

**50 CFR Part 646**

[Docket No. 950110009-5009-01; I.D. 041095B]

RIN 0648-AH45

**Snapper-Grouper Fishery Off the Southern Atlantic States; Landing Gag**

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

**ACTION:** Emergency interim rule; extension of effectiveness.

**SUMMARY:** An emergency interim rule is in effect through April 18, 1995, that requires selected vessels in the commercial snapper-grouper fishery to land gag in a whole condition. NMFS extends the emergency interim rule because conditions justifying the emergency action remain unchanged. The intended effect of this rule is to facilitate the collection of biological data necessary for the management of gag.

**EFFECTIVE DATE:** The amendments to part 646 published on January 18, 1995, at 60 FR 3562 are extended from April 19, 1995, through July 17, 1995, unless terminated earlier by notification in the **Federal Register**.

**ADDRESSES:** Copies of documents supporting this action, including an environmental assessment, may be obtained from Peter J. Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Eldridge, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** Snapper-grouper species off the southern Atlantic states are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 646 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Under section 305(c) of the Magnuson Act, NMFS published an emergency interim rule (60 FR 3562, January 18, 1995) that requires selected vessels in the commercial snapper-grouper fishery to land gag in a whole condition so that their reproductive organs may be collected by NMFS port agents for analysis. Such analysis is vital to determinations of the reproductive capacity of the resource. Because an insufficient number of reproductive organs have been collected, the Council

requested extension of the emergency interim rule through as late as July 17, 1995, with earlier termination if sufficient samples for analysis are collected. NMFS concurs with the Council's request. In accordance with sections 305(c)(3)(B) and (C) of the Magnuson Act, NMFS extends the emergency interim rule through July 17, 1995, unless terminated earlier by notification in the **Federal Register**.

Details concerning the basis for this action and the classification of the rulemaking are contained in the initial emergency interim rule and are not repeated here.

Dated: April 13, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

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**50 CFR Part 651**

[Docket No. 950410096-5096-01; I.D. 032295C]

RIN 0648-AH66

**Northeast Multispecies Fishery; Framework 9**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Framework Adjustment 9 to the Northeast Multispecies Fishery Management Plan (FMP). This rule implements on a permanent basis several measures originally imposed by a temporary emergency rule, with some modifications and additions: A year-round closure of redefined Closed Area I, the Nantucket Lightship Closed Area, and Closed Area II; a small mesh prohibition (with exception criteria) and a prohibition on possession of regulated species while fishing with small mesh; mesh restrictions in the Gulf of Maine juvenile protection areas; an increase in the minimum mesh size in southern New England; a prohibition on scallop dredge vessels from retaining regulated species when they are not fishing under the scallop days-at-sea (DAS) program, and a requirement that the small mesh bycatch provisions apply; and a winter flounder fishing exemption for vessels fishing with small mesh when in state waters, under certain conditions. The intended effect of this rule is to provide some continuing protective measures on groundfish stocks, especially haddock, cod, and yellowtail flounder, while a

more comprehensive plan amendment is developed. Exemptions contained in this action are designed to minimize economic impacts on fishermen without compromising the effects of protective measures on groundfish.

**EFFECTIVE DATES:** April 13, 1995, except § 651.20(i), which is effective May 18, 1995, §§ 651.20(a)(6)(iii)(B), 651.20(j)(1), and 651.21(c)(2)(iv)(A) which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. When OMB approval is received, the effective dates of those paragraphs will be announced in the **Federal Register**.

**ADDRESSES:** Copies of Amendment 5 to the FMP, its regulatory impact review (RIR) and the initial regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 9 (including the Environmental Assessment (EA) supporting the December 12, 1994 emergency action) are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097. Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Richard Roberts, NOAA Information Resources Management Staff, OA1X1, Room 724, 6010 Executive Boulevard, Rockville, MD 20852, and to the Office of Information and Regulatory Affairs (Attention: NOAA Desk Officer), Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Susan A. Murphy, Fishery Policy Analyst, 508-281-9252.

**SUPPLEMENTARY INFORMATION:** Based on new scientific information, the Northeast Regional Stock Assessment Workshop issued a "Special Advisory: Groundfish Status on Georges Bank," and delivered this advisory, along with its 18th Stock Assessment report, to the New England Fishery Management Council (Council) at its August 9-10, 1994, meeting. Because of the collapsed condition of yellowtail flounder and haddock stocks and the strong possibility of collapse of the cod stock, the advisory expressed a need to immediately begin addressing this crisis, stating that management measures contained in Amendment 5 are not nearly sufficient to rebuild these stocks.

Council's response to this unprecedented advisory was to begin immediately to develop Amendment 7, with the objective of reducing fishing

mortality to as close to zero as practicable, to rebuild the key stocks of concern. Options for this FMP amendment are currently being developed to take to public hearing, and its completion and implementation are expected, at the soonest, early next year.

Due to the length of time needed to complete the amendment process, the Council recommended and NMFS approved, an emergency interim rule (59 FR 63926) on December 12, 1994, to implement immediate protective measures to reduce fishing effort on haddock, cod, and yellowtail flounder, and other groundfish.

An emergency action amendment, published on January 13, 1995 (60 FR 3102), made several changes to the emergency rule, including: The addition of several allowable bycatch species to the exempted species list and a revision of the transiting provision for Closed Area I and the Nantucket Lightship Closed Area for safety reasons, so that vessels may transit during storm conditions, provided that the gear is properly stowed.

In order to avoid a hiatus between the emergency action and Amendment 7, the Council, at the strong urging of NMFS, initiated the present framework adjustment, so that the rules promulgated under the emergency action would remain in place until such time that Amendment 7 could be implemented. Failure to implement these measures permanently through a framework adjustment before expiration of the emergency rule action would increase the likelihood of further reductions in stock abundance of various groundfish species.

Since Framework Adjustment 9 could not be implemented before the expiration of the 90-day emergency action, the Council voted at its February 15-16, 1995, meeting to recommend an extension of the emergency action. This extension (60 FR 13078), effective March 13, 1995, through June 10, 1995, incorporated the emergency action and its amendment, and further amended the emergency rule by allowing fishing vessels to transit the closed areas, provided the operator has a demonstrable safety reason and provided the vessel's fishing gear is properly stowed.

Framework 9 implements with some modifications, the measures imposed by the existing emergency interim rule as follows: A year-round closure of a redefined (expanded) Closed Area I, the Nantucket Lightship Closed Area, and Closed Area II; a disallowance of any fishery utilizing mesh smaller than the minimum mesh size allowed for regulated species, with the exception of

fisheries that have been determined to have a catch of less than 5 percent by weight of regulated species; a prohibition on the possession of regulated species while fishing with small mesh; a requirement that all mobile gear vessels fishing in the Stellwagen Bank and Jeffreys Ledge areas, with the exception of mid-water trawl vessels, use a minimum 6-inch (15.24 cm) square mesh codend; and an increase in the minimum mesh size in the Southern New England and Nantucket Lightship Regulated Mesh Areas to 6-inch (15.24 cm) diamond or square mesh.

During the comment period required over two Council meetings in the development of Framework Adjustment 9, several modifications and additions to the emergency action were made with the intent to mitigate some of the economic impacts imposed by the emergency, without compromising its ability to protect the principal groundfish stocks.

Framework 9 implements an exemption to the Nantucket Lightship Closed Area for recreational and party/charter vessels. Under this exemption, party/charter vessels are required to obtain and have on board an authorization letter from the Director, Northeast Region, NMFS (Regional Director). Recreational and party/charter vessels are prohibited from selling any fish that are caught (regardless of where they are caught), and are prohibited from possessing any gear except rod and reel or hand gear on board the vessel. NMFS' database does not include catch information, by area, for the recreational sector, but industry comments indicate that the recreational target species in this area is primarily white hake, with pollock and cod being caught to a lesser extent. Fishing is likely to be limited to only the larger charter vessels, because of this area's distance from shore. The exemption with its restriction on sale and gear should have a minimal impact on the depleted stocks, but is expected to mitigate the economic burden on this sector of the industry, according to public and Council member testimony. The other closed areas remain closed all to recreational fishing.

This framework allows vessels using pelagic hook gear (both recreational and commercial) and pelagic harpoon gear to fish in the closed areas, provided there is no retention of regulated species. Since pelagic hook gear lands virtually no multispecies, and harpoon gear is incapable of catching groundfish, these fisheries will have no impact on the stocks of concern. An explanation of both pelagic longline gear and harpoon

gear is included under the definitions section.

Under this framework action, the hagfish pot fishery is also allowed to occur in the closed areas. Based on anecdotal information and because of the design of the gear, this relatively small fishery takes almost no regulated species and consequently has no impact on the resource the framework measures seek to protect.

The Northeast Fisheries Science Center (NEFSC) has commented that the year-round area closures will have a beneficial conservation effect, although they are insufficient to ensure stock recovery.

