38. Section 2.975 is amended by revising paragraphs (b) and (g) to read as follows:

§ 2.975 Application for notification.

* * * * *

(b) The statement required in paragraph (a)(6) of this section shall be signed pursuant to § 2.911(c).

* * * * *

(g) The records of measurement data, measurement procedures, photographs, circuit diagrams, etc. for a device subject to notification shall be retained for two years after the manufacture of said equipment has been permanently discontinued, or, if the responsible party is officially notified that an investigation or any other administrative proceeding involving the equipment has been instituted prior to the expiration of such two year period, until the conclusion of that investigation or proceeding.

§ 2.979 [Removed]

39. Section 2.979 is removed.

§ 2.983 [Amended]

40. Section 2.983 is amended by removing and reserving paragraph (h) and by removing the reference ''subpart C of part 97'' in the last sentence of paragraph (i) and adding in its place ''subpart D of part 97''.

§ 2.1003 [Removed]

41. Section 2.1003 is removed.

42. Section 2.1005 is amended by revising paragraph (a), the introductory text of paragraphs (c) and (c)(4) and paragraph (d) to read as follows:

§ 2.1005 Equipment for use in the Amateur Radio Service.

(a) The general provisions of §§ 2.981, 2.983, 2.991, 2.993, 2.997, 2.999, and 2.1001 shall apply to applications for, and grants of, type acceptance for equipment operated under the requirements of part 97 of this chapter, the Amateur Radio Service.

* * * * *

(c) Any supplier of an external radio frequency power amplifier kit as defined by § 97.3(a)(17) of this chapter shall comply with the following requirements:

* * * * *

(4) The identification label required by § 2.925 shall be permanently affixed to the assembled unit and shall be of sufficient size so as to be easily read. The following information shall be shown on the label:

* * * * *

(d) Type acceptance of external radio frequency power amplifiers and amplifier kits may be denied when denial serves the public interest, convenience and necessity by preventing the use of these amplifiers in services other than the Amateur Radio Service. Other uses of these amplifiers, such as in the Citizens Band Radio Service, are prohibited (§ 95.411 of this chapter). Examples of features which may result in the denial of type acceptance are contained in § 97.317 of this chapter.

§ 2.1033 [Amended]

43. Section 2.1033 is amended by removing and reserving paragraph (b)(10) and by removing the reference ''§ 15.257(e)'' in paragraph (b)(11) and adding in its place ''§ 15.247(e)''.

§ 2.1045 [Removed]

44. Section 2.1045 is removed.

45. Section 2.1300 is revised to read as follows:

§ 2.1300 Cross reference.

The general provisions of this part, §§ 2.911, 2.923, 2.929, 2.935, 2.936, and 2.946 shall apply to applications for and grants of registration for telephone terminal equipment pursuant to part 68 of this chapter.

[FR Doc. 97–5349 Filed 3–5–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346–7035–02; I.D. 120596A]

RIN 0648–XX76

Summer Flounder Fishery; Final Specifications for 1997; Adjustment to 1997 State Quotas; Commercial Quota Harvested for Delaware

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final specifications for the 1997 summer flounder fishery and adjustments to state commercial quotas.

SUMMARY: NMFS issues the final specifications for the 1997 summer flounder fishery that include commercial catch quotas and an increase in commercial minimum fish size, makes adjustments to the commercial quota for the 1997 summer flounder fishery as a result of overages in the 1996 fishing year and, as a consequence of these overages, announces that the summer flounder quota available to the State of Delaware for 1997 has been harvested. The intent of this document is to comply with implementing regulations for the summer flounder fishery that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of this species, require overages in any state to be deducted from that state's commercial quota for the following year, require publication of a notice to advise the State of Delaware that its quota has been harvested, and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in Delaware.

EFFECTIVE DATE: March 4, 1997 through December 31, 1997, except for § 648.103(a) which will be effective April 7, 1997.

ADDRESSES: Copies of the Environmental Assessment and supporting documents used by the Monitoring Committee are available from: Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Dana Hartley, Fishery Management Specialist, 508–281–9226.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder Fishery (FMP) was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. Implementing regulations for the fishery are found at 50 CFR part 648, subparts A and G.

