follow any of the sea turtle handling and resuscitation requirements specified in § 227.72(e)(1);

(6) Possess a sea turtle in any manner contrary to the handling and resuscitation requirements of § 227.72(e)

(1):

(7) Fail to comply immediately, in the manner specified at 50 CFR 620.8 (b)-(d), with instructions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(8) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(9) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in

contravention of directions from the

(10) Assault, resist, oppose, impede. intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by

this section:

(12) Resist a lawful arrest for an act

prohibited by this section;

(13) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 227;

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an

approved TED; or

(15) Attempt to do, solicit another to do, or cause to be done, any of the

foregoing.

(c) In connection with any action alleging a violation of this section, any person claiming the benefit of any exemption, exception, or permit under this subpart D has the burden of proving that the exemption, exception, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation. Further, any person claiming that a modification made to a TED that is the subject of such an action complies with the requirements of § 227.72(e)(4)(iii) has the burden of proving such claim.

5. In § 227.72, paragraph (e) is revised

to read as follows:

§ 227.72 Exceptions to prohibitions.

(e) Exception for incidental taking-(1) General. The prohibitions against taking in § 227.71(a) do not apply to the incidental take of any member of any species of sea turtle listed in § 227.4 (i.e., a take not directed toward such member) during fishing or scientific research activities to the extent that those involved are in compliance with the requirements of paragraphs (e)(1). (e)(2), (e)(3), and (e)(6) of this section.

(i) Any specimen so taken must be handled with due care to prevent injury to live specimens, observed for activity. and returned to the water according to

the following procedures:
(A) Sea turtles that are dead or actively moving must be released over the stern of the boat. In addition, they

must be released only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels.

(B) Resuscitation must be attempted on sea turtles that are comatose or

inactive but not dead by:

(1) Placing the turtle on its back (carapace) and pumping its breastplate (plastron) with hand or foot; or

2) Placing the turtle on its breastplate (plastron) and elevating its hindquarter several inches for a period of 1 up to 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. Sea turtles being resuscitated must be shaded and kept wet or moist. Those that revive and become active must be released over the stern of the boat only when trawls are not in use, when the engine gears are in neutral position, and in areas where they are unlikely to be recaptured or injured by vessels. Similarly, sea turtles that fail to move within several hours (up to 24, if possible) must be returned to the water in the same manner.

(ii) Any specimen so taken must not be consumed, sold, landed, offloaded, transshipped, or kept below deck.

(2) Gear requirements.—(i) TED requirement. Except as provided in paragraph (e)(2)(ii) of this section, any shrimp trawler that is in the Atlantic Area or Gulf Area must have an approved TED (as defined in § 217.12 of this subchapter) installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp trawler.

(ii) Exemptions from the TED requirement. (A) A shrimp trawler is exempt from the TED requirements of paragraph (e)(2)(i) of this section if it complies with the alternative tow-time restrictions in paragraph (e)(3)(i) of this

section and if it:

(1) Has on board no power or mechanical-advantage trawl retrieval system (i.e., any device used to haul any part of the net aboard);

(2) Is a bait shrimper that retains all live shrimp on board in a container with a circulating seawater system, if it does not possess more than 32 pounds (14.5 kg) of dead shrimp on board, and if it has on board a valid original state baitshrimp license (if in a state that requires such a license);

(3) Has only a pusher-head trawl, skimmer trawl, or wing net rigged for

(4) Is in an area during a period for which tow-time restrictions apply under paragraphs (e)(3)(ii) or (iii) of this section, if it complies with all applicable provisions imposed under those paragraphs;

(5) Prior to January 1, 1993, is in

inshore waters;

(6) Prior to January 1, 1993, is in offshore waters, if it is less than 25 feet

(7.6 m) in length; or

(7) Prior to December 1, 1994, is in inshore waters, if it has no more than one net rigged for fishing (other than a test (or try) net), if that net has both a headrope length of less than 35 feet (10.7 m) and a footrope length of less than 44 feet (13.4 m).

(B) The following fishing gear or activities are exempted from the TED requirements of paragraph (e)(2)(i) of

this section:

(1) A single test net (try net) with a headrope length of 20 feet (6.1 m) or less, if it is either pulled immediately in front of another net or is not connected to another net in any way, if no more than one test net is used at a time, and if it is not towed as a primary net;

(2) A beam or roller trawl fished without doors, boards, or similar devices, that has a mouth formed by a rigid frame and rigid vertical bars, if none of the spaces between the bars, or between the bars and the frame, exceed

4 inches (10.2 cm); and

(3) A shrimp trawler fishing for, or possessing, royal red shrimp, if at least 90 percent (by weight) of all shrimp either found on board, or offloaded from that shrimp trawler, is royal red shrimp.

(3) Tow-time restrictions.—(i) Duration of tows. If tow-time restrictions are utilized pursuant to paragraphs (e)(2)(ii), (e)(3)(ii), or (e)(3)(iii) of this section, a shrimp trawler must limit tow times to no more than 55 minutes from April 1 through October 31, and to no more than 75 minutes from November 1 through March 31. The tow time is measured from the time that the trawl door enters the water until it is removed from the water. For a trawl net that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water.

(ii) Alternative-special environmental conditions. The Assistant Administrator may allow compliance with tow-time restrictions, as an alternative to the TED requirement of paragraph (e)(2)(i) of this section, if he/ she determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.

(iii) Substitute-ineffectiveness of TEDs. The Assistant Administrator may require compliance with tow-time restrictions, as a substitute for the TED requirement of paragraph (e)(2)(i) of this section, if he/she determines that TEDs are ineffective in protecting sea turtles.

(iv) Notice; applicability; conditions. The Assistant Administrator will publish notification concerning any tow-time restriction imposed under paragraphs (e)(3) (ii) or (iii) of this section in the Federal Register and will announce it in summary form on channel 16 of the marine VHF radio. A notification of tow-time restrictions will include findings in support of these restrictions as an alternative to, or as substitute for, the TED requirements of paragraph (e)(2)(i) of this section. The notification will specify the effective dates, the geographic area where towtime restrictions apply, and any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance, including, but not limited to, a requirement to carry observers, or for all shrimp trawlers in the area to synchronize their tow times so that all trawl gear remains out of the water during certain times. A notification withdrawing tow-time restrictions will include findings in support of that

(v) Registration. If the Assistant Administrator imposes restrictions under paragraph (e)(3) (ii) or (iii) of this section, he/she may require the owner and operator of a shrimp trawler to register before entering an area where, and during the time when, the restrictions apply. If registration is required, the trawler's owner and operator must submit the following information to the NMFS Regional Office:

(A) The name and official number (or registration number) of the shrimp

(B) The names, mailing and street addresses, and telephone numbers of the trawler owner and operator;

(C) The permit number or other identification of relevant state or Federal fishing permit(s);

(D) Where and when the trawler

intends to fish;

(E) Where and when the trawler will depart on any fishing trip, with sufficient specificity to allow for an observer to embark on the trip; and

(F) Any changes in the information submitted under paragraphs (e)(3)(v) (A) through (E) of this section. Failure to do so immediately will void the registration, which will render unlawful any subsequent entry of the shrimp

trawler into the area where and during the time when the restrictions apply.

(vi) Procedures. The Assistant Administrator will consult with the appropriate fishery officials (state or Federal) where the affected shrimp fishery is located in issuing a notification concerning tow-time restrictions. An emergency notification can be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each if the Assistant Administrator finds that the conditions that necessitated the imposition of tow-time restrictions continue to exist. The Assistant Administrator may invite comments on such an action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent tow-time restriction through rulemaking.

(4) Approved TEDs. Any netting, webbing, or mesh that may be measured to determine compliance with this paragraph (e)(4) is subject to measurement, regardless of whether it is wet or dry. Any such measurement will

be of the stretched mesh size.
(i) Hard TEDs. Hard TEDs are TEDs with rigid deflector grids and are categorized as "hooped hard TEDs," such as the NMFS and Cameron TEDs (Figures 1 & 2), or "single-grid hard TEDs," such as the Matagorda and Georgia TEDs (Figures 3 & 4). Hard TEDs complying with the following generic design criteria are approved

(A) Construction materials. A hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:

(1) Solid steel rod with a minimum outside diameter of 34 inch (0.64 cm);

(2) Fiberglass or aluminum rod with a minimum outside diameter of 1/2 inch (1.27 cm); or (3) Steel or aluminum tubing with a

maximum inside diameter of 1/4 inch (0.64 cm) and a minimum outside diameter of 1/2 inch (1.27 cm) (schedule

40 tubing).

(B) Method of attachment. A hard TED must be sewn into the trawl around the entire circumference of the TED with heavy twine.

(C) Angle of deflector bars. The angle of the deflector bars must be between 30° and 50° from the normal, horizontal flow through the interior of the trawl.

(D) Space between bars. The space between deflector bars, and between the deflector bars and the frame, must not exceed 4 inches (10.2 cm).

(E) Direction of bars. The deflector bars must run from top to bottom of the TED, as the TED is positioned in the net, except that up to four of the bottom bars and two of the top bars, including the frame, may run from side to side of the TED.

(F) Position of escape opening. The entire width of the escape opening from the trawl must be centered on and immediately forward of the frame at either the top or bottom of the net when the net is in its deployed position. The escape opening must be at the top of the net when the slope of the deflector bars from forward to aft is upward, and must be at the bottom when such slope is downward. For a single-grid TED, the escape opening must be cut horizontally along the same plane as the TED, and may not be cut in a fore-and-aft direction.

(G) Size of escape opening. (1) On a hooped hard TED, the escape opening must not be smaller than 25 inches by 25 inches (63.5 cm by 63.5 cm) in the Gulf Area, or 30 inches by 30 inches (76.2 cm by 76.2 cm) in the Atlantic Area. If a door frame is used over the escape opening, it must open a minimum height of 10 inches (25.4 cm) in the Gulf Area, or 12 inches (30.5 cm)

in the Atlantic Area.

(2) On a single-grid hard TED, the escape opening in the net webbing must measure at least 32 inches (81.3 cm) in horizontal taut length and, simultaneously, 10 inches (25.4 cm) in vertical taut height in the Gulf Area; or 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.5 cm) in vertical taut height in the Atlantic Area. The vertical measurement must be taken at the mid-point of the horizontal measurement.

(H) Size of hoop or grid. (1) Hooped hard TED. (i) An oval front hoop on a hard TED must have an inside horizontal measurement of at least 32 inches (81.3 cm) and an inside vertical measurement of at least 20 inches (50.8 cm) in the Gulf Area, or an inside horizontal measurement of at least 35 inches (88.9 cm) and an inside vertical measurement of at least 30 inches (76.2 cm) in the Atlantic Area.

(ii) A circular front hoop on a hard TED must have an inside diameter of at least 32 inches (81.3 cm) in the Gulf Area or 35 inches (88.9 cm) in the Atlantic Area.

(2) Single-grid hard TED. A single-grid hard TED must have an inside horizontal and vertical measurement of at least 28 inches (71.1 cm) in the Gulf Area or 30 inches (76.2 cm) in the Atlantic Area. The required inside measurements must be at the mid-point of the deflector grid.

(ii) Soft TEDS. Soft TEDs are TEDs with deflector panels made from

polypropylene or polyethylene netting. The following soft TEDs are approved

(A) Morrison TED (Figures 5 & 6). The Morrison TED uses synthetic mesh webbing for its deflector panel(s). The webbing must consist of number 42 (3mm thick) or larger polypropylene or polyethylene webbing that is heat-set knotted or braided. The stretched mesh size may not exceed 8 inches (20.3 cm). The webbing may be installed either as one main excluder panel or as a main and two side (jib) excluder panels (Figure 6), so long as it forms a complete barrier to large objects inside the trawl net forward of the codend. The base (leading edge) of the excluder panel(s) must be sewn to the bottom body of the trawl net at least 16 feet 8 inches (5.1 m) forward of the point at which the codend is attached to the trawl net. The apex of the excluder panel(s) must be sewn to the center of the top body of the trawl net not more than 20 inches (50.8 cm) forward of the point at which the codend is attached to the trawl net. The meshes of the leading edge of the excluder panel shall be sewn evenly onto the bottom belly of the trawl following the same row of meshes from seam to seam, including the wings (i.e., the sides of the trawl that separate the top from the bottom). The leading edge of the panel cannot be installed on a bias. If a net extension is inserted forward of the codend, the base and apex attachments of the excluder panel(s) must be measured from the forward attachment points of such extension. The horizontal taut length of the stretched main excluder panel may not be less than 15 feet (4.6 m). Each point on the circumference of the webbing must be sewn to the trawl net. The meshes of the webbing must be under tension when the codend is pulled aft, thus forming diamond patterns pointing toward the top of the trawl net. As an escape opening, a slit at least 4 feet 8 inches (1.4 m) in taut length must be cut in a fore-and-aft direction at the top of the trawl net immediately forward of the apex of the panel webbing. The slit may not be

covered or closed in any manner.
(b) Parrish TED (Figure 7). The
Parrish TED consists of an extension
and deflector panel made of synthetic
mesh and a steel frame. The extension
must be a piece of 1¾-inch (4.4-cm)
stretched mesh, no. 15 thread, treated
nylon, measuring 150 meshes by 100
meshes and installed in the trawl. When
installed, the extension must be
cylindrically shaped with a
circumference of 150 meshes and a
depth of 100 meshes. The deflector
panel must slope down the inside of the

extension and must be a rectangular piece of 8-inch (20.3-cm), stretched mesh, 3-mm diameter, braided polyethylene. The deflector panel must measure eight meshes across its leading and trailing edges and be 151/2 meshes deep. The eight meshes at the leading edge of the deflector panel must be sewn into the small (13/4-inch) (4.4-cm) mesh of the extension three meshes down from the top edge of the extension. The eight meshes at the trailing edge must be attached to the top edge of the frame. Each side edge of the deflector panel must be attached at 55%inch (14.3-cm) intervals to a 3/a-inch (1.0-cm) diameter, three-strand polydacron rope, which must be attached to the small mesh of the extension at 55/8-inch (14.3-cm) intervals. The deflector panel must form a complete barrier to large objects inside the extension forward of the frame. The frame must be a rectangular, 3/8-inch (1.0-cm) diameter, welded galvanized steel rod unit with a 40-inch by 4-inch (101.6-cm by 10.2-cm) opening and small pad eyes at the top corners. The trailing-edge meshes of the deflector panel must be attached to the top of the frame, and 50 lateral meshes of the extension netting (13/4-inch (4.4.-cm) mesh) must be centered and sewn to the bottom and sides of the frame. The escape opening must consist of a lateral slit, measuring 40 meshes, cut from the leading edge at the bottom of the frame. A bungee cord having a 50-inch (127.0cm) non-stretched length and a 1/4-inch (0.64-cm) diameter must be laced through the meshes at the cut. Opposing ends of the bungee cord must be secured to the opposing pad eyes at the top of the frame. One end of a flap measuring 50 meshes across by 30 meshes deep must be attached to the meshes at the

(C) Andrews TED (Figures 8a & 8b). The Andrews TED is a funnel constructed of 5-inch (12.7-cm) stretched mesh polyethylene or polypropylene webbing that is sewn inside a shrimp trawl. The leading edge of the funnel must be sewn with heavy twine at all points to the outer trawl beginning on the row of meshes located 20 meshes behind the center of the footrope and continuing around the circumference of the trawl, following the same row of meshes. The webbing must not be laced with rope. The funnel must taper to an escape opening in the bottom of the trawl. The rear edge of the escape opening must be located no more than 20 inches (50.8 cm) ahead of the net extension. The trailing edge on the funnel must be sewn at all points around the circumference of the escape

opening. The escape opening must be at least 96 inches (243.8 cm) in circumference. A webbing flap may be used to cover the escape opening if no device holds the webbing flap closed or otherwise restricts the opening, and if such flap is constructed of webbing that has a stretched mesh size no larger than 2-inch (5.1-cm), lies on the outside of the trawl, is attached along its entire forward edge forward of the escape opening, is 50 meshes wide and 15 meshes deep, does not overlap the exit opening more than five meshes on each side (it may be attached along the 15mesh edge), and maintains an opening of at least 48 inches (121.9 cm) in a taut

(iii) Allowable modifications. No modifications may be made to an approved soft TED. Only the following modifications may be made to an

approved hard TED:

(A) Floats may be attached to the TED, either outside or inside of the net, but not to a flap, Floats attached inside the net must be behind the rear surface at

the top of the TED.