Although both U.S. Coast Guard (USCG) and NMFS Enforcement (Enforcement) have expressed concern that allowing any additional vessels fishing access to the closed areas would compromise the ability to enforce such closures, the Council recommended and NMFS has approved these exceptions because they relieve an economic burden on the fishing industry, have relatively little or no impact on the groundfish stocks, and in some cases will help mitigate gear conflicts outside of the closed areas. In addition, the exempted gears are readily distinguishable from other gear types.

This framework adjustment also allows vessels to transit freely Closed Area I and the Nantucket Lightship Closed Area, provided that the gear is not available for immediate use and is properly stowed. Again, USCG and Enforcement have indicated that this measure would affect enforcement operations. However, the Council recommended and NMFS concurred that the benefit of allowing free and open transit outweighs this concern, because the economic burden of requiring vessels to steam around these large areas is significant for many such vessels, both in terms of lost time and fuel costs. The USCG and NMFS have both issued toll-free telephone numbers to be used by the fishing industry in reporting violations to the rules and regulations. Fishers have indicated that they want to be more involved in reporting violators, since they are becoming increasingly aware that any infringement on the regulations will only hurt them in the long run through the need for additional restrictions on the entire fleet.

Vessels are also allowed to transit the Gulf of Maine/Georges Bank regulated mesh area with small-mesh nets and small-mesh species on board, provided that the vessel has on board an authorization letter from the Regional Director, does not fish or possess regulated species, and does not fish for

other prohibited species in the non-exempt areas. This provision is added to this final rule because under the emergency action vessels were allowed to transit the Small-Mesh Exemption Area and fish outside of that area, provided that when they were transiting this area their small mesh nets were stowed and they did not have fish on board. However, due to this restriction, the vessels with home ports in this area, which runs from Maine to Massachusetts, were not allowed to transit back to their home port to offload. The transiting provision will remove this restriction while not affecting the conservation objective of the small-mesh prohibition.

Framework Adjustment 9 also expands the allowable bycatch species that may be retained when fishing under the small-mesh exempted species program. This framework adjustment allows retention of two standard totes of silver hake in the northern shrimp fishery, as well as the retention of limited amounts of monkfish and lobster in all of the exempted small-mesh fisheries. For monkfish, a vessel is restricted to 10 percent of the total weight of other fish possessed on board. For lobster, a vessel is allowed 10 percent of the total weight of other fish on board or 200 lobsters, whichever is less. While these species are not exempted directed fisheries under the small-mesh program in their particular areas, the caps placed on each of them represent a legitimate bycatch in the exempted fisheries and because the caps are low enough they do not provide an incentive to direct on these species. This adjustment will reduce discards and provide additional revenue to the industry.

This framework adjustment also imposes restrictions on vessels fishing with scallop dredge gear when they are not fishing under the scallop DAS program and on vessels fishing with scallop dredge gear with general scallop permits. Under this rule, these vessels are prohibited from retaining regulated species and are subject to the same bycatch restrictions applicable to the small-mesh fisheries, except that a vessel may possess up to 400 lb (181.44 kg) of shucked scallops as specified under 50 CFR Part 650, Atlantic Sea Scallop Fishery. Because scallop dredge vessels have increased their efforts on other species, including monkfish, lobster and yellowtail flounder, when not fishing for scallops, the harvesting and discarding of groundfish is uncontrolled and potentially significant. The Council believes, and NMFS concurs, that without any limitations on this practice, it will escalate as scallop

DAS are further reduced. Vessels operating under the state waters scallop fishery, as described under the Atlantic Sea Scallop FMP, are exempt from this requirement.

The Regional Director has determined that the Cultivator Shoal whiting fishery also meets the small-mesh exemption requirement and, therefore, is allowed under this framework adjustment, subject to the same restrictions as other small-mesh fisheries. In addition to whiting, vessels fishing under this exemption may retain, as allowable bycatch species, longhorn sculpin, and the bycatch provisions specified for monkfish and lobsters.

Finally, Framework Adjustment 9 exempts vessels that hold a Federal multispecies permit from the Federal mesh requirements when fishing on winter flounder in state waters, provided the following conditions are met: The vessel has on board a certificate issued by a state agency authorizing the vessel's participation in that state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder; the vessel is fishing exclusively in the waters of the state from which the exemption certificate was obtained; the applicable state's winter flounder plan has been approved by the Atlantic States Marine Fisheries Commission (ASMFC) as being in compliance with the ASMFC Winter Flounder Fishery Management Plan; the state elects, by a letter to the Regional Director, to participate in the exemption program described in this section; fishing vessels issued a limited access permit that are fishing under the DAS program or under the small boat or sink gillnet DAS exemption program specified under § 651.22(d), do not fish for, possess or land regulated species, exclusive of winter flounder; the vessel does not enter or transit the EEZ; and the vessel does not enter or transit the waters of another state unless such other state is participating in the exemption program and the vessel is enrolled in that state's program.

Vessels fishing under the state waters winter flounder exemption program with a possession-limit-only permit, or vessels subject to the effort control programs and declared out of the multispecies fishery, or who are not fishing under the DAS program, may possess up to the possession limit of winter flounder, provided the vessel does not fish for regulated species, exclusive of winter flounder. Vessels using hook gear and fishing under the hook-gear-only categories would

continue to be exempt from any possession limit on regulated species.

The ASMFC approved a fishery management plan for inshore stocks of winter flounder in May, 1992. The plan's fishing mortality objectives, a maximum spawning potential (MSP) target of 30 percent by January 1, 1995, and a MSP target of 40 percent by January, 1999, are more restrictive than the FMP for federally managed stocks (20 percent MSP). The ASMFC also allows individual states to utilize different measures to achieve the same objective. Under the multispecies regulations, when a federally permitted vessel is fishing for winter flounder in state waters, the most restrictive of either the state or Federal regulations apply. This framework alleviates the cumulative impact of winter flounder regulations on the fishing industry, while still achieving the most conservative management objective for other regulated species as defined in the FMP. The requirement that vessels must retain an exemption certificate issued by the state on board the vessel should mitigate any enforcement problem that this rule would impose.

Since redefined Closed Area I, as outlined in this framework action, overlaps the Cultivator Shoal Whiting Area, § 651.20, paragraph (a)(4), has been changed to reflect the reduced size. Also, because this framework requires vessels to have 6-inch (15.24-cm) mesh, diamond or square, when fishing on regulated species in the southern New England and Nantucket Lightship regulated mesh areas, and because vessels are now allowed to transit the Nantucket Lightship regulated mesh area with small mesh, the Nantucket Lightship regulated mesh area distinction is no longer valid. However, to maintain the numbering sequence of the prohibitions, for enforcement purposes, this section is reserved as specified in § 651.20(b).

This action also adds scientific names for the added allowable bycatch species to help in species identification. Further, paragraph (e)(4) is added to § 651.21 as a stowage provision for sink gillnet gear when transiting the closed areas.

NMFS is amending the multispecies regulations following the procedure for framework adjustments established by Amendment 5 and codified in 50 CFR 651, subpart C. The Council followed this procedure when making adjustments to the FMP, by developing and analyzing the actions over the span of a minimum of two Council meetings. Framework Adjustment 9 was initiated at the Council's December 7-8, 1994, meeting and was followed by meetings

on January 11–12, 1995, and February 15–16, 1995. The Council provided the public with advance notice of both the proposal and the analysis, and opportunity to comment on them prior to and at the February 15–16 Council meeting. Upon review of the analysis and public comment, the Council recommended to the Regional Director that the measures contained in Framework Adjustment 9 be published as a final rule. The Regional Director has determined that the measures in Framework Adjustment 9 are appropriate to publish as a final rule.

Because many of the measures contained within this rule relieve a burden on the fishing industry, it is the intent of the Council and NMFS that Framework Adjustment 9 supersede the extension to the emergency action.

The Council has clearly stated that this framework adjustment, with its modifications, does not necessarily reflect its policies in regard to the development of Amendment 7.

#### Comments and Responses

Written comments were submitted by Capt. John Boats, Inc., East Coast Fisheries Federation, Inc., Greenpeace, NMFS Office of Enforcement (NE Region), Plum Island Surfcasters, Ram Point Marina, Inc., Seafarers International Union of No. America (AFL–CIO), Shinnecock Marlin & Tuna Club, Inc., *The Fisherman Magazine*, U.S. Coast Guard, Zonta Club of Northampton, and 1,168 individuals including Congressman Patrick J. Kennedy (RI). One association and three individuals supported everything in the framework amendment. Several letters addressed solutions that are not within the scope of this framework amendment. The majority of letters addressed the exemption for recreational vessels fishing in the Nantucket Lightship Closed Area.