Section 648.100(a) of the regulations implementing the FMP specifies the process for setting annual management measures in order to achieve the fishing mortality (F_{tgt}) rates specified in the FMP. Under Amendment 7 to the FMP, the schedule of F rates sets a target fishing mortality rate of 0.41 in 1996, 0.3 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18.51 million lb (8.4 million kg), unless the fishing mortality rate (F) of 0.23 is met.

Pursuant to § 648.100, the Regional Administrator, Northeast Region, NMFS, implements certain measures for the fishing year to ensure achievement of the appropriate fishing mortality rate.

With the exception of the proposed increase in codend mesh requirements, the measures remain unchanged from the proposed 1997 specifications that were published in the Federal Register on December 18, 1996 (61 FR 66646). These measures include: (1) A coastwide harvest limit of 18.51 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.04 million kg); (3) a coastwide recreational harvest limit of 7.41 million lb (3.36 million kg); and (4) an increase in the minimum commercial fish size from 13 inches (33.0-cm) to 14 inches (35.6 cm).

Detailed background information regarding the development of this rule was provided in the proposed specifications for the 1997 summer flounder fishery and is not repeated here.

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota will be deducted from that state's annual quota for the following year. Based on dealer reports and other information, NMFS has determined that the States of Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Virginia, and North Carolina have exceeded their 1996 quotas. The remaining States of New Hampshire and Maryland did not exceed their 1996 quotas. A complete summary of 1996 quota overages is shown in Table 1.

After the proposed 1997 specifications were published, a document was published adjusting the State of Delaware's 1996 quota based on data that indicated additional landings in that State in 1995 (61 FR 67497, December 23, 1996). Consequently, Delaware's 1996 commercial quota was adjusted to reflect those landings. The resulting quota was 278 lb (126 kg). Landings in 1996 were well in excess of that number, and the resulting overage leaves no quota available for 1997.

Commercial Quota

The coastwide commercial quota is allocated among the states based on historical catch shares specified in the regulations. Table 2 presents the 1997 commercial quota (11,111,298 lb; 5,040,000 kg) apportioned among the states according to the percentage shares specified in § 648.100(d)(1), and the resulting quotas after deductions were made for 1996 overages.

TABLE 1.—1996 STATE COMMERCIAL QUOTAS, LANDINGS AND OVERAGES

State	1996 Quota		1996 Landings		1996 Overages	
	lb	(kg) [1]	lb	(kg)	lb	(kg)
ME	5,284	1,062	8,226	3,731	2,942	1,334
NH	51	23	0	0	0	0
MA	752,092	328,350	780,297	353,940	28,205	12,794
RI	1,620,342	715,390	1,663,520	754,560	43,178	19,585
CT	250,791	113,757	278,776	126,451	27,985	12,694
NY	844,976	345,723	927,763	420,826	82,787	37,552
NJ	1,858,363	621,996	2,345,460	1,063,883	487,097	220,943
DE	278	126	7,153	3,245	6,875	3,118
MD	226,570	102,770	225,051	102,081	0	0
VA [2]	2,200,681	962,062	2,280,457	1,034,398	79,776	36,186
NC	2,451,068	1,111,786	3,688,217	1,672,947	1,237,149	561,161
Totals	10,210,496	4,631,403	12,204,920	5,536,059	1,995,994	905,368

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Includes preliminary inshore landings data provided by the Commonwealth of Virginia.

TABLE 2.—1997 STATE COMMERCIAL QUOTAS, AS ADJUSTED FOR 1996 OVERAGES

State	Share percent	Initial 1997 quota		Adjusted 1997 quota	
		lb	(kg) [1]	lb	(kg)
ME	0.04756	5,284	2,397	2,342	1,062
NH	0.00046	51	23	51	23
MA	6.82046	757,8413	43,751	729,636	330,957
RI	15.68298	1,742,583	790,422	1,699,405	770,837
CT	2.25708	250,791	113,757	222,806	101,063
NY	7.64699	849,680	385,408	766,893	347,857
NJ	16.72499	1,858,363	842,939	1,371,266	621,996
DE	0.01779	1,977	897	[2] (4,898)	(2,222)
MD	2.03910	226,570	102,770	226,570	102,770
VA	21.31676	2,368,569	1,074,365	2,288,793	1,038,179
NC	27.44584	3,049,589	1,383,270	1,812,440	822,109
Totals		11,111,298	5,040,000	9,115,304	4,134,632

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Numbers in parentheses are negative.