(B) An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size not greater than 15% inches (4.1 cm), if it has an inside horizontal opening of at least 39 inches (99.1 cm) when measured in a taut position, if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than 1/3 of its circumference is attached, and if the inside horizontal opening of at least 39 inches (99.1 cm) is maintained. In a downward shooting TED, only the top 1/3 of the circumference of the funnel may be attached. In an upward shooting TED, only the bottom 1/3 of the circumference of the funnel may be attached.

(C) A webbing flap may be used to cover the escape opening if no device holds it closed or otherwise restricts the opening, and if it is constructed of webbing with a stretched mesh size no larger than 15%-inch (4.1-cm), lies on the outside of the trawl, is attached along its entire forward edge forward of the escape opening, is not attached on the sides more than 6 inches (15.2 cm) beyond the posterior edge of the grid, and does not extend more than 24 inches (61.0 cm) beyond the posterior edge of the grid.

(5) Revision of generic design criteria and allowable modification of hard TEDs and additional soft TEDs. (i) The Assistant Administrator may revise the generic design criteria for hard TEDs set

forth in paragraph (e)(4)(i) of this section, may approve allowable modifications to hard TEDs in addition to those authorized in paragraph (e)(4)(iii) of this section, or may approve soft TEDs in addition to those listed in paragraph (e)(4)(ii) of this section, by a regulatory amendment if, according to a NMFS-approved scientific protocol, the TEDs demonstrate a sea turtle exclusion rate of 97 percent or greater (or an equivalent exclusion rate). Two such protocols have been published by NMFS (52 FR 24262, June 29, 1987; and 55 FR 41092, October 9, 1990). Testing under the protocol must be conducted under the supervision of the Assistant Administrator, and shall be subject to all such conditions and restrictions as the Assistant Administrator deems appropriate. Any person wishing to participate in such testing should contact the Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149.

(ii) Upon application, the Assistant Administrator may issue permits, subject to such conditions and restrictions as the Assistant Administrator deems appropriate, authorizing public or private experimentation aimed at improving shrimp retention efficiency of existing approved TEDs and at developing additional TEDs, or conducting fishery research, that would otherwise be subject to paragraph (e)(2) of this section. Applications should be addressed to the Director, Southeast Region, NMFS, 9450 Koger Blvd., St.

Petersburg, FL 33702.

(6) Limitations on incidental takings during fishing activities.—(i) Limitations. The exemption for incidental takings of sea turtles in paragraph (e)(1) of this section does not authorize incidental takings during fishing activities if the takings:

(A) Would violate the restrictions, terms, or conditions of an incidental take statement or biological opinion;

(B) Would violate the restrictions, terms, or conditions of an incidental take permit; or

(C) May be likely to jeopardize the continued existence of a species listed

under the Act.

(ii) Determination; restrictions on fishing activities. The Assistant Administrator may issue a determination that incidental takings during fishing activities are unauthorized. Pursuant thereto, the Assistant Administrator may restrict fishing activities in order to conserve a species listed under the Act, including, but not limited to, restrictions on the fishing activities of vessels subject to paragraph (e)(2)(i) of this section. The

Assistant Administrator will take such action if he/she determines that restrictions are necessary to avoid unauthorized takings that may be likely to jeopardize the continued existence of a listed species. The Assistant Administrator may withdraw or modify a determination concerning unauthorized takings or any restriction on fishing activities if the Assistant Administrator determines that such action is warranted.

(iii) Notice; applicability; conditions. The Assistant Administrator will publish a notification of a determination concerning unauthorized takings or a notification concerning the restriction of fishing activities in the Federal Register. The Assistant Administrator will provide as much advance notice as possible, consistent with the requirements of the Act, and will announce the notification in summary form on channel 16 of the marine VHF radio. Notification of a determination concerning unauthorized takings will include findings in support of that determination; specify the fishery, including the target species and gear used by the fishery, the area, and the times, for which incidental takings are not authorized; and include such other conditions and restrictions as the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Notification of restriction of fishing activities will include findings in support of the restriction, will specify the time and area where the restriction is applicable, and will specify any applicable conditions or restrictions that the Assistant Administrator determines are necessary or appropriate to protect sea turtles and ensure compliance. Such conditions and restrictions may include, but are not limited to, limitations on the types of fishing gear that may be used, tow-time restrictions, alteration or extension of the periods of time during which particular tow-time requirements apply, requirements to use TEDs, and requirements to provide observers. Notification of withdrawal or modification will include findings in support of that action.

(iv) Registration. If the Assistant Administrator imposes restrictions under paragraph (e)(6)(ii) of this section, he/she may require the owner and operator of a vessel to register before entering an area where, and during the time when, the restrictions apply. If registration is required, the vessel's owner and operator must submit the following information to the NMFS

Regional Office:

(A) The name and official number (or registration number) of the vessel;

(B) The names, mailing and street addresses, and telephone numbers of the vessel owner and operator;

(C) The permit number or other identification of relevant state or Federal fishing permit(s);

(D) Where and when the vessel

intends to fish; and

(E) Where and when the vessel will depart on any fishing trip, with sufficient specificity to allow for an observer to embark on the trip.

(F) Any changes in the information submitted under paragraphs (e)(6)(iv) (A) through (E) of this section. Failure to do so immediately will void the registration, which will render unlawful any subsequent entry of the fishing vessel into the area where and during the time when the restrictions apply.

(v) Procedures. The Assistant Administrator will consult with the appropriate fisheries officials (state or Federal) where the fishing activities are located in issuing notification of a determination concerning unauthorized takings or notification concerning the restriction of fishing activities. An emergency notification will be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each. The Assistant Administrator may invite comments on such action, and may withdraw or modify the action by following procedures similar to those for implementation. The Assistant Administrator will implement any permanent determination or restriction through rulemaking.

[FR Doc. 92-29370 Filed 12-1-92; 12:52 pm]

50 CFR Part 625

[Docket No. 920543-2293]

RIN 0648-AE21

Summer Flounder Fishery

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

SUMMARY: NMFS issues this final rule to implement the following conservation and management measures in Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (Amendment): (1) Annual quotas for the commercial fishery allocated on a state-by-state basis; (2) minimum mesh size for trawl gear; (3) a seasonal restriction for the recreational fishery; (4) bag limits on a trip basis for the recreational fishery; (5) minimum fish size requirements for the commercial and recreational fisheries;

(6) a 5-year moratorium on entry into the commercial fishery; (7) permits for dealers wishing to purchase summer flounder; (8) mandatory logbook reporting by permitted dealers; (9) a prohibition on sale of summer flounder caught by the recreational fishery; and (10) authorization to collect application fees for vessel and dealer permits. Additionally, this final rule implements measures from the Amendment which are designed to protect endangered and threatened sea turtles, especially to reduce the likelihood of incidental catch or injury to sea turtles in the winter trawl fishery for summer flounder. The intent of the Amendment is to reduce the fishing mortality rate to build the severely depleted stock of summer flounder.

This rule also implements the following measures approved from the revised portion of Amendment 2: (1) Federally permitted vessels that are fishing commercially may not land summer flounder in a state after the quota allocated for that state has been taken, and (2) permitted dealers may not purchase summer flounder landed in a state after its commercial quota has been taken. The intent is to keep from exceeding annual quotas of commercially harvested summer flounder.

EFFECTIVE DATES: Sections 625.1, 625.2, 625.3, 625.4, 625.5, 625.7, 625.8, 625.9, 625.10, 625.20, 625.23, 625.24, 625.25, and 635.26 are effective November 30, 1992. Section 625.27 is effective December 16, 1992. Section 625.6(a)(2) is not effective until after OMB approval is obtained for the information collections involved; notice of the effective date will be published in a separate action in the Federal Register. Sections 625.6(a)(1), (a)(3) through (5), 625.21, and 625.22 are effective January 1, 1993. Sections 625.6 (b) and (c) are added and reserved effective January 1, 1993.

ADDRESSES: Copies of Amendment 2, its regulatory impact review (RIR) and the final environmental impact statement (FEIS) are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE 19901–6790.

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in § 625.6(a)(2) of this final rule should be sent to the Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Street, Gloucester, MA 01930, and the Office of Management and Budget (Attention:

NOAA Desk Officer), Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, (508) 281–9324.

SUPPLEMENTARY INFORMATION:

Amendment 2 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC) and the New England and South Atlantic Fishery Management Councils. In the notice of availability (57 FR 19874, May 8, 1992) for Amendment 2 and again in the proposed rule (57 FR 24577, June 10, 1992), the Secretary announced disapproval of one of the measures submitted by the Council.

A revision to that disapproved measure was submitted by the Council (referred to as the revised portion of Amendment 2) in July, 1992. The notice of availability and the proposed rule for the revised portion of Amendment 2 were published in the Federal Register at 57 FR 34107 (August 3, 1992) and 57 FR 36055 (August 12, 1992), respectively. The Regional Director announced the approval of the revised portion of Amendment 2 on September

21, 1992. After review and consideration of public comments, several measures contained in the original Amendment and proposed rule published at 57 FR 24577 were disapproved and the Council was notified by letter from the Northeast Regional Director on August 6, 1992. The proposed exemption of pelagic nets from the minimum meshsize restriction contained in § 625.4(b)(3) was disapproved because there was insufficient information in the administrative record to describe the effects of such an exemption on the fishery and the summer flounder stock. The net as described could easily be fished on the bottom by reducing tow speeds, which could lead to increased discard mortality of undersized summer flounder. The acceptability of state dealer permits as a replacement for a Federal dealer permit was disapproved because it would undermine the data reporting program. Paragraph (a) of § 625.5 is revised to reflect this disapproved item of the proposed rule. The proposed requirements for dealers to submit reports annually and upon changes in processing capacity in § 625.6(a)(2) were disapproved because the information would have been duplicative of data collected on the dealer permit application and voluntary processed products reports.

Approval of an FMP provision for mandatory logbook reporting

requirements for vessel owners, and for owners of charter and party boats, which appeared at § 625.6 (b) and (c) of the proposed rule was subsequently withdrawn. NMFS has determined that these requirements need not be implemented during the 1993 fishing year, because they should be consolidated into a coastwide mandatory vessel reporting system for fisheries off the Mid-Atlantic and New England, targeted for implementation in 1994. A provision of section 9.1.3.1 of Amendment 2 that was not disapproved provides that the Secretary may implement necessary data collection procedures through regulatory amendment, so that mandatory reporting requirements may be added to these regulations for the 1994 fishing

Approved measures contained in Amendment 2 including the revised portion, revise management of the summer flounder (Paralichthys dentatus) fishery throughout the management unit, defined as U.S. waters in the western Atlantic Ocean from the southern border of North Carolina northward to the U.S.-Canadian border, pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended. The Amendment is a joint effort between the ASMFC, its member states, and the Council. It establishes a management system to reduce fishing effort and the fishing mortality rate, and stabilize the fishery at its maximized harvest level after 1995. Measures to accomplish these goals are imposed on both the commercial and the recreational sectors of the fishery in a cooperative manner between the states and the Federal government. All member states of the ASMFC voted in favor of a similar version of this Amendment, except for management measures involving sea turtle conservation (§ 625.27).

The following sections of this amendment are effective November 30, 1992: § 625.1 (Purpose and scope); § 625.2 (Definitions); § 625.3 (Relations to other laws); § 625.4 (Vessel permits); § 625.5 (Dealer permits), § 625.7 (Vessel identification), § 625.8 (Prohibitions). § 625.9 (Facilitation of enforcement), § 625.10 (Penalties), § 625.20 (Catch quotas and other restrictions), § 625.23 (Minimum sizes), § 625.24 (Gear restrictions), § 625.25 (Possession limits), § 625.26 (Sea sampler program) and § 625.27 (Sea turtle conservation). Actual catch quotas developed by the process described in § 625.20 will not be implemented until January 1, 1993, and will be modified annually according to procedures described in § 625.20.

Reporting requirements described in § 625.6(a)(1), (a)(3) through (5), and §§ 625.21 (Closure) and 625.22 (Time restrictions) are effective beginning January 1, 1993. The reporting requirements described in § 625.6 (b) and (c) are reserved pending a regulatory amendment under the FMP at a later date according to section 9.3.1.3 of Amendment 2. The effective date for § 625.6(a)(2) is reserved pending OMB approval of its collection-of-information requirements.

Commercial Fishery Restrictions

One measure contained in the final rule is designed to reduce fishing mortality by limiting commercial harvests to an annual coastwide quota that will be apportioned among the states based on historical commercial landings averaged over the period 1980–1989. The quota applies throughout the management unit; all commercial landings in a state are attributed to that state's quota for a given year. The proportion of the coastwide quota that an individual state receives will be the same each year, but the total amount will vary from year to year, as the coastwide quota varies.

Minimum mesh size is an important component of the Amendment to allow escapement of sublegal-sized flounder, thereby reducing discard mortality. Otter trawlers permitted in the fishery that land or possess more than 100 pounds (45.4 kg.) of summer flounder are subject to a minimum mesh size restriction of 51/2 inches (14.0 cm) diamond, or 6 inches (15.2 cm) square mesh, in the terminal 75 meshes of the net (or the terminal one-third portion of the net for nets having less than 75 meshes). Vessels fishing subject to the minimum mesh restriction may not have smaller mesh on board except for repair pieces no larger than 3 feet square (0.9 m square).