*Comment 1:* Of the 1,168 individual letters, 664 were signed form letters submitted by a representative of the Francis Fleet supporting an exemption for recreational fishing in the yellowtail area south of Nantucket. Most of the remainder were signed form letters submitted independently, but identical to the Francis Fleet submission, supporting a recreational exemption. Further, Congressman Kennedy supported the recreational exemption. Four associations supported the exemption.

*Response:* The letters of support have been noted and an exemption for recreational and charter vessels in the Nantucket Lightship Closed Area, under the conditions specified in this framework, has been approved.

*Comment 2:* Two of the associations (one of which attached a petition signed by 28 individuals) and eight individuals supported exempting recreational fisheries from the possible closing of Georges Bank.

*Response:* The only recreational fishing exemption under consideration by the New England Fishery Management Council during the framework process was a proposal to exempt recreational fishing in the Nantucket Lightship Closed Area. The issue of closing additional areas will be dealt with by Amendment 7 to the Northeast Multispecies FMP. Therefore, comments supporting a recreational fishing exemption on Georges Bank should be made during hearings to be scheduled regarding Amendment 7.

*Comment 3:* One association (speaking for recreational fishing vessels) opposed the transiting prohibition through the Nantucket Lightship Closed Area. It stated that the prohibition is dangerous for vessels fishing the east side of Nantucket shoals.

*Response:* An exception allowing transiting through the Nantucket Lightship Closed Area and Closed Area I for all fishing vessels, including recreational and charter vessels, under the conditions specified in this framework, has been approved.

*Comment 4:* One association, with 16 signatures on its letter, supported the fishing limitations on Georges Bank and urged an extension of the 6-month emergency action to allow for stock rebuilding.

*Response:* The Magnuson Act authorizes for emergency rules to be effective for up to 90 days, with a provision that they may be extended by Council recommendation for an additional 90 days. As no authority exists for another extension by emergency rule, the Council initiated this framework action under the abbreviated rulemaking procedures established by Amendment 5. Its effect will be to continue the measures promulgated under the emergency action until at least such time as a more comprehensive amendment (Amendment 7) is implemented.

*Comment 5:* One environmental organization urged that the Council not exempt recreational, party, and charter boats from the closure of certain areas of Georges Bank. It disagreed with the recreational sector's argument that the financial hardship posed by their inclusion in the Council's plans should take precedence over the conservation measures deemed necessary by the Council since their impact on regulated species is minimal. It added that the

level of removal of groundfish by the recreational sector works at cross-purposes to the Council's intentions of accomplishing a near-zero fishing mortality rate.

*Response:* This framework allows an exemption only to the Nantucket Lightship Closed Area for recreational, party, and charter vessels. It does not exempt this segment of the fishery from other closed areas of Georges Bank. Furthermore, the sale of fish caught on vessels fishing under this exemption is explicitly prohibited (regardless of where the fish are caught), thereby reducing the incentive to target on critical stocks of groundfish. Each vessel in the party/charter fleet will further need a letter of authorization to enter this closed area, and both recreational and party/charter vessels may carry only hand-line and/or rod-and-reel fishing gear aboard. Anecdotal information indicates that the primary target species in this area is white hake, with pollock and cod being caught to a lesser extent. Although some cod is caught in this area, the Council and NMFS believe it should have a minimal impact on the depleted stocks. Concerning the Council's intentions of accomplishing a near-zero fishing mortality rate, that rate is the basis for stock rebuilding under Amendment 7 of the multispecies FMP, now under development. The driving force for this framework is continuation of temporary measures to slow the decline of multispecies stocks until stock rebuilding regulations are in place.

*Comment 6:* One commentator criticized the make-up of the Council, suggesting that recreational fishing interests are not adequately represented.

*Response:* Of the six appointed at-large members of the Council, four have backgrounds involving recreational fishing interests. Of those four, one is editor of *Salt Water Sportsman Magazine*. There are also five state representatives to the Council, one from each New England state, representing the concerns of all sectors of the fisheries. Furthermore, the Regional Director of NMFS is also a member of the Council, and represents commercial and recreational interests, equitably.

*Comment 7:* One association stated that the emergency rule (whose provisions will continue, as modified, by this framework amendment) unfairly affects the winter flounder fishery in the Mid-Atlantic Regulated Mesh Area. The association seeks an exemption west of 72°30' west longitude.

*Response:* This issue was not adequately analyzed in time for Framework Adjustment 9 but is currently under consideration by the

Council as a separate framework amendment. Framework Adjustment 9 implements a winter flounder exemption for vessels fishing with small mesh when in state waters, under certain conditions.

*Comment 8:* The USCG stated that it will not be able to provide the same assurance of violator detection and resource preservation currently existing, if provisions of this framework amendment allowing vessels into the closed areas are approved. The USCG does not support routine transits through the closed areas and states that closed area enforcement is most effective when only small numbers of vessels are allowed to operate in designated areas.

*Response:* The Council and NMFS considered the USCG comments and weighed them against the industry's comments on the costs of requiring vessels to steam around a closed area, unless a safety reason exists. The Council and NMFS do not expect that allowing free and open transit, with gear stowage requirements and severe penalties (including permit vessel and operator sanctions) for fishing in closed areas, will compromise the conservation impact of the closure. The Council determined that the costs to the industry (fuel, days-at-sea allocations while steaming) of the existing safety-only closure provision outweigh the risk of some decrease in compliance with this alternative.

The Council and NMFS further determined that the cost of closing the three areas to pelagic fishing also outweighs the reduction in enforceability resulting from such a closure exception. The Council and NMFS concluded that prohibiting these vessels from possessing any regulated multispecies while in the closed areas will help in the enforcement of the groundfish closure. As pelagic long-line gear is not fixed or anchored to the bottom and has no cable main line, it is readily distinguishable from groundfish hook gear. The other significant pelagic hook fishery that would take place in any of the closed areas is the General Category bluefin tuna fishery. Vessels fishing under a General Category permit are prohibited from having more than two hooks attached to any line on board and, with a prohibition on the possession of groundfish, can easily be distinguished from a groundfish hook vessel. Furthermore, the pelagic fisheries are regulated by a season-and-quota system that significantly limits the time when pelagic hook vessels may fish.

**Classification**

This action has been determined to be not significant for the purposes of E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comments under 5 U.S.C. 553(b)(B). The provision of advance notice as described in this rule and public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and opportunity for public comment to be made and considered. Thus, additional opportunity for public comment is unnecessary.

The AA also finds that under 5 U.S.C. 553(d)(1), because immediate implementation of this rule relieves an economic hardship on the industry with virtually no impact on the conservation objective, there is no need to delay for 30 days the effectiveness of this regulation, except § 651.20(i) which will be effective May 18, 1995.

This rule contains three new collection-of-information requirements subject to the Paperwork Reduction Act that have been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burden for this collection of information is estimated to be 2 minutes per response for each of the requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

The new requirements are:

1. The winter flounder state waters exemption program (§ 651.20(j)(1)) (2 minutes/response);
2. Gulf of Maine/Georges Bank regulated mesh area transit exemption (§ 651.20(a)(6)(iii)(B)) (2 minutes/response);
3. Nantucket Lightship Closed Area party/charter vessel exemption (§ 651.21(c)(2)(iv)(A)) (2 minutes/response).

Because §§ 651.20(a)(6)(iii)(B), § 651.20(j)(1), and § 651.21(c)(2)(iv)(A) require approval by OMB under the Paper Work Reduction Act which has not yet been received, their effectiveness is delayed pending receipt of such approval. The effective date of those sections will be announced in the **Federal Register**.

The regulations extending the emergency action (60 FR 13078, March

10, 1995) eliminated a notification requirement for vessels transiting closed areas during storm conditions.

Because no proposed rule was required, this action is exempt from the requirements to prepare a Regulatory Flexibility Analysis.

**List of Subjects in 50 CFR Part 651**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 12, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows. These amendments supersede the amendments published at 59 FR 63926, December 12, 1994; 60 FR 3102, January 13, 1995; 60 FR 6446, February 2, 1995; and 60 FR 13078, March 10, 1995.

**PART 651—NORTHEAST MULTISPECIES FISHERY**

1. The authority citation for part 651 continues to read as follows:

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

2. In § 651.2, definitions for "American lobster or lobster", "Harpoon gear or harpoon", "Monkfish", and "Pelagic hook or longline gear" are added, in alphabetical order; and "Atlantic sea scallop or scallop" and "Sink gillnet" are revised as follows:

**§ 651.2 Definitions.**

\* \* \* \* \*

*American lobster or lobster* means the species, *Homarus americanus*.

*Atlantic sea scallop or scallop* means the species, *Placopecten magellanicus*.

\* \* \* \* \*

*Harpoon gear or harpoon* means fishing gear consisting of a pointed dart or iron attached to the end of a line several hundred feet in length, the other end of which is attached to a floating device.