Recreational catch data for 1996 are not yet available. The Council and Commission will consider modifications to the recreational possession limit and recreational season after a review of that information.

Changes From the Proposed Rule

In response to public, state agency, and Council comments, NMFS has decided not to implement the proposed

measure that would have increased the present minimum codend mesh regulation of 5.5-inch diamond (14.0-cm) to 6-inch (15.2-cm) diamond. The measure was opposed by a majority of the commenters. An alternative measure is proposed in Amendment 10 to the FMP to require 5.5-inch (14.0-cm) mesh throughout the net. This amendment is under development by the Council, and the Council has requested implementation of this measure through the new interim measure provision of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Action on that request is pending.

In the meantime, the current net restrictions coupled with the increase in commercial minimum fish size will provide some reductions in F. During public participation at the Council meetings, and in the comments received on the proposed rule, industry members made the point that net violations (the use of liners and tying off the codend) have occurred because fisherman felt that the existing mesh regulation (5.5-inch (14.0-cm) codend) was too large to retain sufficiently 13-inch (33.0-cm) fish. Increasing the minimum fish size should reduce the incentive for these violations, as 13-inch (33.0-cm) fish cannot be retained.

Lastly, the Council's proposal to require 5.5-inch (14.0-cm) mesh throughout the net, if approved, will require a considerable financial investment on the part of the industry. Although many industry members that fish for summer flounder in the northern part of its range may already own 6-inch (15.2-cm) codends, commenters indicated that the limited availability of 6-inch (15.2-cm) codends and expense of meeting this requirement for Federal permit holders in other areas would present some problems. Industry members have also stated in their comments that because the measure to require 5.5-inch (14.0-cm) mesh throughout the net has been discussed so much at Commission and Council meetings, many fishermen have been gearing up for this change. Requiring an increase to a 6-inch (15.2-cm) codend at this time would only compound the expense of gear modifications.

Comments and Responses

Comments regarding the 1997 proposed annual specifications for summer flounder were received from 24 organizations or individuals. These included Congressional representatives, industry members and associations, state agencies, various individuals, and the Mid-Atlantic Fishery Management Council. Three commenters approved of all the proposed measures. Ten commenters indicated opposition to the proposed increase in the codend mesh to 6 inches (15.2-cm) but approved of the proposed increase in minimum fish size and supported or accepted the coastwide harvest limit and the commercial quota. Two commenters expressed disapproval for the proposed increase in the codend mesh, as well as the commercial quota, but supported the proposed increase in commercial minimum fish size. Three commenters expressed opposition to the proposed increases in commercial minimum fish size, and codend mesh, but supported or accepted the proposed commercial quota. One commenter expressed concern and opposition to the proposed 1997 commercial quota because of the impacts after the deduction of quota overages from the previous year. Four commenters opposed the 1997 commercial quota based on indications of stock biomass strength early in January 1997. They also were dissatisfied with the rationale used to decide that the measures would not significantly impact a substantial number of small entities. One commenter, representing a fisheries association, opposed all measures. Several letters offered suggestions for future management that are not within the scope of this final rule.

Comment 1. A vessel captain, a former commercial fisherman, and a U.S. Congressman wrote to extend their support for all measures. All expressed concern about the overages in the commercial fishery and urged NMFS to approve the proposed specifications. One commenter noted that, although there may be a lot of political pressure to the contrary, it is essential to ''finally regulate a fishing industry that is on the verge of self destruction.''

Response 1. NMFS agrees that regulation is needed to rebuild the summer flounder resource, but in establishing such measures, must balance the benefits of conservation with the impact on industry. For the reasons outlined in the preamble, NMFS has determined not to implement the codend mesh increase at this time.

Comment 2. Sixteen of the comments were in opposition to the proposed increase in codend mesh from the present 5.5 inches (14.0-cm) to 6 inches (15.2-cm). Of these, 14 were in favor of replacing this measure with one that would require 5.5-inch (14.0-cm) mesh throughout the net. This measure has been proposed in an upcoming plan amendment (Amendment 10) and appears to be widely supported by the Council, the Commission, and industry members. The Council seeks earlier implementation of this measure through an interim management measure procedure contained in the Magnuson-Stevens Act. The Council and a North Carolina fisheries association would also like to see the option for a 6-inch (15.2-cm) codend as part of this pending amendment to aid industry members who already own them.