The proposed rule contained three exemptions to the minimum mesh requirement: (1) Vessels using fly nets, (2) vessels fishing north and east of a prescribed line (seasonal exemption area), and (3) vessels using a type of pelagic net. The exemptions for fly nets and the seasonal exemption area were approved. The exemption for the pelagic net was disapproved.

Therefore, vessels having on board mesh smaller than the minimum size may possess or land only 100 pounds (45.4 kg) of summer flounder on any trip, unless the small mesh is part of a fly net or the vessel is fishing in accordance with the procedures of the seasonal exemption area program. On vessels subject to the 100-pound limitation, summer flounder must be

stored in a single box easily accessible for inspection by an authorized officer.

The seasonal exemption area program allows vessels to fish from November 1 through April 30 with small mesh in an area east of a line projecting, roughly, from Pt. Judith, RI., to and around part of the Southern New England Yellowtail Area (Multispecies FMP), and extending to the outer boundary of the Exclusive Economic Zone (EEZ). The coordinates of the area are found in § 625.24(b)(1) of this rule. To enroll in the exemption area program, vessel owners must obtain a special permit from the Director. Northeast Region, NMFS (Regional Director). While enrolled, vessels may not fish outside the area. Transit of nonexempted areas is allowed provided that mesh smaller than the minimum size is stowed so that it is not available for immediate use.

A 5-year permit moratorium is established for commercial vessels, with broad eligibility requirements to include most current participants, thus minimizing the initial impact of the moratorium. All vessels that landed and sold summer flounder between January 26, 1985, and January 26, 1990, qualify for a moratorium permit. Vessels that were being constructed and/or re-rigged for the summer flounder fishery during this period, providing that they caught and sold summer flounder before the final rule implementing this Amendment is effective, also qualify for a moratorium permit. Moratorium permits are not restricted to otter trawl vessels. Scallopers or any other vessels that meet the eligibility criteria may obtain a moratorium permit. However, this broad eligibility will expire 12 months from the effective date of this provision of the final rule. Unless the vessel owner applies within this 12month period, his or her vessel will lose its eligibility.

Vessels with a moratorium permit may be replaced only if they involuntarily leave the fishery (e.g., sink). The replacement vessel must be of the same gross registered tonnage and length, or smaller. If an individual owns two or more vessels that involuntarily leave the fishery, they may not be replaced with one larger vessel. If a vessel with a moratorium permit fails to land summer flounder for any 52 consecutive week period, it will be considered retired from the fishery and its permit invalidated.

The minimum size limit for summer flounder caught by vessels in the commercial fishery is 13 inches (33 cm). This size corresponds to the escapement factor for 5½ inch mesh (14 cm). Fillets or any parts of a summer flounder must

meet the minimum fish size

requirement.

Vessels not eligible for a moratorium permit, or charter/party vessels with a moratorium permit but carrying passengers for hire, are subject to the recreational possession limit (six fish per person on board, in the first year of implementation). Also, these fishermen may retain the possession limit only during the recreational open season (May 15 to September 30 during the first year of implementation, i.e., 1993) and may not sell their catch. Fillets or any parts of a summer flounder must meet the minimum fish size requirement of 14 inches (35.6 cm).

Recreational Fishery Restrictions

This rule restricts the recreational fishery by imposing possession (trip bag) limits, a no-sale provision, a minimum size limit and seasonal restriction. The possession limit is six summer flounder per person during the first year of implementation but may range from 0 to 15 fish per person in future years, depending on the success of the Amendment in achieving conservation goals. Authority to sell catch is limited to vessels that received a moratorium permit, are fishing commercially, and sell only to licensed dealers. The minimum size limit for summer flounder caught from vessels not fishing with a moratorium permit is 14 inches (35.6 cm)

Some recreational vessels, i.e., charter and party vessels, will be eligible for a moratorium permit and may fish either as a commercial vessel or as a recreational vessel. When fishing commercially, a charter or party vessel may not have more than 3 or 5 crew members on board, respectively, and may land fish in accordance with the commercial size limit of 13 inches (33

cm).

When fishing recreationally, i.e., carrying passengers for hire or having crews in excess of 3 for charter and 5 for party vessels, the recreational possession limit applies and the catch may not be sold. Fillets or any parts of a summer flounder on board must meet the minimum fish size requirement of 14 inches (35.6 cm).

Recreational fishermen and party and charter boats (even if they possess a moratorium permit but are carrying passengers for hire or having crews in excess of 3 for charter and 5 for party vessels) may retain the possession limit only during the recreational open season (May 15 to September 30, 1993) and may not sell their catch.

Other recreational vessels that are not vessels for hire are exempt from the permitting requirements but may not

possess more than the recreational possession limit of summer flounder, multiplied by the number of persons on board. The catch may not be sold.

Recordkeeping, Reporting and Dealer Permits

The Amendment adopts a commercial quota management regime that relies on permitting, mandatory reporting and recordkeeping to achieve fishing mortality reduction and stock rebuilding goals. Commercial, and charter and party vessels (vessels for hire) must obtain a permit to fish in the EEZ. In addition, any person receiving summer flounder for commercial purposes, other than transport, from a vessel issued a moratorium permit is required to obtain a dealer permit. Permitted dealers are required to submit purchase reports to monitor landings as well as to provide information to assess the status of the resource. NOAA has determined that implementation of the vessel logbook system for the summer flounder fishery should be coordinated with a coast-wide system for all species managed in the exclusive economic zone that is currently being developed by the Northeast Fisheries Center. NOAA intends to implement the coast-wide monitoring system by January 1, 1994. Dealers are required to submit reports on a weekly basis. Authorization is provided to the Regional Director to charge a fee for processing permit applications; however, no fee is anticipated for 1993. If a fee is charged it is estimated to be approximately \$20 to \$35 per application.

In order to gather more specific data on the summer flounder resource, permitted vessels are required to take a sea sampler, if requested to do so by the Regional Director. Notice of such a requirement will be provided to the vessel owner who in turn must provide notice of when the vessel will leave on its next fishing trip. The sea sampler requirement may be waived if the vessel is unsafe or not equipped to carry a sea sampler on board.

Other Measures

An annual review will be conducted to determine if the existing measures are adequate to achieve the reduced fishing mortality target levels. If these measures are not adequate, modifications could be made to any of the management measures imposed on the commercial and recreational fishermen. Also, additional measures could be imposed on other categories of vessels issued a moratorium permit, such as scallopers, in order to reduce the mortality of summer flounder. Modifications will be published as a proposed rule, followed

by a public comment period, and publication of a final rule. Such a review is currently underway to establish the 1993 quota.

Measures to Protect Sea Turtles

Due to the known interactions of the summer flounder fishery with populations of endangered and threatened species of sea turtles, the Amendment includes several management measures to promote sea turtle conservation in a circumscribed area off North Carolina and southern Virginia. These measures are similar to those contained in an emergency interim rule that was effective from December 2, 1991, through March 5, 1992 (56 FR 63685, December 5, 1991). and extended from March 6, 1992, through June 3, 1992 (57 FR 8582, March 11, 1992). However, since the implementation of the emergency interim rule, bottom trawl nets with turtle excluder devices (TEDs) have been tested for flounder retention. Two NMFS-certified TEDs, the Anthony Weedless and the Super Shooter, were included in those tests. NMFS-certified TEDs have been demonstrated to exclude turtles at a rate of 97 percent according to a NMFS-approved scientific protocol. The Anthony Weedless and Super Shooter TEDs had flounder catch rates that were statistically identical to the standard nets towed simultaneously (Monaghan, July 1992). North Carolina is considering requiring TEDs in State waters at the request of the industry, which has indicated that it will not accept observers and limited tow times. Also, comments received from the Center for Marine Conservation strongly recommended the use of TEDs due to the low observed compliance with limited tow times and high sea turtle catch rates in this fishery. Therefore, sea turtle conservation measures of the Amendment which are contained in this final rule have been reordered to (1) require TEDs on or after October 15, as specified by the Regional Director, in the Federal Register, in a circumscribed area off North Carolina and southern Virginia, (2) authorize the Regional Director to limit tow times and require observers to document the incidental capture of sea turtles as an alternative to the use of TEDs. Measures that are identical to those in the emergency rule include: (1) Reference to the proper methods for sea turtle handling and resuscitation by summer flounder fishermen; (2) establishment of a monitoring and assessment program in cooperation with the State of North Carolina to measure the incidental take of sea turtles in the summer flounder

fishery; (3) authority for the Regional Director to close the summer flounder fishery if a determination is made that such a closure is necessary to avoid jeopardizing the continued existence of any species listed under the Endangered Species Act (ESA); (4) authority for the Regional Director to reopen the summer flounder fishery if sufficient conservation measures for sea turtles are added to ensure that operation of the fishery is not likely to jeopardize the continued existence of any species listed under the ESA; (5) authority for the Regional Director to allow experimental projects to measure incidental capture rates, to monitor turtle abundance, or to test alternative gear; and (6) additional conservation measures such as the authority for the Regional Director to require observers on all or a certain portion of the vessels engaged in fishing for summer flounder to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. The Amendment contains a detailed description of the observer program in the event that the Regional Director requires observers. This detailed description of the observer program was not included in the emergency rule, but is included in this final rule.

Regulations in § 625.27 will be suspended during the effectiveness of any temporary regulations implemented to regulate incidental take of sea turtles in the summer flounder fishery under the Endangered Species Act under 50 CFR parts 217, 222, and 227. Such an action will be taken through publication in the Federal Register and will be effective for a specified period of time, not to exceed one year.

Changes From the Proposed Rule to the Final Rule

Changes have been made in the final rule to reflect the disapproval of certain measures, as discussed above. In addition, changes have been made to clarify the intent of the regulations, especially regarding whether the owners or operators are the responsible party for compliance with a given regulation.

In § 625.2, a definition for "reporting week" is added. The definition for "total length" is modified by replacing the word "head" with "snout," and the definition for "substantially similar harvesting capacity" is changed to read, "the same or less Gross Registered Tonnage," instead of "the same Gross Registered Tonnage."

In § 625.4, paragraph (a)(3) is modified from the proposed rule to require that owners and operators of vessels issued a moratorium permit under paragraph (b) must not land

summer flounder in any state that the Regional Director has determined no longer has commercial quota available for a given year. This was a measure contained in the revised portion of Amendment 2 that was approved by the Regional Director on September 21, 1992. In paragraph (b)(1) reference is made in the final rule to "the conditions of paragraphs (e) and (f) of this section." In paragraph (b)(1)(i), the phrase, "The owner or operator of" is removed. In paragraph (d)(1), reference is made to paragraphs (d)(2), (e), and (f)(2) of this section. Paragraph (d)(2)(i) is revised to indicate that permit information applies to the owner only, rather than the owner or master of a vessel. This revised paragraph also describes a requirement for an owner who is part of a corporation to attach a copy of the certificate of incorporation to the application for a permit. In paragraph (d)(2)(iv), the requirement to list a radio call sign is deleted from the final rule. In paragraph (d)(2)(vi), requirements for descriptions of navigational aids, onboard computers, and types of echo sounders in the proposed rule are removed from the final rule. In paragraph (d)(2)(xi), the content is changed from "directed fishery or fisheries" to "permit category." In paragraph (d)(2)(xii), the content is changed from "the amount of summer flounder landed during the previous year" to "copy of charter/party boat license number." In paragraph (d)(2)(xiii), the content is changed from "average crew share percentage" to "any other information required by the Regional Director." In paragraph (d)(2)(xiv), the content is changed from "the number of passengers the vessel is licensed to carry" to "certificate of incorporation." In paragraph (e), reference is made to paragraph (f) of this section. In paragraph (f), reference is made to paragraph (d)(1) of this section. Paragraph (h)(2) is modified to include the phrase "at least once" between the words, "summer flounder" and "within" in the phrase, "When the vessel fails to land any summer flounder within any 52-week consecutive period." In paragraphs (h)(1) and (k), the phrase "or operator" is removed. In paragraph (o)(1), the phrase, "or operators" is removed.

In § 625.5, the narrative within "general" of paragraph (a) is revised because state dealer permits are not a valid substitute for a Federal dealer permit. Paragraph (b) is revised to more fully describe conditions for issuance of a Federal dealer permit. Paragraph (b)(3)(ii) is revised to refer to paragraph (b) of this section and § 625.6(a).

Paragraph (b)(11) is revised to refer to paragraph (b)(3) of this section.

In § 625.6, paragraph (a) is revised to indicate that forms "approved" by the Regional Director are acceptable as well as forms "supplied" by the Regional Director. The phrase, "each dealer will be sent forms and instructions," is added to paragraph (a). Paragraph (a)(1)(vii) is changed to paragraph (a)(1)(viii) and revised to indicate that dealer reports must be postmarked within 3 days of the end of each reporting period. New paragraph (a)(1)(vii) requests "port landed." Paragraph (a)(2) is revised to indicate that dealers provide the "Employment Data" required on the annual "Processed Products Report;" submission of the other information on the report remains voluntary. Paragraphs (a)(2)(i) through (iv) are deleted from the final rule. Paragraphs (a)(4) and (a)(5) are changed to the "dealer" rather than an owner or operator. Regulatory text from §§ 625.6 (b) and (c) of the proposed rule are deleted from the final rule due to withdrawal of approval of the daily fishing log and trip report requirements for owners of vessels and owners of charter and party boat vessels, respectively, as described in the preamble of this rule.

In § 625.7, paragraph (d) the phrase, "The owner and operator of," is changed to "The vessel owner shall

ensure that."

In § 625.8, paragraphs (a)(5) through (a)(10) from the proposed rule are redesignated (a)(6) through (a)(11) in this final rule and a new paragraph (a)(5) is added to prohibit the landing of summer flounder in a state after the effective date of a notice published in the Federal Register notifying permit holders that commercial quota is no longer available in that state. Paragraph (a)(5) describes a measure contained in the revised portion of Amendment 2 that was approved by the Regional Director on September 21, 1992. Paragraph (a)(4) is modified to better explain when summer flounder can be possessed other than in a box onboard. Paragraph (b)(5) is added in the final rule to prohibit the sale or transfer of summer flounder to another person for a commercial purpose when the owner or operator of a party or charter boat which harvested the summer flounder has been issued a moratorium permit, but is carrying passengers for hire or carrying more than three crew members if a charter boat or five crew members if a party boat. Paragraph (c)(4) is modified to clarify that dealers are allowed to purchase summer flounder from charter and party boats having

moratorium permits and fishing commercially. Paragraphs (c)(5) through (c)(9) of the proposed rule are redesignated (c)(6) through (c)(10) in the final rule, and a new paragraph (c)(5) is added to prohibit purchase or receipt of summer flounder for commercial purpose in a state after the effective date that a commercial quota is no longer available in that state. The measure described in paragraph (c)(5) is contained in the revised portion of Amendment 2 that was approved by the Regional Director on September 21, 1992.