\* \* \* \* \*

*Monkfish* means the species, *Lophius americanus*.

\* \* \* \* \*

*Pelagic hook or longline gear* means fishing gear that is not fixed, nor designed to be fixed, or anchored to the bottom and that consists of monofilament main line (as opposed to a cable main line) to which gangions are attached.

\* \* \* \* \*

*Sink gillnet* means a bottom-tending gillnet, which is any gillnet, anchored or otherwise, that is designed to be, or is

capable of being, or is fished on or near the bottom in the lower third of the water column.

\* \* \* \* \*

3. In § 651.4, paragraph (f) and the last sentence of paragraph (d) is revised and a new paragraph (t) is added to read as follows:

**§ 651.4 Vessel permits.**

\* \* \* \* \*

(d) \* \* \* Except as provided for in § 651.20(j), if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

\* \* \* \* \*

(f) *Information requirements.* (1) In addition to applicable information required to be provided by paragraph (e) of this section, an application for either a limited access multispecies, hook-gear-only, or possession-limit-only permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having owned more than a 25-percent interest; and name and signature of the owner or the owner's authorized representative.

(2) Applications for a limited access multispecies permit must also contain the following information:

(i) The engine horsepower of the vessel as specified in the vessel's most recent permit application for a Federal Fisheries Permit before May 1, 1994. If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to May 1, 1994 such that it is different from that stated in the vessel's most recent application for a Federal

Fisheries Permit before May 1, 1994, sufficient documentation to ascertain the different engine horsepower.

However, the engine replacement must be completed within 1-year of the date of when the contract for the replacement engine was signed.

(ii) The length, gross tonnage, and net tonnage of the vessel as specified in the vessel's most recent permit application for a Federal Fisheries Permit before May 1, 1994. If the length, gross tonnage, or net tonnage was changed or a contract to change the length, gross tonnage or net tonnage had been entered into prior to May 1, 1994 such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit, sufficient documentation to ascertain the different length, gross tonnage or net tonnage. However, the upgrade must be completed within 1 year of the date of when the contract for the upgrade was signed.

(iii) If the vessel owner is applying to fish under the individual DAS program specified in this section, the application must include such election.

(iv) In 1994, vessel owners may change their vessel's DAS category within 30 days of receipt of their 1994 multispecies permit. After 30 days, the vessel must fish only in the DAS program assigned for the remainder of the fishing year. In 1995, if the vessel owner is applying to fish under a different DAS program than was assigned for 1994, the application must include such election and the vessel must fish only in that category for the entire fishing year.

(v) For 1996 and thereafter, a vessel, when fishing under the DAS program, may fish only under the DAS program assigned to it in 1995, or if not assigned in 1995, the DAS program assigned to it on its initial permit to fish under the DAS program. However, any vessel may elect for any year to fish under a hook-gear-only permit if it meets the requirements specified in paragraph (b) of this section.

(vi) Beginning on September 1, 1994, if the vessel is a combination vessel, or if the applicant elects to take an Individual DAS allocation or to use a VTS unit, although not required, a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described in § 651.28(a).

\* \* \* \* \*

(t) *Certificate for winter flounder fishing in state waters.* A vessel permitted under this part and fishing for winter flounder in state waters under the minimum mesh size described in § 651.20(j), must have on board a

certificate issued by the state agency authorizing the vessel's participation in the state waters winter flounder fishing program.

4. In § 651.5, paragraph (a) is revised to read as follows:

**§ 651.5 Operator permits.**

(a) *General.* Any operator of a vessel that has been issued a valid Federal multispecies permit under this part, or any operator of a vessel fishing for multispecies finfish in the EEZ or in possession of multispecies finfish in or harvested from the EEZ, must carry on board a valid operator's permit issued under this part. This requirement does not apply to recreational vessels and vessels that fish exclusively in state waters for multispecies.

\* \* \* \* \*

5. In § 651.9, paragraphs (a), (b), and (e) are revised to read as follows:

**§ 651.9 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 holding a valid Federal multispecies vessel permit issued under this part, issued a permit under § 651.5 or a letter under § 651.4(a)(8)(v), to do any of the following:

(1) Possess or land multispecies finfish smaller than the minimum size as specified in § 651.23.

(2) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 651.7(b).

(3) Fish for, possess, or land multispecies finfish unless the operator of the vessel has been issued an operator's permit under § 651.5, and a valid permit is on board the vessel.

(4) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 651.4(m) or § 651.5(k).

(5) Fail to affix and maintain permanent markings as required by § 651.8.

(6) Sell, transfer, or attempt to sell or transfer to a dealer any multispecies finfish unless the dealer has a valid Federal Dealer's Permit issued under § 651.6.

(7) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove, or otherwise transfer fish from one vessel to another vessel or other floating conveyance unless authorized in writing by the Regional Director pursuant to § 651.30(a).

(8) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(9) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(10) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 651.31.

(11) Land haddock from, or possess haddock on board, a sea scallop dredge vessel during the time specified in § 651.27(b)(1).

(12) Land, or possess on board a vessel, more than 500 lb (226.8 kg) of haddock, or the equivalent in totes or boxes, as specified in § 651.27(b)(2), or violate any of the other provisions specified in § 651.27(b)(2).

(13) Fish with, set, haul back, possess on board a vessel, unless stowed in accordance with § 651.20(c)(4), or fail to remove a sink gillnet from the area and for the times specified in § 651.32(a), unless authorized in writing by the Regional Director.

(14) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, other than transport, any multispecies, unless the transferee has a dealer permit issued under § 651.6.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access permit under § 651.4(a) or a letter under § 651.4(a)(8)(v), to do any of the following:

(1) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a), after using the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22.

(2) If required to have a VTS unit as specified in § 651.28(a) or § 651.29(a):

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 651.28(a) on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage as specified in § 651.29(a).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess, or land multispecies finfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 651.4(a)(5)(i).

(5) Fish for, possess, or land multispecies finfish with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased

or upgraded in excess of limitations specified in § 651.4(a)(5)(ii).

(6) Fail to comply with any requirement regarding the DAS notification as specified in § 651.29.

(7) If not fishing under the VTS system, fail to have on board the vessel a card issued by the Regional Director, as specified in § 651.29(b).

(8) Fail to notify that a vessel is participating in the DAS program as specified in § 651.29(b).

(9) Fail to comply with the other methods of notification requirements, including a call-in system as specified in § 651.29(c), if required by the Regional Director.

(10) Fail to provide notification of the beginning or ending of a DAS before leaving port or before returning to port, as required under § 651.29 (b) or (c).

(11) Fail to comply with the layover day requirement as described in § 651.22(c)(1)(ii)(A).

\* \* \* \* \*

(e) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (d) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, or land multispecies finfish unless:

(i) The multispecies finfish were being fished for or harvested by a vessel holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), and the operator on board such vessel has been issued an operator's permit under § 651.5 and has a valid permit on board the vessel;

(ii) The multispecies finfish were harvested by a vessel not issued a Federal multispecies permit that fishes for multispecies finfish exclusively in state waters; or

(iii) The multispecies finfish were harvested by a recreational fishing vessel.

(2) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a) unless:

(i) The multispecies finfish were harvested by a vessel that has been issued a limited access permit under § 651.4(a), a hook-gear-only permit under § 651.4(b), or a letter under § 651.4(a)(8)(v); or

(ii) The regulated species were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(3) Land, offload, cause to be offloaded, sell, or transfer; or attempt to land, offload, cause to be offloaded, sell, or transfer multispecies finfish from a fishing vessel, whether on land or at sea,

as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 651.7, unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(4) Purchase or receive multispecies finfish, or attempt to purchase or receive multispecies finfish, whether on land or at sea, as a dealer without accurately preparing, submitting in a timely fashion, and retaining the documents required by § 651.7.

(5) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless both vessels qualify under the exception specified in paragraph (e)(1)(ii) of this section, or unless authorized in writing by the Regional Director pursuant to § 651.30(a).

(6) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any multispecies finfish from a trip unless the vessel is holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), or the multispecies finfish were harvested by a vessel without a Federal multispecies permit that fishes for multispecies finfish exclusively in state waters.

(7) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose in the capacity of a dealer, multispecies finfish taken from a fishing vessel, unless in possession of a valid dealer permit issued under § 651.6; except that this prohibition does not apply to multispecies finfish taken from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(8) Purchase, possess, or receive for commercial purposes multispecies finfish caught by a vessel other than one holding a valid Federal multispecies permit under this part, or a letter under § 651.4(a)(8)(v), unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(9) To be or act as an operator of a vessel fishing for or possessing multispecies finfish in or from the EEZ, or holding a Federal multispecies permit under this part without having been issued and possessing a valid operator's permit issued under § 651.5.

(10) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(11) Make any false statement, oral or written, to an authorized officer or employee of NMFS, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any multispecies finfish.