Many industry members commented that because the measure to go to 5.5-inch (14.0-cm) mesh throughout the net has been discussed and supported by the Council and Commission, many industry members have made an initial investment in constructing nets that meet these specifications. Further, a marine supply distributor noted that the proposed measure for 6-inch (15.2-cm) codend mesh would present some problems in his industry and for the manufacturer. He stated that the polyethylene used to construct codends requires 3 or 4 months to manufacture. He feels that it may be difficult to acquire 6-inch (15.2-cm) mesh if the proposed measure is approved. He stressed that the time it takes to meet these proposed gear changes should be considered in the management process.

The Connecticut Department of Environmental Protection and a Council member stated that the proposed increase in the codend would have significant negative impacts on Federal permit holders who fish primarily in state waters, especially for those dependent upon the winter flounder fishery. Similarly, Federal permit holders from the more southern states within the management unit emphasized that raising the minimum mesh size for summer flounder would be a *de facto* increase in the minimum mesh requirement for the Mid-Atlantic groundfish fishery. The regulations in the Fishery Management Plan for the Northeast Multispecies Fishery declare that the minimum mesh requirement for vessels fishing in the Mid-Atlantic regulated mesh area (the area bounded on the east by a line running from the shoreline along 72°30′ west long.) is the mesh requirement specified in the summer flounder regulations. Meeting this required change would be a considerable expense for the industry. Many of the commenters stressed the need for net retention studies.

Response 2. NMFS intends to pursue the possibility of implementing the measure for 5.5-inch (14.0-cm) mesh throughout the net via the interim management measure process. Because this process was only recently made available through the Magnuson Stevens Act, guidelines governing its use are presently being developed. Similarly, it

is unclear until the guidelines are promulgated how much time it will take to implement this measure through the interim management measure process. NMFS agrees that there appears to be wide support for 5.5-inch (14.0-cm) mesh throughout the net, but this measure has yet to be taken to public hearing.

NMFS is aware that the codend mesh requirement for the Mid-Atlantic groundfish fishery is dependent upon the mesh requirement set for the summer flounder fishery and acknowledges some costs would have accompanied the proposed increase in codend mesh for both fisheries. Similarly, depending upon the state requirement for minimum mesh in the multispecies winter flounder fishery (state waters exemption program), Federal permit holders who fish primarily in state waters for winter flounder would have to purchase new codends to meet the proposed increase in minimum codend mesh for the summer flounder fishery.

NMFS makes every effort to anticipate the costs of proposed measures to the industry. In addition, proposed measures are subject to public hearing and a comment period so that concerns such as these can be expressed and addressed. For the reasons presented by commenters here and addressed in the preamble, NMFS has determined not to implement the proposed increase in codend mesh.

NMFS is currently unaware of any ongoing summer flounder net retention studies and acknowledges the need for these studies for many of the regulated fisheries. NMFS funds are limited and unless monies can be made available, NMFS must rely on the industry and other sources to procure accurate catch information associated with mesh size.

Comment 3. Four commenters opposed the proposed increase in commercial minimum fish size. Reasons for this opposition centered around the issue of increased discard mortality. An industry advisor to the Council used discard rates given in Amendment 2 to the FMP for summer flounder to illustrate this. Those that oppose the increase would rather see 13-inch (33.0-cm) fish count toward the quota rather than toward discards.

Response 3. Amendment 2 to the FMP for summer flounder implemented a 5.5-inch (14.0-cm) codend mesh and a 13-inch (33.0-cm) total length minimum fish size for the commercial fishery. At the time of Amendment 2, these measures were intended to target 14-inch (35.6-cm) fish. However, the Council and Commission recognized that a 5.5-inch (14.0-cm) mesh would retain some 13-inch (33.0-cm) fish and decided that allowing fishermen to land 13-inch (33.0-cm) fish would be less wasteful. Unfortunately, this allowance has resulted in the unintended targeting of 13-inch (33.0-cm) fish. Mortality has increased for fish of this size well beyond the mortality associated with an incidental take of this size fish.