In § 625.20, paragraph (d)(2) is modified to indicate that all summer flounder "landed for sale" in a state are applied against that state's commercial

quota.

In § 625.21, paragraph (c) is revised from "state inaction" to "state quotas" and contains a description of how those quotas will be monitored by the Regional Director. The measure described in paragraph (c) is contained in the revised portion of Amendment 2 that was approved by the Regional Director on September 21, 1992.

Director on September 21, 1992. In § 625.22, the phrase, "Owners and operators of vessels," is changed to

"Vessels."

In § 625.24, paragraph (a) is revised to better explain the minimum mesh size requirement for otter trawl nets that have less than 75 meshes forward of the terminus of the net. The phrases, "Owners and operators of vessels" and "Vessel owners and operators of vessels" in paragraph (b)(1) are changed to "Vessel." In paragraph (b)(2), the phrase, "Owners or operators of vessels" is changed to "Vessels." Paragraphs (b)(3) and (b)(3) (i) through (iv) described an exemption to the minimum mesh-size restriction for pelagic nets in the proposed rule and are deleted from the final rule. In paragraph (c), the phrase, "Owners and operators," is changed to "Vessels." In paragraph (e), the phrase, "The owner and operator of a fishing vessel shall not," is changed to "No vessels subject to this part shall.'

In § 625.25, the phrase, "Owners and operators" is changed to "Neither owners nor operators," and the phrase, "may not," is changed to "may."

In § 625.26, paragraph (b) is changed in the final rule to indicate that upon notice without a time limitation rather than a 48-hour notice limitation, the Regional Director will provide information concerning sea sampler availability and placement.

In § 625.27, paragraphs (c), (c)(1), (c)(2) are revised to be paragraph (c) and describe a requirement for turtle excluder devices rather than restricted

tow times, under certain circumstances in the summer flounder fishery. Paragraph (f) is revised to remove discussion of turtle excluder devices. Paragraph (h)(2) is revised to indicate that the Regional Director will provide information concerning observer availability and placement upon receipt of notice from the vessel owner, rather than within 48 hours of notification.

Comments and Responses

NMFS received comments on the proposed rule from two states, the New England Fishery Management Council (NEFMC), three fishing industry associations, one conservation group and two individuals. All of the comments were carefully considered during the formulation of the final rule. Specific comments are discussed and responded to below.

General Issues

Comment: Virginia requests implementation of Amendment 2 with the utmost urgency; it has enacted strong protective measures for summer flounder in its waters and supports the extension of protective measures to the EEZ as well.

Response: Implementation of the quota management system will begin January 1, 1993, but many of the important conservation measures will be effective immediately upon

publication.

Comment: An individual and one industry association oppose the Amendment because they feel that it reallocates the resource from commercial to recreational interests.

Response: The ASMFC and the Council were careful in their development of the management measures in this Amendment to ensure that both commercial and recreational interests were treated equitably. While the commercial harvest is restricted by the state quota limits, the recreational harvest is also restricted by a 41/2 month season, possession limit, minimum size limit, and a prohibition on sale. The Amendment establishes a process for annual review of commercial and recreational catches which includes two public comment opportunities where concerns may be raised regarding possible inequity in catch distribution.

Comment: NEFMC is concerned about the complexity of regulations pertaining to fisheries in southern New England. They say there are overlapping, and in some cases, conflicting regulations for fluke, butterfish, squid, and mackerel. They wish to see regulations standardized to minimize confusion.

Response: NMFS shares the commenter's concern for

standardization of permitting, recordkeeping, and reporting systems. This final rule disapproves a number of permitting and reporting requirements because they deviate from the standardized system, and their disapproval is not believed to jeopardize the Council's management objectives. The problem of standardization is being addressed. The lack of standardization results from the fact that the fisheries regulations are developed under separate fishery management plans.

Comment: NEFMC states that the 5year rebuilding plan is too rigid and
should be modified to respond to
changes in stock size, fishing mortality
estimates or economic impacts. They
suggest that the regulations establish a
mechanism to enable the Council to
extend the rebuilding period if
necessary without another fishery

management plan (FMP) amendment.

Response: The 5-year period for the management measures adopted by the Council and ASMFC was selected based on analyses which show that the probability of achieving the 10 percent maximum spawning potential level in 5 years was close to 80 percent. The Amendment contains a framework for quota-setting that responds to changes in stock size or fishing mortality rate. If there is a need to address unforeseen issues, the Council has options available to it besides an FMP amendment, such as requests for emergency action.

as requests for emergency action.

Comment: NEFMC is concerned about the enforceability of the proposed regulations in state waters. They express doubts about the willingness or legal authority of the states to close their waters to summer flounder fishing or enforce other management measures in a timely manner. They ask which agency will be responsible for interjurisdictional enforcement in state waters and where the funds will come from for additional state enforcement

Response: The states participated fully in the development of the Amendment through ASMFC, and recognize the regulatory and enforcement requirements associated with the FMP. Enforcement will be a cooperative effort between the states and NMFS. Federally permitted vessels are still subject to federal regulation when fishing in State waters. The state may also make it a violation of state regulations to do so, but this action is not required. It is not anticipated that a significant increase in state enforcement effort will be required.

Comment: NEFMC states that the

Comment: NEFMC states that the fishery impact statement in the proposed amendment does not address the requirements of the Magnuson Act.

They believe that the analysis does not evaluate the impact of the proposed regulations on other fisheries and are particularly concerned about the potential shift of fishing effort from summer flounder to other overfished stocks such as yellowtail flounder and cod. An individual states that the FEIS and RIR associated with the Amendment are inadequate because they do not prove that the short-term losses resulting from the management measures will be offset by the long-term gains. The commenter believes the elimination of the mixed trawl fishery is not adequately addressed.

Response: Both the Amendment and the FEIS address the impact of fishery regulations on the fisheries in question. They recognize that the summer flounder fishery is only a part of the southern New England/Mid Atlantic mixed trawl fishery. The criteria specified to qualify for a moratorium permit will deny access to few vessels; therefore, this requirement will have little or no impact on the fisheries for other species. The quota requirements will shorten the fishing season in most states, but again the nature of the mixed trawl fishery is such that other species commonly pursued, such as squid and mackerel, will hear the brunt of the additional effort. This will occur only during the period of time the summer flounder fishery is closed. Effort is not expected to shift significantly to other species such as yellowtail flounder and cod since they are less available due to their overfished status.

The fact that limited access is being contemplated in most of the fisheries in New England and the Mid-Atlantic areas has been discussed as a cause for concern to the rebuilding of the summer flounder resource, since displaced vessels from the multispecies fishery may target high value summer flounder if it is available.

Comment: An individual believes that the rule will force fishermen to take unnecessary risks in fishing.

Response: It is unclear which specific provision it is believed will force risky fishing activities. Neither the Council nor NMFS has intentionally promulgated any regulations which would force such activities, but is impossible to address this comment more specifically. If the commenter was referring to the section precluding replacement of vessels under the moratorium for reasons due to lack of maintenance, NMFS has recognized the potential safety issue associated with this restriction and has recommended that the Council revise this section in conjunction with the next rulemaking.

Permits

Comment: NEFMC and a fisheries organization state that collection of crew share information on the permit application will produce faulty data because crew share changes during the year.

Response: NMFS agrees with the commenter and this requirement was disapproved. NMFS believes that socioeconomic data such as crew share would best be collected through a survey that sampled a subset of the population, rather than burden the entire fishery with this collection.

Comment: An individual opposes some of the information required on the vessel permit application because it is unrelated to conservation and management, specifically hold capacity, crew size, and crew share.

Response: Conservation and management under the Magnuson Act embraces considerations of social, economic, and ecological factors as well as biological factors. While crew share has been eliminated in the final rule, as mentioned above, NMFS will continue to collect data concerning hold capacity and crew size for use in analyses of the fishing fleet. Hold capacity is especially needed for summer flounder vessels in order to evaluate harvesting capacity since vessel replacement will be limited to a vessel of substantially similar harvesting capacity to the vessel being replaced

Comment: An individual opposes the fact that landing summer flounder will be a requirement for maintaining a vessel permit. He believes it will penalize those who redirect their effort to other species and will reward those who continue to fish the resource NMFS is trying to protect.

Response: The commenter is referring to the expiration of permits if a vessel fails to land summer flounder within any 52-consecutive-week period. The purpose of the measure is to eliminate vessels that clearly have retired from the fishery. This measure does not impose any significant burden on vessels wishing to preserve their eligibility. They are required only to have landed any amount of summer flounder in a 52-consecutive-week period.

consecutive-week period.

Comment: NEFMC questions the conservation value of the provision stating that a vessel permit expires "when a vessel fails to land summer flounder within any 52-consecutive-week period."

Response: NEFMC may have interpreted this as a requirement to land summer flounder each week for 52 weeks rather than the correct meaning that summer flounder must be landed at

least once during this period. The regulatory text in § 625.4(h)(2) has been changed to clarify that a vessel only needs to land summer flounder once in a 52-week period to avoid expiration of a moratorium permit. Again, the purpose of this requirement is to eliminate vessels that clearly have retired from the fishery. Every vessel retired represents a potential reduction in fishing effort and a reduction in fishing capacity which provides conservation benefits.

Comment: NEFMC and two industry associations express the opinion that reporting the type and quantity of fishing gear on the permit application is burdensome. They believe that technically this requirement would mean reporting the addition of spare net floats.

Response: Type and quantity of fishing gear is required to calculate fishing effort, which is necessary for assessing the status of the resource. This information has been collected on permit applications for many years and has not proved to be burdensome.

Comment: NEFMC questions the legality of reliance on the Coast Guard to determine vessel seaworthiness as it relates to permit transferability. NEFMC believes that the requirement will encourage the deliberate sinking of vessels to allow permit transfers. A conservation organization also expresses concern about the measure to allow vessels to be replaced only if they involuntarily leave the fishery; they request that the concept of permit transferability be explored in future regulations.

Response: A provision for permit transferability in case of vessels deemed to be unseaworthy was included in the moratorium imposed on the surf clam and ocean quahog fishery with no known adverse effects. The Coast Guard now has a program that enables it to evaluate seaworthiness. There should be no legal question about the evaluation. Deliberate sinking of fishing vessels, though not unknown, is illegal. As the limited entry systems for this and other fisheries evolve, it will be appropriate to explore the concept of less constrained permit transfers.

Recordkeeping and Reporting

Comment: North Carolina expresses the opinion that dealer reporting should be required monthly rather than weekly.

Response: Because the data from dealer reports will be the basis for quota management, it is necessary that the information be received in a timely manner. The quotas for most states are not large and would be significantly

exceeded if landings data were only available on a monthly basis.

Comment: NEFMC and an industry association suggest suspending the weekly dealer report requirement until it can be coordinated with FMPs for other species.

Response: Since the dealer report data will be required to administer the state quota system, it is not possible to delay its implementation beyond the January

1, 1993 effective date.

Comment: NEFMC expresses the opinion that any collection of price information should be part of an overall data collection program, and that dealer reports for summer flounder should not

require reporting other species.

Response: Price information has been collected through a voluntary weighout collection system for all Northeast species for many years. NMFS does not intend to duplicate that system by collecting summer flounder information separate from the existing system-it will be collected as part of the overall Northeast Region data collection system. The requirement to report other species purchased by summer flounder dealers is appropriate since the system requires data to be compiled on a trip basis.

Comment: An industry association expresses the opinion that price information is proprietary and serves no

management purpose.

Response: The collection of ex-vessel price information is necessary for any economic analysis of the fishery. Price information has been collected for many years, and is not disclosed except in an aggregated form.

Comment: NEFMC and an industry association express the opinion that the requirement to report pounds of all other species purchased is "duplicative" and is an ineffective way

to collect bycatch data.

Response: As explained above, the purpose of reporting other species purchased is to be in conformance with the overall data collection program currently in place for all Northeast Region fisheries. The Amendment uses that system and does not duplicate it. If the term "bycatch data" refers to the commercial mixed trawl fishery, information on the species composition of the catch has always been obtained successfully from dealer reports.

Comment: An industry association believes that it is imperative to standardize reporting requirements for vessels and dealers for all managed

Response: NMFS is developing a standardized, coast-wide mandatory data collection system for vessels and dealers participating in fisheries throughout the northeast region. NMFS

plans to implement this system in January, 1994. In the interim, the data collection system that will be used to monitor summer flounder quotas adopts the same format already familiar to the industry, e.g., identical forms supplied by agents in local field offices. Any additional reporting requirements are kept to a minimum and many of the requirements contained in the proposed rule have been eliminated.

Comment: NEFMC expresses concern that the logbook requirement is burdensome and impractical. They believe that fishermen cannot produce accurate estimates of catch and NMFS cannot handle the volume of data that

will be collected.

Response: NMFS believes that estimates provided by the fishermen would be sufficiently accurate, even though catches are usually not weighed until they reach the dealer. The dealer weighout is the basis for quota monitoring and is to be corroborated by the fisherman's estimate once a vessel reporting system is implemented. NMFS agrees with the commenter that a system is needed to process the additional volume of data contained in vessel logbook requirements. NMFS is currently working to develop such a system and expects to implement it in January 1994. In the interim, fishermen will not be required to fill out or submit logbooks until the vessel reporting system is in place

Comment: NEFMC and an industry association express the opinion that the requirement to provide the Regional Director with any additional information that is necessary for the management of the fishery should be deleted since it is too open-ended.

Response: This requirement reflects the Council's intent that NMFS has the information necessary for management, and is not open-ended since the Regional Director must demonstrate that any additional data request is necessary to manage the fishery

Comment: NEFMC and an industry association express the opinion that it is almost impossible to calculate the number of employees engaged in the production of summer flounder each

month.

Response: NMFS has been collecting monthly employment statistics, submitted annually, from fish dealers for a number of years. These statistics are not collected on a species-by-species basis and were not mandatory. Because the data are not reported on a speciesby-species basis, it is difficult to gauge the effect of summer flounder regulations on related employment. However, NMFS recognizes the burden of some paperwork requirements and

has disapproved the collection of an additional annual report specifically for summer flounder employment. Instead, NMFS will require permitted summer flounder dealers to submit the "Employment Data" section of the report currently in use and estimate the summer flounder related employment from this general report.

Comment: NEFMC and an industry association express the opinion that it is a burden for a processor to estimate future processing capacity and then report any changes to the Regional

Response: NMFS agrees with this comment; the requirement has been

disapproved.

Comment: NEFMC and an industry association express the need for clarification or elimination of the requirement to report fishing time. The requirement duplicates information collected in the dockside interview and is an unrealistic burden to impose at sea.