(12) Make any false statement in connection with an application under § 651.4 or § 651.5 or on any report required to be submitted or maintained under § 651.7.

(13) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(14) Fish with, use, or have available for immediate use within the area described in § 651.20(a)(1) nets of mesh size smaller than the minimum mesh size specified in § 651.20(a)(2), except as provided in § 651.20 (a)(3) through (a)(6), (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(15) [Reserved]

(16) Fish with, use, or have available for immediate use within the area described in § 651.20(c)(1) nets of mesh size smaller than the minimum size specified in § 651.20(c)(2), except as provided in § 651.20(c)(3), (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(17) Fish with, use, or have available for immediate use within the area described in § 651.20(d)(1) nets of mesh size smaller than the minimum size specified in § 651.20(d)(2), except as provided in § 651.20(d)(3), (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(18) Enter or be in the area described in § 651.21(a)(1) on a fishing vessel, except as provided in § 651.21(a)(2), (d), and (e).

(19) [Reserved]

(20) Enter the area described in § 651.21(b)(1) on a fishing vessel, except as provided by § 651.21(b)(2) and (e).

(21) Enter or be in the area described in § 651.21(c)(1), on a fishing vessel, except as provided in § 651.21(c)(2) and (e).

(22) Fail to comply with the gear-marking requirements of § 651.25.

(23) Import, export, transfer, land, or possess regulated species that are smaller than the minimum sizes as specified in § 651.23, unless the regulated species were harvested from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(24) Interfere with, obstruct, delay, or prevent by any means lawful investigation or search relating to the enforcement of this part.

(25) Fish within the areas described in § 651.20(a)(4) with nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is issued and possesses on board the vessel an authorizing letter issued under § 651.20(a)(4)(i).

(26) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.20(a)(4).

(27) Fish for, land, or possess multispecies finfish harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 651.20(e), or unless the vessels that engaged in pair trawling qualify for the exception specified in paragraph (e)(1)(ii) of this section.

(28) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 651.20(a)(3).

(29) Fail to comply with the requirements as specified in § 651.20(a)(5).

(30) Fish for the species specified in § 651.20 (e) or (f) with a net of mesh size smaller than the applicable mesh size by area fished specified in § 651.20, or possess or land such species, unless the vessel is in compliance with the requirements specified in § 651.20 (e) or (f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(31) Fish with, set, haul back, possess on board a vessel, unless stowed in accordance with § 651.20(c)(4), or fail to remove a sink gillnet from the EEZ portion of the areas, and for the times specified in § 651.32(a), unless authorized in writing by the Regional Director.

(32) Violate any provision specified under § 651.29.

(33) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.27(b)(1).

(34) Land, or possess on board a vessel, more than 500 lb (226.8 kg) of haddock, or the equivalent in totes or boxes, as specified in § 651.27(b)(2), or violate any of the other provisions specified in § 651.27(b)(2).

(35) Fish with, use or have available for immediate use scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 650.24 of this chapter, or fishing under a general category permit issued under § 650.4(b) of this chapter, in the areas described in § 651.20(i), except as provided in § 651.20(i), or unless the vessel qualifies

for the exception specified in paragraph (e)(1)(ii) of this section.

(36) Obstruct or constrict a net as described in § 651.20(h) (1) and (2).

(37) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 651.20(j), from or within the areas described in § 651.20, while in possession of nets of mesh smaller than the minimum size specified in § 651.20, unless the vessel and nets conform with the stowage requirements of § 651.20(c)(4), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(i) of this section.

(38) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 651.20(j), from or within the areas described in § 651.20(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 650.24 of this chapter, or fishing under a general category permit issued under § 650.4(b) of this chapter, unless the vessel and the dredge gear conform with the stowage requirements of § 651.27(a)(3) and § 651.21(e)(2), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(39) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 650.20 of this chapter, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in § 650.24 of this chapter, or fishing under a general category permit issued under § 650.4(b) of this chapter, unless said fish are caught, possessed or landed in accordance with §§ 651.20 and 651.27, or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

\* \* \* \* \*

6. In § 651.20, paragraphs (a) through (f) are revised and paragraphs (i) and (j) added to read as follows:

**§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.**

All vessels fishing for, harvesting, possessing, or landing multispecies finfish in or from the EEZ and all vessels holding a Federal multispecies permit under this part must comply with the following restrictions on minimum mesh size, gear, and methods of fishing, unless otherwise exempted or prohibited.

(a) *Gulf of Maine/Georges Bank (GOM/GB) regulated mesh area—(1) Area definition.* The Gulf of Maine/Georges Bank regulated mesh area is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by

straight lines connecting the following points in the order stated (see Figure 1 to part 651):

GULF OF MAINE/GEORGES BANK REGULATED MESH AREA

| Point    | Latitude         | Longitude        |
|----------|------------------|------------------|
| G1 ..... | ( <sup>1</sup> ) | ( <sup>1</sup> ) |
| G2 ..... | 43°58' N.        | 67°22' W.        |
| G3 ..... | 42°53.1' N.      | 67°44.4' W.      |
| G4 ..... | 42°31' N.        | 67°28.1' W.      |
| G5 ..... | 41°18.6' N.      | 66°24.8' W.      |

<sup>1</sup> The intersection of the shoreline and the U.S.-Canada Maritime Boundary [southward along the irregular U.S.-Canada Maritime Boundary].

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

| Point     | Latitude    | Longitude              | Approximate loran C bearings   |
|-----------|-------------|------------------------|--------------------------------|
| G6 .....  | 40°55.5' N. | 66°38' W.              | 5930-Y-30750 and 9960-Y-43500. |
| G7 .....  | 40°45.5' N. | 68°00' W.              | 9960-Y-43500 and 68°00' W.     |
| G8 .....  | 40°37' N.   | 68°00' W.              | 9960-Y-43450 and 68°00' W.     |
| G9 .....  | 40°30' N.   | 69°00' W.              |                                |
| NL3 ..... | 40°22.7' N. | 69°00' W.              |                                |
| NL2 ..... | 40°18.7' N. | 69°40' W.              |                                |
| NL1 ..... | 40°50' N.   | 69°40' W.              |                                |
| G11 ..... | 40°50' N.   | 70°00' W.              |                                |
| G12 ..... |             | 70°00' W. <sup>1</sup> |                                |

<sup>1</sup> Northward to its intersection with the shoreline of mainland Massachusetts.

(2) *Mesh-size restrictions.* Except as provided in paragraphs (a)(3) through (6), (e), (f), and (j) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, or midwater trawl, on a vessel, or used by a vessel fishing in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m<sup>2</sup>)), or to vessels that have not been issued a Federal multispecies permit and that are fishing exclusively in state waters.

(3) *Small-mesh exemption area.* Northern shrimp has been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish for, harvest, possess, or land northern shrimp with nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the Small mesh exemption area, if the vessel complies with the requirements specified in paragraphs (a)(3) (i) through (iii) of this section. The Small-Mesh Exemption Area is defined by straight lines connecting the following points in the order stated:

SMALL-MESH EXEMPTION AREA

| Point     | Latitude         | Longitude  |
|-----------|------------------|--|
| SM1 ..... | 41°35' N.        | 70°00' W.  |
| SM2 ..... | 41°35' N.        | 69°40' W.  |
| SM3 ..... | 42°49.5' N.      | 69°40' W.  |
| SM4 ..... | 43°12' N.        | 69°00' W.  |
| SM5 ..... | 43°41' N.        | 68°00' W.  |
| G2 .....  | 43°58' N.        | 67°22' W.;<br>(the U.S.-<br>Canada<br>Maritime<br>Boundary). |
| G1 .....  | ( <sup>1</sup> ) | ( <sup>1</sup> )   |

<sup>1</sup> Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Possession limit exemption.* (A) A vessel fishing under this exemption may not fish for, possess on board or land any species of fish other than shrimp except as provided under paragraph (a)(3)(i)(B) of this section.

(B) The following may be retained, with the restrictions noted, as allowable bycatch species in the northern shrimp fishery as described in this section: Longhorn sculpin (*Myoxocephalus octodecimspinosus*); up to two standard boxes or totes of silver hake (whiting); monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

(ii) *Finfish excluder device.* A vessel must have a properly configured and installed finfish excluder device in any net with mesh smaller than the minimum size specified in paragraph (a)(2) of this section. The finfish excluder device must be configured and installed consistent with the following specifications (see Figure 2 to part 651 for an example of a properly configured and installed finfish excluder device):

(A) A finfish excluder device is a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl.

(B) The finfish excluder device must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having first passed between the bars of the grate.

(C) A fish outlet or hole must be provided to allow fish or other objects that are too large to pass between the bars of the grate to pass out of the net. The aftermost edge of this outlet must be at least as wide as the grate at the point of attachment. The fish outlet must extend forward from the grate toward the mouth of the net.