Many industry members have indicated that the current minimum codend mesh is too large to target sufficiently 13-inch (33.0-cm) fish. They have also indicated that raising the minimum mesh size would discourage cheating and lessen the impacts and discard mortality on still smaller fish captured in nets that are fished with liners or with codends that have been tied off. NMFS agrees that, initially, it would appear that discard values will increase under the proposed specifications. However, successful regulations require the support of those subject to them. NMFS has received many indications that the previous minimum fish size has not worked to conserve 13-inch (33.0-cm) summer flounder. NMFS anticipates improved compliance with net regulations because the increase in minimum size will act as a disincentive to target 13-inch (33.0-cm) fish with illegal mesh or other net modifications (such as tying off the net) since these fish cannot be retained. Thus, increasing the minimum fish size will serve to reduce mortality on younger fish.

Comment 4. Fifteen commenters supported the proposed increase in commercial minimum fish size. They felt that the measure would contribute toward conservation of younger fish and would eliminate the incentive for net violations (tying off the codend or using liners).

Response 4. For the reasons outlined in the response above and presented in the preamble, NMFS agrees with this comment.

Comment 5. Seven commenters felt that the proposed commercial quota is too low. They suggest alternate commercial quotas that range from 18.51 million lb (8.4 million kg) to 30 million lb (13.6 million kg) and stress the economic hardships associated with the proposed quota level. Many participants believe that biomass has been underrepresented in the stock assessments and believe that NMFS is being overly cautious at the expense of the industry. They cite various factors that may have contributed to an inaccurate assessment, including aging discrepancies, data collection problems, and cyclical environmental events.

Response 5. Scientists have noted the increase in biomass. This increase was forecast in their projections. NMFS expects that harvesters would also note the increase in biomass, and NMFS commits substantial resources to compiling observations from industry members. These observations, through biological sampling, interviews with captains, vessel logbooks, and other methods, contribute toward stock assessments. Although biomass has increased, the age structure of the stock remains compressed in that it only contains the younger age classes. NMFS, the Council, and Commission are committed to the conservation of these younger age classes to improve the long-term viability of the stock and ultimately the industry.

The 1997 commercial quota for summer flounder is set at the upper limit authorized by the FMP, which does not allow the commercial quota to exceed this ''cap'' unless the fishing mortality rate of 0.23 is met. The target fishing mortality rate for 1997, as part of the rebuilding schedule implemented under the FMP, is 0.30. In every year since 1993, the fishing mortality rate has exceeded the goal of the rebuilding schedule. Therefore, increasing the quota is not allowed under the regulations implementing the FMP and is not advised based on the best available scientific information.

Comment 6. A U.S. Senator from North Carolina noted that the summer flounder fishery is extremely valuable to the State and its residents and noted that, although the summer flounder stock is at 80 percent of its historic peak level, the 1997 North Carolina quota will be the lowest in history. The Senator also expressed concern about the impact that overage deductions will have on the State.

Response 6. The 22nd Stock Assessment Workshop (SAW) reported that the stock is at the medium level of historical abundance. The coastwide harvest limit and commercial quota level are set at the FMP's ''cap.'' The process of overage deductions for landings that exceed the quota in any state is also outlined in the regulations. The Council recommended the commercial quota level in an attempt to balance stock conservation with economic impact. NMFS acknowledges that overharvest in prior years will have an impact on the quota level for North Carolina in 1997 and advises that the State consider management measures used by other states to prolong the harvest of the quota and support the price per pound paid to fishermen. For instance, states with a small share percentage of the commercial quota use trip limit systems that effectively extend their quota, spread catches over various

fleet sectors, and maximize ex-vessel and market values.

Comment 7. Several commenters raised the issue that the proposed increase in minimum fish size and codend mesh would force longer tow times because these measures would result in the loss of 30 percent of 14-inch (35.6-cm) fish. This increased effort would, in turn, raise fuel and crew costs.

Response 7. NMFS has determined not to implement the mesh increase. Therefore, decreases in relative catch will be less than anticipated. Raising the minimum fish size may increase effort but because of this measure, landing larger, more valuable fish may offset these costs.

Comment 8. A commenter from North Carolina contested the statement that larger fish bring a higher price and, therefore, offset any increased costs associated with the proposed rule. The commenter also contended that this conclusion of the impacts of this measure on small businesses is unsatisfactory.