Response: Fishing time will be reported on the vessel logbook and, at some later date when the vessel logbook system is implemented, the instructions will clarify the requirement. It is anticipated that dockside interviews will not be conducted for trips landing summer flounder so that duplication will be avoided.

Comment: An individual objects to the requirement that logbook reports must be submitted in order to be eligible for a permit the following year.

Response: NMFS believes that the issuance of a permit for the summer flounder fishery should be contingent upon the submission of required reports. The information collected in the reports is necessary to monitor the progress of the management program as the stock rebuilds, or to make further adjustments to improve rebuilding, if necessary. In addition, logbook reports are mandatory to ensure the integrity of the quota monitoring system. Requiring their submission as a condition for a permit is a fair and integral aspect of the mandatory system.

Comment: North Carolina, NEFMC, an industry association and an individual express the opinion that requiring vessel reports to be returned within 2 days after the end of the month is not practical since vessels may be at sea at

that time.

Response: NMFS notes this comment and will devise a more practical schedule for vessel logbooks when a vessel reporting system is implemented. For instance, one possibility is to require reporting, or mailing of a report, within 72 hours after a trip was landed.

Comment: NEFMC and an industry association express the opinion that requiring a vessel to report the pounds of each species caught turns the vessel operator into a sea sampler.

Response: Fishermen have always been an important source for information. Their harvests are, in fact, a sample of the populations of the various species comprising the public resource. Without the fisherman's data on removals from the resource, including the effort associated with that removal, scientific assessments would not be possible.

Comment: An individual disagrees with the time estimates on reports required. He states that fishermen are overburdened with reports and NMFS must consolidate them to reduce the burden.

Response: NMFS is unaware of any other Federal logbook reports, with possible exception of marine mammal logs, that are required of mixed-trawl vessels in Southern New England and the Mid-Atlantic areas. During the development of a vessel reporting system in the upcoming year, NMFS will review the time estimates for the vessel report; however, it should be noted that the estimates are an average and the actual time will differ from person to person.

Comment: Several commenters express support for the exemptions to the minimum mesh in the proposed rule, and propose changes to the exemption area, the administration of the exemption program, and the regulations for fishing inside and outside of the exemption area.

Response: At a recent joint meeting of the ASMFC and the MAFMC there was much discussion concerning changes in the exemption line and its operation. The only legal recourse available to the Secretary was to approve or disapprove the proposed line. The Secretary decided to approve the line and provide small mesh fishermen with some flexibility rather than constrain them with just the 100 pound limitation. The Regional Director has requested the Council revisit the issue and consider the bycatch threshold as part of an integrated approach to the multi-species fishery issue. This will also allow additional public comment and the introduction of new information on the matter.

Comment: An industry association expresses concern about the dealer reporting requirements in the regulations. It states that a dealer reporting system is only justifiable if it covers all regulated species. It is also concerned that mandatory reporting requirements cannot be enforced

equitably, and that only large dockside facilities will be subject to strict compliance monitoring.

Response: NMFS will make every effort to monitor and investigate large and small dealers alike. In fact, once the vessel reporting system is implemented in 1994, fishermen will report to whom they sold their catch, which will identify any dealers who have not provided reports. The requirement that dealers obtain permits will also enhance enforcement capability.

Catch Quotas

Comment: Two industry associations and an individual object to the fact that the commercial quota is allocated to the states on the basis of historic catch data. Problems they identify include the fact that the choice of the period covered by the data affects the allocation; and the quota is biased downward in states such as Massachusetts, where state regulations imposed conservation measures on the fishery. One industry association proposes that the quota should be reallocated.

Response: The states were all involved in the development of this joint plan through ASMFC. There were many circumstances that could result in claims of bias against various states. For instance, some states had implemented 5½ inch (13.97 cm) mesh, others banned trawling in their waters, and others indicated that NMFS data collection fell short in their state. All parties agreed to put aside these concerns to implement these important conservation measures.

Comment: NEFMC tentatively approves the proposed quota allocation program but suggests that the existing allocation program should be limited to one year. They suggest revising the proposed rule to allow the allocations to be changed by notice action upon receipt by the Council of a recommendation from ASMFC.

Response: NMFS believes that the Council intended that any changes to the allocation program be done with approval and recommendation of both the Council and ASMFC with full public process, participation, and review of any new analysis that might change the allocation program.

Comment: An industry association expresses concern about quota monitoring and the methods that might be used to determine when the quotas have been harvested. It believes that the significant reductions imposed by the quota will be further reduced if projections and estimates are used to determine closure dates.

Response: NMFS is also concerned with obtaining reliable catch

information upon which to base such important decisions as a closure. Therefore, the primary data for quota monitoring will be the dealer weighout reports, which are to be submitted on a mandatory basis. The timely submission of these reports will improve the projections and estimates used to calculate closure dates.

Comment: An individual and an industry association both express concern about the state quota system. The individual is concerned because vessels from one state may harvest all of the quota allocated to another state. The industry association is concerned that because the fishery in Massachusetts begins late in the year, fish taken in other areas will be landed in Massachusetts, attaining the quota before Massachusetts fishermen can harvest fish from local waters.

Response: The allocation of quota by state is based on historic catches by state of landing. Before the imposition of quotas by state, it was possible for vessels from one state to land their catches in another state. In fact, those past landings contributed to the state share of quota as calculated in the amendment. The comment implies that a state quota should be reserved for vessels based in that particular state. However, such a restriction would not be consistent with certain aspects of national standards 3 and 4.

Comment: An industry association feels that while each state has the right to develop its own FMP to use state quota, there should be some mechanism to see that the FMPs are relatively consistent.

Response: The components of the management regime are specified in the Amendment. The Summer Flounder Monitoring Committee will annually review all relevant data and recommend to the Council and ASMFC commercial and recreational measures to assure that the target mortality level is achieved. The Amendment, which was developed with state participation through ASMFC, enables the states to set regulatory programs but it requires that they be consistent with the FMP. As in all fisheries, states can always impose more restrictive measures than those in the FMP.

Comment: A conservation association strongly supports the quota system.

Response: Comment noted.
Comment: A fishing association
wishes to see a more equitable division
of the catch between inshore and
offshore vessels. They suggest that the
state quotas be subdivided.

Response: Many of the state quotas will be small and further subdivision may not be feasible for effective monitoring or management. However, individual states may impose more restrictive measures to address such concerns.

Closure

Comment: An individual objects to the portion of the regulations which allows the Regional Director to close the EEZ to fishing if the inaction of one or more states will cause fishing mortality to be exceeded. He believes that it is unfair to penalize all participants because of the inaction of one state.

Response: This option is clearly intended as a last resort to protect the summer flounder resource if it is jeopardized by the inaction of a state. Before this option is exercised, however, the Regional Director will notify Federally permitted vessel owners and operators that they cannot land summer flounder in a state whose quota is filled.

Time Restrictions

Comment: North Carolina proposes a revision of the recreational season proposed in the regulations (May 15 to September 30) to July 1 to November 15. The season would be the same length with less discard of small fish.

Response: The recreational fishery is managed by a combination of framework measures consisting of a possession limit, size limit, and season that are set to achieve the annual recreational catch limit (Appendix 1-18 of the Amendment). Because recreational catch estimates are available on a bi-monthly coast-wide basis, each state's fishing season must begin and end in the same bimonthly period to achieve coast-wide reductions in mortality. The bimonthly periods May/June and September/October were selected by the Council because a mid-May to end of September season (May 15 to September 30) in combination with a 6 fish possession limit and a 14 inch (35.6 cm) minimum fish size achieved the target reduction in exploitation of 47 percent. Although the amendment sets a fixed period for vessels possessing Federal permits, it allows states the flexibility to set any four-and-1/2 month season for recreational fishermen operating in state waters provided the season begins in the May/June period and ends in the September/October period. To have the latest possible season and remain consistent with the bimonthly periods selected, a state may elect to impose a June 15 to October 31 season.

Minimum Size

Comment: An industry association believes that the commercial minimum size should remain 14 inches (35.6 cm) because fish of that size are more valuable in the marketplace and 5½ inch (14.0 cm) mesh allows good escapement of fish smaller than 14 inches (35.6 cm).

Response: Mesh selectivity analyses show that the minimum mesh size specified in the FMP will allow 50 percent selection of 13½ inch (34.3 cm) fish. Because all states currently have a minimum size limit for summer flounder of 13 inches (33 cm) or greater, the minimum size was set at 13 inches (33 cm) and the mesh size was selected to minimize discarding due to mesh selectivity. The mesh size selected is consistent with the current mesh requirements in the northeast groundfish fishery, in which many summer flounder vessels participate.

Comment: NEFMC comments that the minimum fillet size restriction places an unnecessary burden on recreational and charter/party boat fishermen and will encourage landing whole fish and filleting dockside, which poses a rack disposal problem. An industry association proposes that the minimum fillet size should be revised to reflect the fillet size which can be taken from a 14 inches (36.6 cm) whole fish.

Response: The minimum fillet size restriction was specified to enforce compliance with the minimum size limit, and the restriction only poses a problem when fillets are smaller than 14 inches (35.6 cm). The restriction will remain unchanged since any modification would threaten enforcement of the minimum size limit.

Comment: An individual opposes the recreational size limit of 14 inches (35.6 cm) and proposes instead a minimum size of 13 inches (33 cm) with a six-fish bag limit and an open season.

Response: The combination of management measures proposed by the commenter would not achieve the reduction in fishing mortality in the recreational sector of the fishery which was established in the plan. The combination of 14" minimum size, six-fish bag limit, and May 15-September 30 season was determined to provide the best balance of measures which achieved the required mortality reduction. The Amendment establishes a process to adjust these measures annually and the process requires that public comment be considered so the balance of the measures may be subject to change in the future.

Comment: A conservation essociation supports the commercial size limit.

Response: Comment noted.

Gear Restrictions

Comment: NEFMC and an industry association support the fly net and

pelagic net exemptions from minimum mesh requirements. They propose that a definition of a squid net should be developed and added to the list of net exemptions.

Response: The pelagic net exemption was disapproved because there was no support in the administrative record for the prescription contained in the Amendment. Many fishermen disclaimed any familiarity with the net as described. There was a concern that this net, unlike the fly net, could be fished on the bottom. This would increase discard mortality and conflict with the objectives of the Amendment. The Council was encouraged to develop a record in support of exempting a net commonly used in the squid fishery.

Comment: NEFMC, an industry association, and an individual oppose the prohibition on having nets on board which do not meet the minimum mesh requirement. NEFMC states that such a prohibition inhibits the mixed trawl nature of the fishery and has the effect of forcing vessels to stay in a fully exploited fishery rather than change to other species when conditions warrant.

Response: Vessels may have small mesh on board provided that they do not possess more than 100 pounds (45.4 kg) of summer flounder on board. The inclusion of a prohibition on having nets on board which do not meet the minimum mesh size requirement is essential for effective enforcement of the minimum mesh requirement for trips directing on summer flounder.

Comment: An industry association supports 5½ inch (13.97 cm) mesh in the terminus of the net, as described in the regulation. A conservation association supports the minimum mesh requirement.

Response: Comment noted.

Possession Limit

Comment: North Carolina questions the method of calculating the number of fish caught based on the number of fillets. The regulations specify that the number of fillets will be divided by two, but many people take four fillets from each fish.

Response: In order to allow fishermen to fillet fish at sea and still enforce compliance with the bag limit, there must be a way to establish the number of fish caught. The method selected by the Council and ASMFC is to divide the fillets by two to determine the total number of fish caught. Individuals who have in the past taken four fillets from their fish will have to alter their methods in order to land summer flounder in filleted form.

Comment: An industry association proposes that the by: atch limit of 100

pounds (45.4 kg) should be increased to 500 pounds (227 kg) to stop senseless discards. Another industry association proposes an increase in the bycatch limit to 250 pounds (113.5 kg) because 500 pounds (227 kg) would be sufficient to support a directed fishery.

to support a directed fishery.

Response: The analysis of bycatch limits was based on the estimation of the number of summer flounder trips which would be exempted from the management requirements of the Amendment under a 100 (45.4 kg) or 500 pound (227 kg) threshold. This analysis shows that nearly twice the number of trips will be exempt at a 500 pound (227 kg) threshold as will be exempt at a 100 pound (45.4 kg) threshold. The 250 pound (113,5 kg) threshold was not analyzed. The more stringent 100 pound (45.4 kg) threshold was selected in order to minimize the impact on juvenile summer flounder and overall fishing mortality that would result if a significant portion of the summer flounder fishery was exempt from the management measures, particularly the minimum mesh requirement. An FMP amendment would be needed to put such an alternative in place

Comment: NEFMC objects to the fact that the proposed rule mandates a recreational bag limit. Since the recreational fishery is conducted primarily in state waters, they believe that it should be left up to each state to achieve the mandated mortality reductions by whatever mechanism they choose.

Response: Recreational fishery measures in the Amendment have been approved by the states through ASMFC. Therefore, the states have been active participants in the selection of the bag limit as a mechanism to achieve the mandated mortality reductions in the recreational fishery.

Sea Turtle Conservation

Comment: North Carolina wishes the regulations to be clear on the point that if TEDs are required and used, then the limited tow time provision is not required.

Response: The regulations have been modified to make this clear.

Comment: A conservation association strongly recommends that the final rule should include a mandatory requirement for use of TEDs from Cape Charles to the South Carolina border.

Response: The final regulations require use of NMFS certified TEDs by vessels engaged in summer flounder fishing operations and using trawl gear during the period specified by the Regional Director. The requirement applies to vessels fishing within

coordinates corresponding to the area noted by the commenter. The final regulations also authorize the Regional Director to take other action, which may include allowing limited tow times as an alternative to TEDs.

Comment: An individual opposes the portion of the regulations which allows the Regional Director to close the entire EEZ to fishing as the result of sea turtle takes in a localized area.

Response: The Endangered Species
Act requires action to be taken to
prevent further takes if sea turtle
mortality reaches a level which will
jeopardize the species. Therefore, the
provision that the commenter objects to
is mandated by law and will not be
modified. It should be noted that
intermediate steps are specified to be
taken when sea turtle takes reach levels
of concern in order to prevent such
jeopardy from occurring.

Comment: An individual opposes the requirement that vessels must pay for observer coverage.

Response: Observers are provided through existing NMFS observer programs. The vessel does not have to pay the salary for the observer but must provide adequate accommodations and food.

Permits

Comment: A conservation association expresses support for the moratorium on new entrants to the commercial fishery. NEFMC, two industry associations, and an individual all oppose the moratorium on new vessel permits. Specific concerns include the legality of a moratorium that prevents future entries for 5 years regardless of stock condition, the criteria for qualification for a moratorium permit as arbitrary and unrelated to conservation; and the fact that it is discriminatory to impose a moratorium on commercial vessels and not on recreational vessels. NEFMC also suggests that there be some coordination of moratoria and control dates in all managed fisheries since the proliferation of separate dates is a concern to them.