(D) A funnel of net material is allowed in the lengthening piece of the net

forward of the grate to direct catch towards the grate.

(iii) A vessel may only fish under this exemption during the northern shrimp season, as established by the Atlantic States Marine Fisheries Commission (ASMFC). The northern shrimp season is December 1 through May 30, or as modified by the ASMFC.

(4) *Cultivator Shoal whiting (silver hake) fishery exemption area.* The Cultivator Shoal whiting fishery has been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the Cultivator Shoal whiting fishery exemption area, if the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section. The Cultivator Shoal whiting fishery exemption area is defined by straight lines connecting the following points in the order stated (see Figure 1 to part 651):

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

| Point | Latitude    | Longitude |
|-------|-------------|-----------|
| C1    | 42°10' N.   | 68°10' W. |
| C2    | 41°30' N.   | 68°41' W. |
| C14   | 41°30' N.   | 68°30' W. |
| C3    | 41°12.8' N. | 68°30' W. |
| C4    | 41°05' N.   | 68°20' W. |

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA—Continued

| Point | Latitude  | Longitude |
|-------|-----------|-----------|
| C5    | 41°55' N. | 67°40' W. |
| C1    | 42°10' N. | 68°10' W. |

(i) *Requirements.* Vessels fishing in this fishery must have on board an authorizing letter issued by the Regional Director. Vessel owners are subject to the following conditions:

(A) A vessel fishing under this exemption may not fish for, possess on board or land any species of fish other than whiting except as provided under paragraph (a)(4)(i)(E) of this section.

(B) A minimum mesh size of 3 inches (7.62 cm) applied to the first 160 meshes counted from the terminus of the net;

(C) A season of June 15 through October 31, unless otherwise specified by publication of a notification in the **Federal Register**.

(D) When transiting through the GOM/GB regulated mesh area as specified under paragraph (a)(1) of this section, any nets of mesh smaller than the regulated mesh size as specified under paragraph (a)(2) of this section, must be stowed according to the provisions of paragraph (c)(4) of this section.

(E) The following may be retained, with the restrictions noted, as allowable bycatch species in the Cultivator Shoal whiting fishery exemption area as described in this section: longhorn sculpin (*Myoxocephalus octodecimspinosus*); monkfish and monkfish parts up to 10 percent by

weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

(ii) *Sea sampling.* The Regional Director shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The Council shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make the appropriate recommendations to the Regional Director following the procedures specified in subpart C of this part.

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area.* Except as provided in paragraphs (a)(3), (a)(6), (e), (f) and (j) of this section, the minimum mesh size for any trawl net, Scottish seine, purse seine, or midwater trawl in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing in the following area shall be 6 inches (15.24 cm) square mesh in the last 50 bars of the codend and extension piece for vessels 45 ft (13.7 m) in length and less, and in the last 100 bars of the codend and extension piece for vessels greater than 45 ft (13.7 m) in length.

(i) The Stellwagen Bank/Jeffreys Ledge juvenile protection area is defined by straight lines connecting the following points in the order stated (see Figure 1 to Part 651):

STELLWAGEN BANK JUVENILE PROTECTION AREA

| Point | Latitude    | Longitude   | Approximate Loran coordinates |
|-------|-------------|-------------|-------------------------------|
| SB1   | 42°34.0' N. | 70°23.5' W. | 13737 44295                   |
| SB2   | 42°28.8' N. | 70°39.0' W. | 13861 44295                   |
| SB3   | 42°18.6' N. | 70°22.5' W. | 13810 44209                   |
| SB4   | 42°05.5' N. | 70°23.3' W. | 13880 44135                   |
| SB5   | 42°11.0' N. | 70°04.0' W. | 13737 44135                   |
| SB1   | 42°34.0' N. | 70°23.5' W. | 13737 44295                   |

JEFFREYS LEDGE JUVENILE PROTECTION AREA

| Point | Latitude    | Longitude   | Approximate Loran coordinates |
|-------|-------------|-------------|-------------------------------|
| JL1   | 43°12.7' N. | 70°00.0' W. | 13369 44445                   |
| JL2   | 43°09.5' N. | 70°08.0' W. | 13437 44445                   |
| JL3   | 42°57.0' N. | 70°08.0' W. | 13512 44384                   |
| JL4   | 42°52.0' N. | 70°21.0' W. | 13631 44384                   |
| JL5   | 42°41.5' N. | 70°32.5' W. | 13752 44352                   |
| JL6   | 42°34.0' N. | 70°26.2' W. | 13752 44300                   |
| JL7   | 42°55.2' N. | 70°00.0' W. | 13474 44362                   |
| JL1   | 43°12.7' N. | 70°00.0' W. | 13369 44445                   |

(ii) Fishing for northern shrimp in the SB/JL juvenile protection area is allowed subject to the requirements of paragraph (a)(3) of this section.

(6) *Transit*. (i) Vessels fishing under the Small Mesh Exemption program specified in paragraph (a)(3) of this section may transit through the SB/JL juvenile protection area defined in paragraph (a)(5) of this section with nets on board that do not conform to the requirements specified in paragraph (a)(2) or (a)(5) of this section, provided that the nets are stowed in accordance with the provisions of paragraph (c)(4) of this section;

(ii) Vessels subject to the mesh requirements specified in paragraph (a)(2) of this section may transit through the Small Mesh Exemption Area defined in paragraph (a)(3) of this section with nets on board with mesh smaller than the minimum size specified in paragraph (a)(2) of this section, provided that the nets are stowed in accordance with the provisions of paragraph (c)(4) of this section, and provided the vessel has no fish on board; and

(iii) Vessels subject to the mesh requirements specified in paragraph (a)(2) of this section may transit through the GOM/GB regulated mesh area defined in paragraph (a)(1) of this section with nets on board with mesh smaller than the minimum mesh size specified in paragraph (a)(2) of this section with small mesh exempted species on board, provided that the following conditions are met:

(A) Vessels properly stow any nets of mesh smaller than the regulated mesh size as specified in paragraph (a)(2) of this section in accordance with the provisions of paragraph (c)(4) of this section;

(B) Vessels have on board an authorizing letter issued by the Regional Director; and

(C) Vessels may not fish for, possess on board, or land any species of fish except, when fishing in the areas specified in paragraphs (a)(4), (c), and (d) of this section, vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (c)(3), and (d)(3), respectively, of this section.

(7) *Addition or deletion of exemptions*. The Regional Director may add exemptions of species if he/she makes a determination that the fishery in which the species are fished for or caught, after considering the gear used, area where the fishery occurs and other relevant factors, has a catch of less than 5 percent by weight of regulated species. The Regional Director may delete an existing exemption if he/she makes a determination that the catch of

regulated species is greater than or equal to 5 percent by weight. Notification of additions or deletions will be made through publication of a rule in the **Federal Register**.

(b) *Nantucket Lightship regulated mesh area*. [Reserved]

(c) *Southern New England regulated mesh area*—(1) *Area definition*. The Southern New England regulated mesh area is that area bounded on the east by straight lines connecting the following points in the order stated (see Figure 1 part 651):

SOUTHERN NEW ENGLAND REGULATED MESH AREA

| Point     | Latitude    | Longitude              |
|-----------|-------------|------------------------|
| G5 .....  | 41°18.6' N. | 66°24.8' W.            |
| G6 .....  | 40°55.5' N. | 66°38' W.              |
| G7 .....  | 40°45.5' N. | 68°00' W.              |
| G8 .....  | 40°37' N.   | 68°00' W.              |
| G9 .....  | 40°30.5' N. | 69°00' W.              |
| NL3 ..... | 40°22.7' N. | 69°00' W.              |
| NL2 ..... | 40°18.7' N. | 69°40' W.              |
| NL1 ..... | 40°50' N.   | 69°40' W.              |
| G11 ..... | 40°50' N.   | 70°00' W.              |
| G12 ..... |             | 70°00' W. <sup>1</sup> |

<sup>1</sup>Northward to its intersection with the shoreline of mainland Massachusetts; and on the west by a line running from the shoreline along 72°30' W. longitude to the outer boundary of the EEZ.

(2) *Mesh-size restriction*. Except as provided in paragraphs (c)(3), (e), (f), and (j) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 6 inches (15.24 cm) square or diamond mesh throughout the net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(3) *Exemptions*—(i) *Species exempt*. Butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake (whiting), and weakfish fished for in, or harvested from, the Southern New England regulated mesh area have been found to meet the exemption qualification requirements specified in paragraph (c)(5) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (c)(2) of this section may fish for, harvest, possess, or land any of the above mentioned species with nets of mesh smaller than the minimum size specified in paragraph (c)(2) of this section in the Southern New England regulated mesh area, provided such vessels comply with the

requirements specified in paragraph (c)(3)(ii) of this section.