Response 8. Data supplied by both the commenter and NMFS weighout database indicate that summer flounder prices tend to increase with the size of the fish landed. Weighout data in 1993 indicate prices ranged from $1.10 per lb for small summer flounder to $2.41 per lb for jumbos. Preliminary figures for 1997 indicate that nearly 90 percent of the summer flounder landed in North Carolina were in the medium and large size ranges. Medium fish average between 14 and 16.1 inches (35.6–40.8 cm) and large fish average between 16.5 and 18.2 inches (42–46.2-cm). If the market were to be ''flooded'' with large or jumbo fish sufficient to drive down the price of those fish, the net effect would still be positive, as a large or jumbo fish would still hold more value than a medium or large fish, even if all the categories were priced the same, based on the weight of those fish.

The Regulatory Flexibility Act (RFA) requires that agencies consider the economic impact of their rulemakings on small entities, including small businesses. Based on the best available data, NMFS concluded that this rule would not have a significant economic impact on a substantial number of small entities. As explained above, the data presented by the commenter, supports this conclusion.

Comment 9. Several commenters stressed that most North Carolina fishermen do not participate in the groundfish fishery and do not have 6-inch (15.2-cm) codends. Therefore, costs would increase.

Response 9. Approximately 75 percent of the North Carolina vessels that hold commercial summer flounder permits also hold permits for the Northeast Multispecies fishery. Presuming such vessels do not fish outside of the Mid-Atlantic regulated mesh area (described in Comment 1), the need for a 6-inch (15.2-cm) mesh (the mesh size required throughout the net in areas other than the Mid-Atlantic regulated mesh area) would not arise and the vessel might not possess the 6-inch (15.2-cm) diamond mesh. While NMFS still contends that any costs associated with the change would be minor because codends are routinely replaced as part of normal operating expenses, the Council has repeatedly stressed its desire for a mesh requirement of 5.5 inches (14.0-cm) throughout the net. For this and other reasons as described in the preamble of this rule, NMFS has determined that the 6-inch (15.2-cm) codend mesh would be inappropriate at this time.

Comment 10. Several commenters contend that North Carolina is receiving only 42 percent of its historical landings since 1989 and that a 58-percent reduction is significant under the RFA.

Response 10. NMFS is required to conduct a regulatory flexibility analysis to consider the needs and concerns of small entities, unless, as in this case, it makes a determination that the rule will not have a significant impact on a substantial number of small entities. The determination of significance of a rule is made regarding the impact of the rule on the recent or current situation of small entities. The RFA does not require NMFS to compare the level of the 1997 summer flounder quota with the amount of summer flounder harvested in 1989 to determine if the 1997 quota is significant. The RFA requires NMFS to determine the incremental impact of the 1997 summer flounder quota relative to the impacts of the 1996 summer flounder quota on those same entities, as last year's quota represents the baseline under which these small entities operated. The impact of the incremental change from 1996 to 1997 has been determined to be not significant.

With respect to the incremental impact of this action on North Carolina, the coastwide harvest limit and commercial quota for 1997 are no different than those set for 1996. Thus, the impact of the 1997 quota on North Carolina is not significant. North Carolina's adjusted quota for 1997 reflects deductions to the 1997 quota due to overages in excess of its quotas in 1995 and 1996.

Comment 11. A commenter wanted to know how vessels, unable to take advantage of a season as brief as the 10-day season in North Carolina in 1997, were accounted for in the regulatory flexibility analysis.

Response 11. The RFA requires analysis of the economic impacts of a regulatory action, in total. To the extent that the various sectors are impacted differently by a regulatory action, the regulatory flexibility analysis should address the impacts on those sectors. However, nothing in the RFA requires analysis of the economic impact of a regulation on an individual small entity. In fact, such an evaluation would be impossible to conduct. For the industry as a whole, the economic impacts of the proposed quota are not significant because the total quota is the same for 1997 as it was in 1996 (before overages). The ''cap'' on the quota established under Amendment 7, which revised the rebuilding schedule, was deemed to have significant positive impacts on the industry relative to the quota that would have been implemented had the amendment not been passed. The quota implemented by this action is set equal to that ''cap.'' The State of North Carolina, as with all the states implementing the quota, has the ability to further manage its allocation through trip limits and/or seasons, as the State deems appropriate for its fishery. How a state chooses to utilize its allocation is beyond the scope of the economic analysis and the regulations implemented here.