Response: NMFS urges the NEFMC to coordinate moratorium and control dates with the Council through their representative to that Council and joint committee work. Moratoria have been used as an effective management tool in other fisheries such as surf clams and ocean quahogs. The qualification for a moratorium permit in the summer flounder fishery is simply to have participated in the fishery by landing summer flounder during a certain time period. This is consistent with national standard 4, which requires that allocation of fishing privileges be fair

and equitable to all fishermen. The moratorium is expected to stabilize fishing capacity and effort, particularly as the stock recovers and new vessels may be tempted to enter the fishery before the stock can be rebuilt. The amendment does not impose identical measures but seeks to balance the restrictions in the recreational and commercial sectors of the fishery. The moratorium on new entrants applies to all vessels that are permitted to harvest summer flounder for sale in the EEZ. A similar measure for recreational vessels would be ineffective since many of them do not venture into the EEZ. A more effective and perhaps analogous restriction for the recreational sector is the no-sale provision, which, for obvious reasons, cannot be applied to the commercial sector.

Resubmitted Portion of Amendment 2

Comment: The U.S. Department of the Interior (DOI) requested that the comment period be extended to provide them with more time to respond to the proposed rule for the resubmitted portion of Amendment 2.

Response: It was not possible to extend the comment period because resubmitted rules follow accelerated schedules that are mandated by the Magnuson Act. However, any comments received from DOI will be reviewed and considered for future management actions. This was the only request for an extension.

Comment: The Sport Fishing Institute expressed concern for the status of the resource, support for the rule and emphasized the need for compliance with the reporting requirements contained in Amendment 2.

Response: NMFS agrees that reporting requirements imposed on dealers are critical to the success of the management measures contained in Amendment 2, and is working to develop an effective reporting and data collection system.

Changes to Regulatory Text

Due to the extensive amendments required to regulations at 50 CFR part 625, that part is revised in its entirety. Until this final rulemaking, §§ 625.20, 625.21, 625.22, and 625.25 were reserved; headings are changed and text is added to these sections. Section 625.27 is added, and §§ 625.1, 625.2, 625.4, 625.6, 625.7, 625.8, 625.9, 625.10, and 625.23 are substantially revised. Section 625.3 is the only section that remains the same.

Classification

The Secretary of Commerce (Secretary) determined that approved

provisions of the FMP amendment that this rule would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, has taken into account the information, views, and comments received during the comment

The Council prepared an FEIS for Amendment 2 describing the possible impacts on the environment as a result of this rule. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that the preferred alternative versus the status quo is environmentally preferable upon review of the final environmental impact statement (FEIS) and public comments. The FEIS demonstrates that the preferred alternative contains management measures to rebuild the stock of summer flounder and should provide positive economic and social benefits to the fishing industry in the long term, balance in the ecosystem in terms of the summer flounder resource, and protective measures for endangered and threatened species of sea turtles.

The Assistant Administrator has determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the regulatory impact review (RIR), which demonstrates negative net short-term impacts, but positive long-term economic benefits to the fishermen under the management measures. The action will not have a cumulative effect on the economy of \$100 million or more, nor will it result in a major increase in costs to consumers, industries, Government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.based enterprises are anticipated.

NMFS certified to the Small Business Administration that this rule could have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). For the purposes of the RFA, the RIR is retitled as a RIR/regulatory flexibility analysis (RFA). According to the RIR/RFA prepared by the Council, the management measures will have some negative impact on small entities; however, the extent of effects on small entities is difficult to determine because any effects will be moderated by the fact that summer flounder is only one component of a mixed-species fishery and participants will be able to catch other species. Also, a near-term improvement in the condition of the summer flounder stock is possible

depending on the success of new year classes. A strong year class could greatly reduce the effect of reduction of fishing mortality rate on the coastwide quota and quotas for individual states. The expected longer term impact of the management measures being implemented by this rule is a stabilized stock condition at a much higher level than the current level. Such a benefit to the stock and the fishery is clearly preferable to the impact of continued fishing without enactment of the conservation program proposed in Amendment 2. Existing summer flounder management measures have not been sufficient to conserve the resource and the stock is overexploited. Stock abundance has been reduced to less than 20 percent of the level of the late 1970's and commercial landings in 1989 were the lowest in the past 15 years. Continued fishing under existing regulations is likely to lead to stock collapse and the loss of substantial income from the summer flounder fishery for the foreseeable future.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Several state agencies responded and commented that the measures are not inconsistent with their respective programs. Consistency is presumed for

states that did not respond.

This rule contains collections of information subject to the Paperwork Reduction Act that have been approved by OMB; (1) applications for dealer permits (§ 625.5(b)—OMB Approval Number 0648-0202); (2) small mesh exemption permits (§ 625.4(o)—OMB Approval Number 0648-0202); (3) moratorium permits for vessels with a history of participation in the fishery and appeal of denied permits (§§ 625.4 (b) and (g)—OMB Approval Number 0648-0202); (4) notice requirements for sea sampling trips (§ 625.26(b)—OMB Approval Number 0648-0202); and (5) dealer purchase reports (§ 625.6(a)-OMB Approval Number 0648-0229. Public reporting burden for these collections are estimated to average 5, 5, 30, 2, and 2 minutes per response, respectively.

This rule also revises one collectionof-information requirement contained in

the proposed rule. The "Processed Products Report" (§ 625.6(a)(2)). previously approved by OMB under Control Number 0648-0018, will now be required in lieu of an "annual report." This collection-of-information requirement has been submitted to OMB for approval under the Paperwork Reduction Act and will not become effective until OMB approval is received. Public reporting burden for this collection-of-information requirement is estimated to average 2 minutes for the mandatory portion and 6 minutes for the voluntary portion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of this collection-of-information requirement, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

A biological opinion regarding the implementation of the FMP was issued on August 2, 1988, pursuant to Section 7 of the Endangered Species Act. The opinion considered the impacts of the fishery and related management activities. Takes of endangered and threatened sea turtles in the fishery were determined to occur in some areas and years, but were felt to be below levels that would jeopardize the continued existence of any endangered

populations.

The fishery continued without restriction, and between November 26, and December 7, 1990, 54 sea turtles, including at least 8 endangered Kemp's ridleys (Lepidochelys kempi), stranded on North Carolina beaches. Consultation was reinitiated due to new information collected during the stranding event and subsequent experimental trawls. A second biological opinion, issued on November 15, 1991, concluded that continued unrestricted operation of the summer flounder fishery in waters off North Carolina and southern Virginia would jeopardize the continued existence of the endangered Kemp's ridley population. Reasonable and prudent alternatives were given which included requirements for vessels trawling for summer flounder to limit tow times to 75 minutes or use NMFSapproved turtle excluder devices in waters within 10 miles of the North Carolina and southern Virginia coasts. Implementation of these alternatives is necessary to allow fishing activities to

continue and have been incorporated into this rule. Because of the proposed implementation of this rule, consultation was reinitiated and a biological opinion was issued August 10, 1992. This opinion concluded that the proposed rule would provide sufficient protection to sea turtles to avoid jeopardizing the continued existence of any populations until permanent regulations are issued under the Endangered Species Act. Copies of this biological opinion are available from the Regional Director (see ADDRESSES).

The Assistant Administrator has determined that delaying the effectiveness of §§ 625.1, 625.2, 625.3, 625.4, 625.5, 625.7 625.8, 625.9, 625.10, 625.20, 625.23, 625.24, 625.25, 625.26, and 625.27 of this final rule for 30 days under the Administrative Procedure Act, 5 U.S.C. 553(d), is impracticable and contrary to the public interest. Conservation measures contained in §§ 625.23, 625.24, and 625.25 to protect undersized, immature summer flounder from excessive catch and retention need to be made effective upon filing of the final rule by the Office of the Federal Register on November 30, 1992 to meet the objectives of these management measures. Section 625.27 must be effective beginning December 16, 1992 to protect endangered and threatened species of sea turtles from incidental take in the fall/winter trawl fishery for summer flounder following expiration of the action published at 57 FR 53603 (November 12, 1992) under authority of 50 CFR parts 217, 222, and 227. Otherwise, the summer flounder and sea turtle stocks may suffer significant reductions in abundance. Also, §§ 625.1, 625.2, 625.3, 625.4, 625.5, 625.7, 625.9, 625.10, and 625.20 must be effective upon filing of this final rule by the Office of the Federal Register November 30, 1992, to meet the objectives of the management measures contained in Amendment 2, give the affected public sufficient time to apply for a moratorium permit and appeal if necessary, and allow the administrative process of issuing both moratorium and party and charter boats permits to work in a reasonable fashion in preparation for the 1993 summer flounder fishery. Therefore, he is waiving the 30-day delayed effectiveness period for these sections.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements. Dated: November 27, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is revised to read as follows:

PART 625—SUMMER FLOUNDER FISHERY

Subpart A-General Provisions

625.1

Purpose and scope.

625.2 Definitions.

625.3 Relation to other laws.

625.4 Vessel permits.

625.5 Dealer permit.

Recordkeeping and reporting requirements.

625.7 Vessel identification.

625.8 Prohibitions.

625.9 Facilitation of enforcement.

625.10 Penalties.

Subpart B-Management Measures

625.20 Catch quotas and other restrictions.

625.21 Closure.

625.22 Time restrictions.

625.23 Minimum sizes.

625.24 Gear restrictions.

625.25 Possession limit.

625.26 Sea sampler program.

625.27 Sea turtle conservation.

Authority: 16 U.S.C. 1801 et seq.

Subpart A-General Provisions

§ 625.1 Purpose and scope.

The regulations in this part implement the Fishery Management Plan for the Summer Flounder Fishery (FMP), which was prepared and adopted by the Mid-Atlantic Fishery Management Council in cooperation with the Atlantic States Marine Fisheries Commission and the New England and South Atlantic Fishery Management Councils. These regulations govern the conservation and management of summer flounder.

§ 625.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Being rerigged means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for summer flounder.

Charter or party boat means any vessel that carries passengers for hire to engage in fishing.

Commission means the Atlantic States Marine Fisheries Commission.

Council means the Mid-Atlantic Fishery Management Council.

Dealer means any person who receives summer flounder for a

commercial purpose from the owner or operator of a vessel issued a moratorium permit under § 625.4 other than solely for transport on land.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Summer Flounder Fishery and any amendments thereto.

Fishing commercially means retaining summer flounder in excess of the possession limit specified in section 625.25.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, telephone 508-281-9300, or a designee.

Reporting week means a period of time beginning at 0001 local time on Sunday; and ending at 2400 hours local time the following Saturday.

Substantially similar harvesting capacity means the same or less Gross Registered Tonnage (GRT) and vessel registered length.

Summer flounder means the species Paralichthys dentatus.

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

Total length (TL) means the distance from the tip of the snout to the tip of the tail (caudal fin) while the fish is lying on its side normally extended.

Under construction means that the keel has been laid.

Vessel registered length means that registered length specified on U.S. Coast Guard documentation or state registration if the state registered length is verified by a NMFS authorized official.

§ 625.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Additional regulations governing fishing for summer flounder by foreign vessels in the EEZ are set forth in 50 CFR part 611, subparts A and C.

§ 625.4 Vessel permits.

(a) General—(1) Requirement. Subject to the eligibility requirements specified in paragraphs (b) and (c) of this section,

the owner of a vessel of the United States, including a party or charter vessel, must obtain a permit issued under this part to fish for or retain summer flounder in the EEZ.

(2) Exemption. Any vessel other than a party or charter boat that observes the possession limit in § 625.25 is exempt

from the permit requirement.

(3) Condition. Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed) will be subject to all requirements of this part. All such fishing, catch and gear will remain subject to all applicable state requirements. If a requirement of this part and a management measure required by state law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a moratorium permit issued pursuant to paragraph (b) of this section must also agree, as a condition of the permit, not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available.

(b) Moratorium permit (effective through 1997). (1) A vessel is eligible to receive a permit to fish for and retain summer flounder in excess of the possession limit in section 625.25 in the EEZ if it meets the conditions for paragraphs (e) and (f) of this section, and any of the following criteria:

(i) The vessel landed and sold summer flounder between January 26, 1985, and January 26, 1990; or

(ii) The vessel was under construction for, or was being rerigged for, use in the directed fishery for summer flounder on January 26, 1990, provided the vessel landed summer flounder for sale prior to October 15, 1992; or

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity that involuntarily left the summer flounder fishery during the moratorium, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not

be combined to create larger replacement vessels.

(iv) Vessels that are judged unseaworthy by the Coast Guard for reasons other than lack of maintenance may be replaced by a vessel of substantially similar harvesting capacity. (v) If there is no further amendment of this section, the above restrictions on eligibility to apply for and receive a moratorium permit expire after 1997.

(2) Restriction. No one may apply for the permit specified in paragraph (b)(1) of this section more than 12 months after November 30, 1992, or the events specified under paragraphs (h) (1) and (2) of this section. This section does not affect annual permit renewals.

(c) Party and charter boat permit. Any party or charter boat is eligible for a permit to fish, other than a moratorium permit, if it is carrying passengers for hire, and is then subject to the possession limits specified in § 625.25.

(d) Permit application. (1) An application for a permit under this section must be submitted and signed by the owner of the vessel on an appropriate form obtained from the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to paragraphs (d)(2), (e) and (f)(2) of this section. Applicants for moratorium permits shall provide information with the application sufficient for the Regional Director to determine if the vessel meets the eligibility requirements. Dealer weighout forms signed by the dealer and notarized statements from marine architects or surveyors or shipyard officials will be considered acceptable forms of proof.

(2) Permit information. An applicant must provide all the following

information:

 (i) The name, mailing address including ZIP code, and telephone number of the owner of the vessel (if owner is a corporation a copy of the certificate of incorporation must be attached to the application);

(ii) The name of the vessel;

(iii) The vessel's U.S. Coast Guard documentation number or the vessel's state registration number for a vessel not required to be documented under title 46 of the U.S. Code;

(iv) Home port (city and state), gross tonnage, and registered length of the

vessel;

(v) Engine horsepower of the vessel and the year the vessel was built;

(vi) Type of construction and type of

propulsion;

(vii) Permit number of current or, if expired, previous Federal fishery permit issued to the vessel;

(viii) Approximate fish hold capacity of the vessel (to the nearest 100 lbs. or

45.4 kg);

(ix) Type and quantity of fishing gear used by the vessel;

(x) Average number of crew members, including the captain, which may be stated in terms of a normal range;

(xi) Permit category;

(xii) Copy of charter/party boat license and number of passengers the vessel is licensed to carry (party and charter boats); and

(xiii) Any other information required by the Regional Director to manage the summer flounder fishery.