(ii) *Possession and net stowage requirements*. Vessels may possess regulated species while in possession of nets with mesh less than the minimum size specified in paragraph (c)(2) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2) of this section.

Vessels fishing for the exempted species identified in paragraph (c)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels (*Conger oceanicus*); searobins (species in the family Triglidae); black sea bass (*Centropristis striata*); red hake; tautog (blackfish) (*Tautoga onitis*); blowfish (puffer) (species in the family Tetraodontidae); cunner (*Tautoglabrus adspersus*); John Dory (*Zenopsis conchifera*); mullet (species in the family Mugilidae); bluefish (*Pomatomus saltatrix*); tilefish (*Lopholatilus chamaeleonticeps*); longhorn sculpin (*Myoxocephalus octodecimspinosus*); fourspot flounder (*Paralichthys oblongus*); alewife (*Alosa pseudoharengus*); hickory shad (*Alosa mediocris*); American shad (*Alosa sapidissima*); blueback herring (*Alosa aestivalis*); sea ravens (*Hemirhamphus americanus*); Atlantic croaker (*Micropogonias undulatus*); spot (*Leiostomus xanthurus*); swordfish (*Xiphias gladius*); monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

(4) *Net stowage requirements*. A net that is stowed and is not available for immediate use conforms to one of the following specifications:

(i) A net stowed below deck, provided:

(A) It is located below the main working deck from which the net is deployed and retrieved;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) It is fan-folded (flaked) and bound around its circumference; or

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

(A) It is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net; or

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

(A) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) The codend is removed from the net and stored below deck; or

(iv) Nets that are secured in a manner authorized in writing by the Regional Director.

(5) *Addition or deletion of exemptions.* The Regional Director may add exemptions of species if he/she makes a determination that the fishery in which the species are fished for or caught, after considering the gear used, area where the fishery occurs and other relevant factors, has a catch of less than 5 percent by weight of regulated species. The Regional Director may delete an existing exemption if he/she makes a determination that the catch of regulated species is greater than or equal to 5 percent by weight. Notification of additions or deletions will be made through publication of a rule in the **Federal Register**.

(d) *Mid-Atlantic regulated mesh area—(1) Area definition.* The Mid-Atlantic regulated mesh area is that area bounded on the east by a line running from the shoreline along 72°30' west longitude to the intersection of the outer boundary of the EEZ (see Figure 1 to part 651).

(2) *Mesh-size restrictions.* Except as provided in paragraphs (d)(3), (e), (f), and (j) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine, or midwater trawl in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing in the Mid-Atlantic regulated mesh area shall be that specified in the summer flounder regulations at § 625.24(a) of this chapter. This restriction does not apply to vessels that have not been issued a multispecies finfish permit under § 651.4 and are fishing exclusively in state waters.

(3) *Exemptions—(i) Species exempt.* Butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, summer flounder, silver hake (whiting), weakfish, and scallops fished for in, or harvested from, the Mid-Atlantic regulated mesh area have been found to meet the exemption qualification requirements specified in paragraph (d)(4) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (d)(2) of this section may fish for, harvest, possess or land any of the above-mentioned species with nets of mesh smaller than the minimum size specified in

paragraph (d)(2) of this section in the Mid-Atlantic regulated mesh area, provided such vessels comply with the requirements specified in paragraph (d)(3)(ii) of this section.

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh less than the minimum size specified in paragraph (d)(2) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(2) of this section. Vessels fishing for the exempted species identified in paragraph (d)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels (*Conger oceanicus*); searobins (species in the family Triglidae); black sea bass (*Centropristis striata*); red hake; tautog (blackfish) (*Tautoga onitis*); blowfish (puffer) (species in the family Tetraodontidae); cunner (*Tautoglabrus adspersus*); John Dory (*Zenopsis conchifera*); mullet (species in the family Mugilidae); bluefish (*Pomatomus saltatrix*); tilefish (*Lopholatilus chamaeleonticeps*); longhorn sculpin (*Myoxocephalus octodecimspinosus*); fourspot flounder (*Paralichthys oblongus*); alewife (*Alosa pseudoharengus*); hickory shad (*Alosa mediocris*); American shad (*Alosa sapidissima*); blueback herring (*Alosa aestivalis*); sea ravens (*Hemitripterus americanus*); Atlantic croaker (*Micropogonias undulatus*); spot (*Leiostomus xanthurus*); swordfish (*Xiphias gladius*); skate (species in the family Rajidae); monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or two hundred lobsters, whichever is less.

(4) *Addition or deletion of exemptions.* The Regional Director may add exemptions of species if he/she makes a determination that the fishery in which the species are fished for or caught, after considering the gear used, area where the fishery occurs and other relevant factors, has a catch of less than 5 percent by weight of regulated species. The Regional Director may delete an existing exemption if he/she makes a determination that the catch of regulated species is greater than or equal to 5 percent by weight. Notification of additions or deletions will be made through publication of a rule in the **Federal Register**.

(e) *Midwater trawl gear exemption.* (1) For the GOM/GB, JL/SB, and Nantucket Lightship regulated mesh areas south of 42°20' N. latitude, fishing for Atlantic herring or blueback herring, mackerel, and squid may take place throughout the fishing year with midwater trawl gear of mesh size less than the regulated size, provided that:

(i) Midwater trawl gear is used exclusively;

(ii) The vessel deploying midwater gear is issued an authorizing letter by the Regional Director;

(iii) The authorizing letter is on board the vessel; and

(iv) The vessel does not fish for, possess, or land multispecies finfish.

(v) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or squid in areas south of 42°20' N. lat., and Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat.

(2) For the GOM/GB and JL/SB regulated mesh areas north of 42°20' N. lat., fishing for Atlantic herring or blueback herring and for mackerel may take place throughout the fishing year with midwater trawl gear of mesh size less than the regulated size, provided that the requirement of paragraphs (e)(1) (i) through (v) of this section are met.

(f) *Purse seine gear exception.* For the GOM/GB, JL/SB, and Nantucket Lightship regulated mesh areas, fishing for Atlantic herring or blueback herring, mackerel, and menhaden may take place throughout the fishing year with purse seine gear of mesh size less than the regulated size, provided that:

(1) Purse seine gear is used exclusively;

(2) The vessel deploying the purse seine gear is issued an authorizing letter by the Regional Director;

(3) The authorizing letter is on board the vessel; and

(4) The vessel does not fish for, possess, or land multispecies finfish.

(5) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden.

\* \* \* \* \*

(i) *Scallop dredge vessel restrictions.* Scallop vessels using scallop dredge gear that possess a limited access scallop permit under § 650.4(a) of this chapter and are not fishing under the scallop days-at-sea program described in § 650.24 of this chapter, or scallop dredge vessels that possess a General scallop permit under § 650.4(b) of this chapter, are prohibited from fishing for, possessing on board, or landing any species of fish other than 400 pounds (181.44 kg) of shucked scallops, or 50

U.S. bushels (17.62 hl) of in-shell scallops as specified under §§ 650.24 and 650.4(b) of this chapter. Vessels fishing under the state waters exemption program in § 650.27 of this chapter are exempt from this restriction. Vessels subject to this restriction, when fishing in the areas specified in paragraphs (a)(3), (a)(4), (c)(1) and (d)(1) of this section, may retain the exempted small-mesh species as provided under the small-mesh exemptions specified under paragraphs (a)(3)(i), (a)(4)(i), (c)(3), and (d)(3), respectively, of this section.

(j) *State waters winter flounder exemption.* Any vessel issued a Federal multispecies permit under this part may fish for, possess, or land winter flounder subject to possession limits specified at § 651.27(a)(2), while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (c)(2) and (d)(2) provided that:

(1) The vessel has on board a certificate approved by the Regional Director and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder;

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained;

(3) The state's winter flounder plan has been approved by the Atlantic States Marine Fisheries Commission (ASMFC) as being in compliance with the ASMFC Winter Flounder Fishery Management Plan;

(4) The state elects, by a letter to the Regional Director, to participate in the exemption program described by this section;

(5) The vessel does not enter or transit the EEZ;

(6) The vessel does not enter or transit the waters of another state unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program;

(7) The vessel does not fish for, possess, or land any regulated species, exclusive of winter flounder;

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small mesh species specified under (a)(3)(i), (c)(3), and (d)(3) of this section when fishing in the areas specified under (a)(3), (c)(1), and (d)(1) of this section, respectively; and

(9) The vessel complies with all other applicable requirements.