Comment 12. One commenter questioned the combined effects under the RFA of regulations in other fisheries, particularly striped bass and weakfish, on the North Carolina summer flounder fishery and remarked on a reduction in permit holders fishing in the State.

Response 12. While various regulations may impact fishery participants differently, the RFA does not require an analysis of cumulative impacts of regulations other than those being proposed in a given action. NMFS acknowledges that there may be such cumulative effects. However, it would be nearly impossible to anticipate behavioral changes by the industry in response to every regulatory change. While there may be a reduction of permit holders in North Carolina, this does not necessarily mean a reduction in fishing effort. Some vessel owners may have shifted their vessels to other states but remain in the fishery.

Comment 13. Many commenters voiced concerns about state commercial quota overages and urged NMFS to improve the quota monitoring system. Similarly, NMFS was advised to

improve enforcement and to reduce underreporting and high levels of discards associated with the summer flounder fishery.

Response 13. At the September 1996 Council meeting, the Council discussed the need for improved enforcement and quota monitoring. At that meeting, the Council proposed to establish a committee of enforcement personnel and quota system administrators to evaluate the commercial reporting requirements of the Summer Flounder FMP. The goal of this committee was to develop by January 1, 1997, an investigation and enforcement strategy to ensure compliance with vessel owner and dealer permit and reporting requirements. The committee has met several times to discuss ways to improve compliance on the part of the states, federally permitted dealers, and fishermen. NMFS anticipates that the Commission will adopt compliance criteria in Amendment 10 to the FMP.

NMFS has limited authority under the current regulations to improve quota monitoring. NMFS has taken steps to secure direct landings reports from federally permitted dealers in states that have been late in reporting those landings. This will constitute a duplication of effort (double reporting), but NMFS believes this is the only effective alternative available at present.

NMFS law enforcement personnel review proposed regulations and work with the Council to facilitate plan development with enforceability as a central component. Additionally, law enforcement personnel work proactively with industry and the Coast Guard to promote training and education concerning fishery regulations. NMFS law enforcement personnel continue to conduct periodic random checks for compliance of federally permitted dealers and vessels. Further, NMFS maintains cooperative agreements with several states that provide for increased and improved enforcement coverage.

Comment 14. One commenter contended that the statement that net violations (tying off the codend) have occurred in the summer flounder fishery is largely unsubstantiated in NMFS law enforcement records.

Response 14. Although NMFS has relatively few records of this type of violation for the summer flounder fishery in 1996, harvesters and other industry members have given every indication that violations involving the use of liners or tying off the codend are a concern. In addition, the 22nd SAW reports that high discards probably contributed to the pattern of underestimating the fishing mortality in the present assessment and in past assessments. These net infractions contribute directly and substantially to the discard rate.

Classification

This action is authorized by 50 CFR part 648 and complies with the National Environmental Policy Act.

These final specifications are exempt from review under E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the management measures contained in this rule would not have a significant economic impact on a substantial number of small entities. The reasons for this determination were discussed in the proposed rule published in the Federal Register on December 18, 1996 (61 FR 66646). NMFS received four comments, addressed above, regarding this certification. These comments did not cause NMFS to change its determination regarding the certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Reporting and record keeping requirements.

Dated: March 3, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Effective April 7, 1997 § 648.103, paragraph (a), is revised to read as follows:

§ 648.103 Minimum fish sizes.

(a) The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under § 648.4 (a)(3), 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;

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[FR Doc. 97–5698 Filed 3–4–97; 3:06 pm]

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National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961126330–7039–02; I.D. 110796H]

RIN: 0648–XX72

Atlantic Mackerel, Squid, and Butterfish Fisheries; 1997 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 1997 initial specifications.

SUMMARY: NMFS issues final initial specifications for the 1997 fishing year for Atlantic mackerel, squid, and butterfish (SMB). Regulations governing these fisheries require NMFS to publish specifications for each fishing year. This action is intended to promote the development of the U.S. SMB fisheries.

EFFECTIVE DATE: January 1, 1997, through December 31, 1997.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations and the Environmental Assessment are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648. These regulations stipulate that NMFS publish a document specifying the initial annual amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Procedures for determining the initial annual amounts are found in § 648.21.

Proposed 1997 initial specifications, requesting public comment were published on December 11, 1996 (61 FR 65192). No public comments were received. Therefore, the final 1997 initial specifications are unchanged from those that were proposed. An