(xiv) Certificate of incorporation, if

applicable.

(3) Change in permit information.

Any change in the information specified in paragraph (d)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days

of the change.

(e) Fees. The Regional Director may charge a fee to recover administrative expenses of issuing a permit required under paragraphs (b) and (c) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) Issuance. (1) The Regional Director will issue a permit under this section at any time during the fishing year to an

applicant if:

(i) The application is complete as described in paragraph (d)(2) of this section; and

(ii) The applicant has complied with all applicable reporting requirements of section 625.6 during the 12 months immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 625.6 during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(g) Appeal of denial of permit. (1) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (b)(1) of this section. The appeal shall set forth the basis for the

applicant's belief that the Regional Director erred in his decision.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(3) The decision on the appeal by the Regional Director is the final decision of

the Department of Commerce.

(h) Expiration. Except as provided in paragraph (b)(1)(iii) of this section, a permit expires:

(1) When the owner retires the vessel

from the fishery;

(2) When the vessel fails to land any summer flounder at least once within any 52 consecutive week period; or

(3) On December 31 of each year; or (4) When the ownership of the vessel changes; however, the Regional Director may authorize the continuation of a moratorium permit for the summer flounder fishery if the new owner requests. Applications for permit continuations must be addressed to the Regional Director.

(i) Duration. A permit will continue in effect until December 31 of each year, unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report any change in the information on the permit application to

the Regional Director.

(j) Alteration. No person may alter, erase, or mutilate any permit. Any permit that has been altered, erased, or

mutilated is invalid.

(k) Replacement. Replacement permits may be issued by the Regional Director when requested in writing by the owner, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. The fee for a replacement permit shall be the same as for an initial permit.

(l) Transfer. Permits issued under this part are not transferable or assignable. A permit will be valid only for the fishing vessel and owner for which it is issued.

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

(n) Suspension and revocation.
Subpart D of 15 CFR part 904 (Civil Procedures) governs the imposition of enforcement-related sanctions against a permit issued under this part.

(o) Exemption permits. Owners of vessels seeking an exemption from the minimum mesh requirement under the provisions of § 625.24(a)(1)(i) must apply to the Regional Director under

paragraph (d) of this section at least seven days prior to the date they wish the permit to become effective. The applicant shall mark "Exemption Permit Request" on the permit application at the top. A permit issued under this paragraph does not meet the requirements of paragraph (a) of this section but is subject to the other provisions of this section. Persons issued an exemption permit must surrender it to the Regional Director at least one day prior to the date they wish to fish not subject to the exemption. The Regional Director may impose temporary additional procedural requirements by publication of a notice in the Federal Register.

§ 625.5 Dealer permit.

(a) General. Any dealer must have a permit issued under this section.

(b) Permit application. (1) An application must apply for a dealer permit on a form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. Applications must contain the name, principal place of business, mailing address and telephone number of the applicant. The Regional Director will notify the applicant of any deficiency in the application pursuant to paragraph (b)(3)(ii) of this section.

(2) Change in permit information.

Any change in the information specified in paragraph (b)(1) of this section must be submitted by the applicant in writing to the Regional Director within 15 days

of the change.

(3) Issuance. (i) The Regional Director will issue a permit at any time during the fishing year to an applicant if:
(A) The application is complete; and

(B) The application is complete; and (B) The applicant has complied with all applicable reporting requirements of this section and § 625.6(a) during the 12 months immediately preceding the

application.

(ii) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of paragraph (b)(1) this section and § 625.6(a) during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(4) Expiration. A permit expires on December 31 of each year or if the ownership of the business changes.

(5) Duration. Any permit issued under this section remains valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director.

(6) Alteration. Any permit that is altered, erased, or mutilated is invalid.

(7) Replacement. The Regional
Director may issue replacement permits
for lost permits. Any application for a
replacement permit shall not be
considered a new permit.

(8) Transfer. A permit is not transferable or assignable. It is valid only for the person to whom it is issued.

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

(10) Suspension and revocation. The Administrator may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing permit enforcement-related sanctions or denials are found at subpart

D of 15 CFR part 904.

(11) Fees. The Regional Director may charge a fee to recover administrative expenses of issuing a permit required under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (b)(3) of this section.

§ 625.6 Recordkeeping and reporting requirements.

- (a) Dealers.—(1) Weekly report.
 Dealers shall provide at least the following information to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by the Regional Director.
 Reports must be postmarked within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit. The following information is required:
- (i) Name and mailing address of dealer;
- (ii) Name and permit number of the vessels from which summer flounder are landed or received;

(iii) Dates of purchases:

(iv) Pounds of summer flounder purchased;

(v) Price per pound;

(vi) Pounds purchased of all other species landed by the vessel landing summer flounder;

(vii) Port landed; and

(viii) Any additional information the Regional Director determines is necessary for the orderly management of the summer flounder resource.

(2) Annual report. All persons required to submit reports under paragraph (a)(1) are required to complete the "Employment Data" section of the Annual Processed Products Reports; the other information on the form is voluntary. Reports shall be submitted to: NMFS Statistics, 166 Water St., Woods Hole, MA 02543.

(e) Inspection. The dealer shall make the log reports available immediately upon request for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections.

(4) Record retention. For one year after the date of the last entry in the log, the dealer shall retain each logbook at the owner's principal place of business.

(5) At-sea activities. All persons purchasing, receiving, or processing any summer flounder at sea for landing at any port of the United States must submit information identical to that required by paragraphs (a) (1) and (2) of this section and provide those reports to the Regional Director or designee on the same frequency basis.

(b) Vessel owners issued a moratorium permit (Reserved).

(c) Owners of party and charter boats (Reserved).

§ 625.7 Vessel identification.

(a) Vessel name. Each fishing vessel subject to this part and over 25 feet (7.6 m) in registered length must affix permanently its name on the port and starboard sides of the bow and, as possible, on its stern.

(b) Official number. Each fishing vessel subject to this part and over 25 feet (7.6 m) in registered length shall display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft.

(c) Numerals. Except as provided in paragraph (e) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 m) in registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 feet (7.6 m) in registered length. The registered length of a vessel, for

purposes of this section, is that registered length set forth in U.S. Coast Guard or state records.

(d) Duties of owner. The vessel owner shall ensure that each vessel subject to

this part will:

(1) Keep the vessel's name and official number clearly legible and in good repair, and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(e) Nonpermanent marking. Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for summer flounder.

§ 625.8 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a permit (including moratorium permit) under § 625.4 to do any of the following:

(1) Land or possess at see any summer flounder, or parts thereof, that fail to meet the minimum fish size specified in

§ 625.23;

(2) Fail to affix and maintain markings

as required by § 625.6;

(3) Possess 100 or more pounds (45.4 or more kg) of summer flounder, unless the vessel meets the minimum meshsize requirement specified in § 625.24, or is fishing in the exempted area with an exemption permit as specified in § 625.24(b)(1), or is fishing with exempted gear specified in § 625.24(b)(2);

(4) Possess summer flounder in other than a box specified in § 625.25(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 625.24(a), unless the vessel is fishing pursuant to the exemptions specified in § 625.24(b);

(5) Land summer flounder for sale, in a state after the effective date published in the Federal Register notifying permit holders that commercial quota is no

longer available in that state;

(6) Possess nets or netting on board with mesh that does not meet the requirements of § 625.24, or nets that are modified or otherwise obstructed, if subject to the minimum mesh-size requirement specified in § 625.24, except pieces of netting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh

sections of the net forward of the terminal portion of the net to which the minimum mesh-size requirement applies may be carried on board;

(7) Possess nets or netting on board with mesh less than 5½ inches (14.0 cm) if fishing with an exempted net described in § 625.24, except pieces of netting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh sections of the net forward of the terminal portion of the net to which the minimum mesh requirement applies may be carried on board;

(8) Fish west or south, as appropriate, of the line specified in § 625.24(b)(1) if exempted from the minimum mesh requirement specified in § 625.24 by an exemption permit issued under § 625.4;

(9) Sell or transfer to another person for a commercial purpose, other than transport, any summer flounder, unless the transferee has a dealer permit issued under 625.5;

(10) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a moratorium permit issued pursuant to § 625.4; or

(11) Refuse to embark a sea sampler if requested by the Regional Director.

(b) It is unlawful for the owner and operator of a party or charter boat issued a permit (including moratorium permit) pursuant to § 625.4, when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess summer flounder in excess of the possession limit established

pursuant to § 625.25;

(2) Possess summer flounder smaller than the minimum size limit established pursuant to § 625.23(b);

(3) Fish for summer flounder other than during a season specified pursuant

to § 625.22;

(4) Refuse to embark a sea sampler if requested by the Regional Director; or

(5) Sell summer flounder or transfer summer flounder to another person for a commercial purpose.

(c) It is unlawful for any person to do

any of the following:

(1) Possess in or harvest from the EEZ summer flounder either in excess of the possession limit specified in § 625.25 or before or after the time period specified in § 625.22, unless the person is operating a vessel issued a moratorium permit under § 625.4 and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended;

(2) Offload, cause to be offloaded, sell or buy any summer flounder, whether

on land or at sea, as an owner, operator, dealer, buyer or receiver in the summer flounder fishery without accurately preparing and submitting, in a timely fashion the documents required by § 625.6;

(3) Purchase or otherwise receive, except for transport, summer flounder from the owner or operator of a vessel issued a moratorium permit under § 625.4 unless in possession of a valid permit issued under § 625.5:

(4) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a moratorium permit not subject to the

possession limit in § 625.5.

(5) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the Federal Register notifying permit holders that commercial quota is no longer available in that state.

(6) Make any false statement, oral or written, to an authorized officer, concerning the catching, taking, harvesting, landing, purchase, sale, possession, or transfer of any summer

flounder;

(7) Fail to report to the Regional Director within 15 days any change in the information contained in the permit

application;

(8) Fail to comply with any sea turtle conservation measure specified in § 625.27, including any sea turtle conservation measure implemented by notice in the Federal Register in accordance with paragraph § 625.27(d);

(9) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized sea sampler or observer while performing their duties as described under sections 625.26 and 625.27, respectively; or

(10) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the

Magnuson Act.

(d) All summer flounder possessed aboard a party or charter boat issued a permit under § 625.4(c) are deemed to have been harvested from the EEZ.

§ 625.9 Facilitation of enforcement. See § 620.8 of this chapter.

§625.10 Penalties.

See § 620.9 of this chapter.

Subpart B-Management Measures

§ 625.20 Catch quotas and other restrictions.

(a) Annual review. The Summer Flounder Monitoring Committee will review the following data on or before August 15th of each year to determine the allowable levels of fishing and other

restrictions necessary to result in a fishing mortality rate of 0.53 in 1993 through 1995, and a fishing mortality rate of 0.23 in 1996 and thereafter:

(1) Commercial and recreational catch

data:

(2) Current estimates of fishing mortality;
(3) Stock status;

(4) Recent estimates of recruitment;

(5) Virtual population analysis results; (6) Levels of noncompliance by

fishermen or individual states; (7) Impact of size/mesh regulations; (8) Impact of gear other than otter

trawls on the mortality of summer flounder: and

(9) Any other relevant information.

(b) Recommended measures. Based on this review, the Summer Flounder Monitoring Committee will recommend to the Demersal Species Committee of the Council and the ASMFC the following measures to assure that the fishing mortality rate specified in paragraph (a) of this section is not exceeded:

(1) The commercial quota will be set from a range of 0 to the maximum allowed to achieve the fishing mortality rate specified in paragraph (a) of this

section;

(2) Commercial minimum fish size;

Minimum mesh size:

(4) The recreational possession limit will be set from a range of 0 to 15 summer flounder to achieve the fishing mortality rate specified in paragraph (a) of this section;

(5) Recreational minimum fish size;

(6) Recreational season; and

(7) Restrictions on gear other than

otter trawls.

(c) Annual fishing measures. The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the applicable fishing mortality rate specified in paragraph (a) of this section is not exceeded. The Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director with respect to the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. Included in the recommendation will be supporting documents as appropriate, concerning the environmental and economic impacts of the proposed

action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish in the Federal Register a proposed rule on or before September 15th to implement these measures, if he determines that these measures are necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. After considering public comment on this proposed rule, the Regional Director will publish a final rule in the Federal Register to implement the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded.

(d) Distribution of annual quota. (1) The annual commercial quota will be distributed to the states based upon the

following percentages:

State	Share (%)
Maine	0.0482
New Hampshire	0.0005
Massachusetts	6.9111
Rhode Island	15.8914
Connecticut	0.9532
New York	7.7486
New Jersey	16,9473
Delaware	0.0180
Maryland	2.0662
Virginia	21,6001
North Carolina	27.8155

(2) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year. (e) Review of state FMPs. [Reserved].

§ 625.21 Closure.

(a) Noncompliance. [Reserved].

(b) EEZ closure. The Regional Director shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notice in the Federal Register if he determines that the inaction of one or more states will cause the fishing mortality rate in § 625.20 to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Director may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the fishing mortality rate in section 625.20 to be exceeded.

(c) State quotas. The Regional Director will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested.

The Regional Director shall publish notice in the Federal Register advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

§625.22 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 625.4 and fishermen subject to the possession limit may fish for summer flounder only during the period May 15th to September 30th. This time period may be adjusted pursuant to the procedures in § 625.20.

§ 625.23 Minimum sizes.

(a) The minimum size for summer flounder is 13 inches (33 cm) total length for all vessels issued a moratorium permit under § 625.4, except on board party and charter boats carrying passengers for hire or carrying more than three crew members if a charter boat or more than five crew members if a party boat;

(b) The minimum size for summer flounder is 14 inches (35.6 cm) total length for all vessels that do not qualify for a moratorium permit, or party and charter boats holding moratorium permits but fishing with passengers for hire or carrying more than three crew members if a charter boat or more than five crew members if a party boat.

(c) The minimum size applies to whole fish or to any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 625.20.

§ 625.24 Gear restrictions.

(a) General. Otter trawlers whose owners are issued a permit (including moratorium permit) under § 625.4, and that land or possess 100 or more pounds (45.4 or more kg) of summer flounder, per trip, must fish with nets that have a minimum mesh size of 51/2 inches (14.0 cm) diamond mesh or 6 inches (15.2 cm) square mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimummesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension.

(b) Exemptions to the minimum meshsize restriction. The minimum meshsize requirement does not apply to:

(1) Vessels issued a permit under paragraph § 625.4(o) and fishing from 1 November through 30 April in the

"exemption area" which is east or north, as appropriate, of a line that follows 71°30.0' W. longitude south to 40°53.1' N. latitude, 71°30.0' W. longitude; thence northeasterly 41°00.0' N. latitude, 70°49.5' W. longitude, thence easterly to 41°00.0' N. latitude, 70°30.0' W. longitude, thence southerly to 40°50.0' N. latitude, 70°30.0' W. longitude, thence easterly to 40°50.0' N. latitude, 69°40.0′ W. longitude, thence southerly to 40°33.5′ N. latitude, 69°40.0′ W. longitude, thence southwesterly to 40°26.5' N. latitude, 70°40.0' W. longitude, thence northerly to 40°40.5' N. latitude, 70°40.0' W. longitude, thence southwesterly to 40°30.0' N. latitude, 72°00.0' W. longitude, thence southerly to 40°17.8' N. latitude, 72°00.0' W. longitude, thence southwesterly to 40°15.5' N. latitude, 72°20.0' W. longitude, thence southerly along 72°20.0' W. longitude until it intersects the outer boundary of the EEZ. Vessels fishing with an exemption permit cannot fish west or south, as appropriate, of the foregoing

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

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

(2) Fly nets. Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5½ inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm);

to 64 inches (162.6 cm);
(ii) The first body section (belly) of
the net has 35 or more meshes that are
at least 8 inches (20.3 cm); and

(iii) The mesh decreases in size throughout the body of the net to as small as 2 inches (5 cm) or smaller towards the terminus of the net.

(iv) The Regional Director may terminate this exemption if he determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If he makes such a determination, the Regional Director shall publish a notice in the Federal Register terminating the exemption for the remainder of the calendar year.

(c) Restriction. Vessels subject to the minimum mesh-size requirement may not have nets or pieces of netting on board the vessel that do not meet the minimum mesh-size requirement except pieces of netting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh sections of the net forward of the terminal portion of the net to which the minimum mesh-size requirement applies may be carried on board.

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

long axis of the net. (e) Net modifications. No vessels subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chaffing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present), consisting of line or rope no more than 2 inches (5 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the cod end along each of the following: the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

§ 625.25 Possession limit.

(a) No person shall possess more than six summer flounder in or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a moratorium permit under § 625.4. Persons on board a commercial vessel that is not eligible for a moratorium permit under § 625.4 are subject to this possession limit. The owner and operator and crew of a charter or party boat issued a moratorium permit under section 625.4(b) are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) If whole summer flounder are processed into fillets, an authorized officer will convert the number of fillets to whole summer flounder at the place of landing by dividing fillet number by two. If summer flounder are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole

summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Neither owners nor operators of otter trawlers issued a permit (including moratorium permit) under § 625.4 and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh-size requirements, except pieces of netting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh sections of the net forward of the terminal portion of the net to which the minimum mesh-size requirement applies, may possess more than 100 pounds (45.4 kg) of summer flounder. Summer flounder on board these vessels shall be stored on board the vessel in a separate box that measures 36 inches (91.4 cm) long, 15 inches (38.1 cm) wide, and 12 inches (30.4 cm) high for a volume of 3.75 cubic feet (0.1 cubic meters) and which is readily available for inspection.

§ 625.26 Sea sampler program.

(a) Request to take sea sampler. The Regional Director may request a fishing vessel issued a permit under § 625.4 to take on board an observer or sea sampler to accompany the vessel on all fishing trips conducted during the period specified in the request. If requested by the Regional Director to take an observer or sea sampler, a vessel may not engage

in any fishing operations for summer flounder unless an observer or sea sampler is on board or unless the

requirement is waived.
(b) Responsibility for sea sampler placement. If requested by the Regional Director to take a sea sampler, it is the responsibility of the vessel owner to arrange for and facilitate sea sampler placement. Upon notice, the Regional Director will provide information concerning sea sampler availability and

(c) Waiver. The Regional Director may waive the sea sampler requirement based on a finding that the facilities for housing the sea sampler or for carrying out sea sampler functions are so inadequate or unsafe that the health or safety of the sea sampler or the safe operation of the vessel would be jeopardized.

(d) Sea sampler functions. If requested by the Regional Director to take a sea sampler, the vessel owner, vessel operator, and crew must cooperate with the sea sampler in the performance of the sea sampler's duties,

(1) Notifying the sea sampler in a timely fashion of when fishing

operations are to begin and end;
(2) Allowing for the embarking and debarking of the sea sampler, as specified by the Regional Director. ensuring that transfers of sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea sampler involved;

(3) Providing adequate accommodations and food;

(4) Allowing the sea sampler access to all areas of the vessel necessary to conduct sea sampler duties;

(5) Allowing the sea sampler access to communications and navigation equipment and personnel as necessary to perform sea sampler duties;

6) Providing true vessel locations, by latitude and longitude or loran coordinates, as requested by the sea

(7) Notifying the sea sampler of any sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel, as requested by the sea

(8) Providing the sea sampler with sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel, as requested by the sea

sampler; and

(9) Providing storage for biological specimens, including cold storage if available, as requested by the sea sampler. These specimens must be retained on board the vessel, as

instructed by the sea sampler or until retrieved by authorized NMFS personnel.

§ 625.27 Sea turtle conservation.

This section will be suspended during the effectiveness of any temporary regulations issued to regulate incidental take of sea turtles in the summer flounder fishery under authority of the Endangered Species Act under 50 CFR parts 217, 222, and 227. Such suspensions and temporary regulations will be issued by publication in the Federal Register and will be effective for a specified period of time, not to exceed 1 year.

(a) Sea turtle handling and resuscitation. The sea turtle handling and resuscitation requirements specified in 50 CFR 227.72(e)(1)(i) and (ii) apply with respect to sea turtles incidentally taken by a vessel fishing for summer

flounder.

(b) Sea turtle monitoring and assessment program. (1) The Regional Director will establish a monitoring and assessment program, in cooperation with the Council and the State of North Carolina, to measure the incidental take of sea turtles in the summer flounder fishery, monitor compliance with required conservation measures by trawlers, and predict interactions between the fishery and sea turtles to prevent turtle mortalities.

(2) A scientifically designed, observerbased monitoring program, as specified in paragraph (h) of this section, may be used to gather scientific data measuring the incidental take of turtles by trawlers in the summer flounder fishery and to report turtle distribution and

abundance.

(3) A cooperative sea turtle monitoring and assessment program utilizing a variety of information, including aerial and vessel surveys; onboard observers; individually tagged turtles; physical parameters, such as sea surface temperatures, and reports from the sea turtle stranding network; and other relevant and reliable information, will assess and predict turtle distribution, abundance, movement patterns and timing to provide information to NMFS to prevent turtle mortality caused by the summer flounder fishery.

(c) The Regional Director will require the use of a NMFS certified turtle excluder device (TED) by any vessels engaged in summer flounder fishing operations and utilizing trawl gear on or after October 15, as necessary to protect endangered sea turtles. The Regional Director will publish notice in the Federal Register with the specific time period. Descriptions of currently

certified TEDs can be found in 50 CFR § 227.72(e)(4). This requirement applies to vessels within the EEZ bounded on the north by a line along 37°05' N. latitude, bounded on the south by a line along 33°35' N. latitude, and bounded on the east by a line 7 nautical miles from the shoreward boundary of the

(d) Closure of the fishery. The Regional Director may close the summer flounder fishery in Federal waters, or any part thereof, after consultation with the Council, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notice in the Federal Register. The Regional Director shall take such action if he determines a closure is necessary to avoid jeopardizing the continued existence of any species listed under ESA. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program. A closure will be applicable to those areas specified in the notice and for the period specified in the notice. The Regional Director will provide as much advance notice as possible consistent with the requirements of the ESA and will have the closure announced on channel 16 of the marine VHF radio. A closure may prohibit all fishing operations, may prohibit the use of certain gear, may require that gear be stowed, or may impose similar types of restrictions on fishing activities. The prohibitions, restrictions and duration of the closure will be specified in the notice.

(e) Reopening of the fishery. (1) The Regional Director may reopen the summer flounder fishery in Federal waters, or any part thereof, after consultation with the Council, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notice in the Federal Register. The Regional Director may reopen the summer flounder fishery in Federal waters, or any part thereof, if additional sea turtle conservation measures are implemented and if projections of NMFS's sea turtle monitoring program indicate that such measures will ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species

listed under the ESA.

(2) The Regional Director may reopen the summer flounder fishery in Federal waters, or any part thereof, if the sea turtle monitoring program indicates changed conditions and if projections of

the sea turtle monitoring program indicate that NMFS can ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any agencies listed under the ESA.

(f) Additional sea turtle conservation measures. (1) The Regional Director may impose additional sea turtle conservation measures, including towtime requirements, in Federal waters, after consultation with the Council, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notice in the Federal Register. The Regional Director shall take such action if he determines further measures are necessary to avoid jeopardizing the continued existence of any species listed under the ESA or if such action would allow reopening of the summer flounder fishery in Federal waters. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program.

(2) Consistent with the procedures specified in paragraph (h) of this section, the regional Director may require observers on all or a certain portion of the vessels engaged in fishing for summer flounder as described in paragraph (h) of this section to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. This requirement may apply to certain types of vessels, certain areas, or during certain times of the year.

(g) Experimental projects. Notwithstanding paragraphs (a) through (f) of this section, the Regional Director may authorize summer flounder fishing, as a part of experimental projects to measure turtle capture rates, to monitor turtle abundance, to test alternative gear or equipment, or for other research purposes. Research must be approved by the Regional Director, and it must not be likely to jeopardize the continued existence of any species listed under the ESA. The Regional Director will impose such conditions as he determines necessary to ensure adequate turtle protection during experimental projects. Individual authorizations may be issued in writing. Authorizations applying to multiple vessels will be published in a notice in the Federal Register.

(h) Observer program.—(1) Request to take observer. The Regional Director may request a fishing vessel issued a moratorium permit under § 625.4 to take on board an observer to accompany the vessel on all fishing trips conducted during the period specified in the

request. If requested by the Regional Director to take an observer, a vessel may not engage in any fishing operations for summer flounder unless an observer is on board or unless the observer requirement is waived.

(2) Responsibility for observer placement. If requested by the Regional Director to take an observer, it is the responsibility of the vessel owner to arrange for and facilitate observer placement. Upon receipt of notice, the Regional Director will provide information concerning observer availability and placement.

(3) Waiver. The Regional Director may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

(4) Observer functions. If requested by the Regional Director to take an observer, the vessel owner, vessel operator, and crew must cooperate with the observer in the performance of the observer's duties, including:

(i) Notifying the observer in a timely fashion of when commercial fishing operations are to begin and end;

(ii) Allowing for the embarking and debarking of the observer, as specified by the Regional Director, ensuring that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the observer involved;

(iii) Providing adequate accommodations and food;

(iv) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;

(v) Allowing the observer access to communications and navigation equipment and personnel as necessary to perform observer duties;

(vi) Providing true vessel locations, by latitude and longitude or loran coordinates, as requested by the

observer;

(vii) Notifying the observer of any sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel, as requested by the observer;

(viii) Providing the observer with sea turtles, marine mammals, summer flounder, or other specimens taken by the vessel, as requested by the observer,

(ix) Providing storage for biological specimens, including cold storage if available, as requested by the observer. These specimens must be retained on board the vessel, as instructed by the

observer or until retrieved by authorized NMFS personnel.

[FR Doc. 92-29290 Filed 11-30-92; 4:55 pm] BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 920109-2009]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce. ACTION: Fishing restrictions, and request for comments.

SUMMARY: NMFS announces an increase in the trip limit for widow rockfish in the groundfish fishery off Washington, Oregon, and California. The increase in the trip limit is designed to keep the catch within the 1992 harvest guideline for the species while allowing full utilization of the widow rockfish harvest guideline during the remainder of the year.

DATES: Effective from 0001 hours (local time) December 2, 1992, until modified, superseded, or rescinded. Comments will be accepted through December 21, 1992.

ADDRESSES: Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd. suite 4200, Long Beach, CA 90802– 4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140; or Rodney McInnis at (310) 980–4040. SUPPLEMENTARY INFORMATION: This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The FMP provides for rapid changes to specific management measures that have been designated as "routine." The trip limit for widow rockfish is a management measure that has been designated routine at 50 CFR 663.23(c)(1)(i)(A).

The notice of 1992 groundfish fishery specifications and management measures (57 FR 1654, January 15, 1992) announced an initial 4-week cumulative trip limit for widow rockfish of 30,000 pounds (13,608 kg). At the July 1992 meeting, the Pacific Fishery Management Council (Council) found that landings were occurring at an unexpectedly high rate and recommended that the 4-week cumulative trip limit be reduced to 3,000 pounds (1,361 kg) per trip, which

occurred on August 12, 1992 (57 FR 34266, August 4, 1992). At its November 1992 meeting, the Council learned that the landings of widow rockfish were lower than expected. The best available data indicate that through October 31, 1992, 5,764 mt of widow rockfish were landed. At that rate, the harvest guideline of 7,000 mt would not be fully utilized in 1992. Consequently, the Council has recommended increasing the trip limit for widow rockfish to 30,000 pounds (13,608 kg) cumulative per 4-week period on December 2, 1992, the beginning of the next 4-week period. The last 4-week period in 1992 ends at 2400 hours (local time) December 31, 1992, including an extra 2 days to extend to the end of the year. If this trip limit continues into 1993, the next 4week period would be 2 days short, from January 1 through January 26, 1993. The 2-day adjustment is to coincide with the fishing week which begins on each Wednesday.

Secretarial Action

The Secretary of Commerce concurs with the Council's recommendation and revises paragraph (B) of the 1992 Management Measures (57 FR 1654, January 15, 1992), which was modified at 57 FR 34266, August 4, 1992, to read as follows: Effective 0001 hours (local time) on December 2, 1992, no more than 30,000 pounds (13,608 kg) cumulative of widow rockfish may be taken and retained, possessed, or landed per vessel in a 4-week period. All other provisions remain in effect.

Classification

This action is taken under the authority of and in accordance with the regulations at 50 CFR 663.23(c).

This action is authorized by
Amendment 4 to the FMP for which a
Supplemental Environmental Impact
Statement (SEIS) was prepared in
accordance with the National
Environmental Policy Act. Because this
action and its impacts have not changed
significantly from those considered in
the SEIS, this action is categorically
excluded from the requirement to
prepare an environmental assessment in
accordance with § 6.02c.3.(f) of NOAA
Administrative Order 216-6.

This action is in compliance with E.O. 12291. The public has had the opportunity to comment on this action. The public participated in Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in November 1992 that resulted in the recommendation to take this action.

The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see ADDRESSES) during business hours until December 21, 1992.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, and Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 et seq. Dated: November 30, 1992.

David S. Crestin.

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce. ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Pacific cod in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary because the total allowable catch (TAC) for Pacific cod in the BSAI has been reached.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), November 30, 1992 through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907/586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The TAC for Pacific cod in the BSAI is 176,700 metric tons (57 FR 42710, September 16, 1992).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for Pacific cod in the BSAI has been reached. Therefore, NMFS is requiring that Pacific cod be treated as a