7. Section 651.21 is revised to read as follows:

**§ 651.21 Closed areas.**

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section:

| Point     | Latitude  | Longitude                      |
|-----------|-----------|--------------------------------|
| CI1 ..... | 41°30' N. | 69°23' W.                      |
| CI2 ..... | 40°45' N. | 68°45' W.                      |
| CI3 ..... | 40°45' N. | 68°30' W.                      |
| CI4 ..... | 41°30' N. | 68°30' W.;<br>and<br>69°23' W. |
| CI1 ..... | 41°30' N. | 69°23' W.                      |

(2) Paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish (*Myxine glutinosa*), and that have no other gear on board capable of catching multispecies finfish; and

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching multispecies finfish.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

| Point      | Latitude    | Longitude  |
|------------|-------------|--|
| CI11 ..... | 41°00' N.   | 67°20' W.  |
| CI12 ..... | 41°00' N.   | 66°35.8' W.  |
| G5 .....   | 41°18.6' N. | 66°24.8' W.<br>(the U.S.-<br>Canada<br>Maritime<br>Boundary)       |
| CI13 ..... | 42°22' N.   | 67°20' W.<br>(the U.S.-<br>Canada<br>Maritime<br>Boundary);<br>and |
| CI11 ..... | 41°00' N.   | 67°20' W.  |

(2) Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish (*Myxine glutinosa*), and which have no other gear on board capable of catching multispecies finfish;

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear,

provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching multispecies finfish; and

(iii) Transitting for safety reasons provided that:

(A) The operator has determined that there is a compelling safety reason; and

(B) Fishing gear is stowed in accordance with paragraph (e) of this section.

(c) *Nantucket Lightship Closed Area.*

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section:

| Point     | Latitude  | Longitude                      |
|-----------|-----------|--------------------------------|
| G10 ..... | 40°50' N. | 69°00' W.                      |
| CN1 ..... | 40°20' N. | 69°00' W.                      |
| CN2 ..... | 40°20' N. | 70°20' W.                      |
| CN3 ..... | 40°50' N. | 70°20' W.;<br>and<br>69°00' W. |
| G10 ..... | 40°50' N. | 69°00' W.                      |

(2) Paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish (*Myxine glutinosa*), and which have no other gear on board capable of catching multispecies finfish;

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching multispecies finfish;

(iii) Fishing with or using dredge gear designed and used to take ocean quahogs or surf clams, and which have no other gear on board capable of catching multispecies finfish; and

(iv) Classified as charter, party or recreational vessel provided that,

(A) If the vessel is a party or charter vessel: It has an authorizing letter issued by the Regional Director on board;

(B) Fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

(C) It has no gear other than rod and reel or handline gear on board.

(d) *Transitting.* Vessels may transit Closed Area I and the Nantucket Lightship Closed Area as defined in paragraphs (a)(1) and (c)(1) of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

(e) *Gear stowage requirements.* Vessels transitting the closed areas specified under paragraph (a)(1), (b)(1), or paragraph (c)(1) of this section must stow their gear as follows:

(1) Net vessels may not have fishing gear available for immediate use as specified in § 651.20(c)(4).

(2) Scallop dredge vessels must detach the towing wire from the scallop dredge, reel the wire up onto the winch, and secure and cover the dredge so that it is rendered unusable for fishing.

(3) Hook gear vessels using gear other than pelagic hook gear must secure all anchors and buoys, and have all hook gear, including jiggling machines, covered.

(4) Sink gillnet vessels must cover all nets with canvas or other similar material and lash or otherwise securely fasten the nets to the deck or rail, and must have all buoys larger than six inches (15.24 cm) in diameter, high flyers and anchors disconnected.

8. In § 651.22, paragraphs (c), (d), and (e) are revised to read as follows:

**§ 651.22 Effort-control program for limited access vessels.**

\* \* \* \* \*

(c) *Fleet Days-at-Sea program.* (1) Beginning on May 1, 1994, all vessels issued a limited access permit that are longer than 45 ft (13.7 m) in length that have not elected to fish under the Individual DAS program as specified in paragraph (a) of this section shall be subject to the following effort-control requirements:

(i) Days in which vessels may not possess more than the possession limit of regulated species as specified in § 651.27(a).

(A) During each fishing year, beginning with 1994, vessel owners of all such vessels must declare periods of time out of the multispecies fishery totaling at least the minimum number of days listed for each such fishing year in the following schedule. Each period of time declared must be at least 20 consecutive days. At least one 20-consecutive-day period must be declared or taken between May 1 and May 31, or between March 1 and April 10, of each fishing year. Each fishing year shall begin on May 1 and extend 12 months through April 30 of the following year.

| Fishing year | Days out of multispecies fishing |
|--------------|----------------------------------|
| 1998 .....   | 200                              |
| 1999 .....   | 233                              |

(B) During each period of time declared, the applicable vessel may not possess more than the possession limit of regulated species as specified in § 651.27(a).

(C) Adjustments to the schedule of days out of the multispecies fishery, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(D) Procedure for declaring days. Fleet DAS participants shall declare their periods of required time under paragraph (c)(1)(i) of this section, following the notification procedures specified in § 651.29(b).

(E) If a vessel owner has not declared, or taken, the period of time required between May 1 and May 31, or between March 1 and April 10, of each fishing year on or before April 11 of each such year, the vessel is subject to the possession limit specified under § 651.27(a) during the period April 11 through April 30, inclusive.

(F) If a vessel owner has not declared, or taken, any or all of the remaining periods of time required under paragraph (c)(1)(i) of this section, by the last possible date to meet the requirement, the vessel is subject to the possession limit specified under § 651.27(a) from that date through the end of the fishing year.

(ii) *Layover day requirement.* (A) Fleet DAS participants engaged in a fishing trip that is not during the period of time declared pursuant to paragraph (c)(1)(i) of this section and that is longer than 24 hours must tie-up at the dock at the end of such trip for a period equal to half the time of the DAS accrued on the trip, based on hourly increments, as recorded through the notification procedures specified in § 651.29(b).

(B) *Accrual of DAS.* DAS under the card or call-in notification systems, described in § 651.29 (b) and (d), respectively, shall accrue in hourly increments with all partial hours counted as full hours. A DAS, under either the card or call-in notification system, begins once the card has been read by the reader, or the phone call has been received, and confirmation has been given by the Regional Director. A DAS ends under either the card or phone notification system, when after returning to port, the card has been read by the reader, or the phone call has been

received, and confirmation has been given by the Regional Director.

(C) Tie-up time begins to accrue when the Regional Director is notified through the monitoring system that the trip is ended.

(D) A vessel that remains tied to the dock beyond the time required will not be credited with the additional time.

(E) A vessel required to be tied-up at the dock under this part may not fish or leave the dock under any capacity during the tie-up period unless authorized by the Regional Director.

(2) [Reserved]

(d) *Exemptions from effort reduction program—(1) Small boat.* (i) Beginning on May 1, 1994, vessels issued a limited access permit under § 651.4(a) that are 45 ft (13.7 m) or less in length overall, except vessels using sink gillnet gear, will be exempt from the effort reduction program if the vessel and vessel owner comply with the following:

(A) Determination of the length will be through the measurement along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern;

(B) To be eligible for the small-boat exemption, vessels for which construction is begun after May 1, 1994, must be 45 feet (13.7 m) or less in length and must be constructed such that the product of the overall length divided by the beam will not be less than 2.5; and

(C) The measurement of length overall must be verified using documentation that accurately states length overall as described in paragraph (c)(1)(i)(A) of this section. Acceptable documentation includes U.S. Coast Guard documentation on vessels built after 1984, written verification from a qualified marine surveyor or the builder, or the vessel's construction plans. A copy of the length overall verification must accompany an application for a Federal multispecies permit issued under § 651.4.

(ii) Vessels fishing under the small boat exemption must bring all gear back to port at the conclusion of a fishing trip, except gillnets and gear not intended to fish for multispecies finfish, such as lobster.

(iii) Adjustments to the small-boat exemption, including changes to the length requirement, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(2) *Sink gillnet vessels.* (i) A sink gillnet vessel greater than 45 ft (13.7 m) in length is exempt from the DAS effort

| Fishing year | Days out of multispecies fishing |
|--------------|----------------------------------|
| 1994 .....   | 80                               |
| 1995 .....   | 80                               |
| 1996 .....   | 128                              |
| 1997 .....   | 165                              |

reduction program of this part on all fishing trips during which the vessel fishes for multispecies exclusively with sink gillnet gear, and does not have other gear available for immediate use as described in § 651.20(c)(4), if the vessel owner or owner's authorized representative complies with monitoring requirements set forth in § 651.28(c), unless effort reduction measures are implemented pursuant to subpart C of this part.

(ii) A sink gillnet vessel greater than 45 ft (13.7 m) in length that intends to fish for, possess or land, or does possess or land, more than the possession limit of regulated species as specified in § 651.27(a) with gear other than sink gillnet gear, or has other gear on board that is not stowed as described in § 651.20(c)(4), at any time during a calendar year, may fish under, and shall be subject to, the DAS effort reduction program of this part, except on trips that qualify for the exemption set forth in paragraph (d)(2)(i) of this section;

(iii) A sink gillnet vessel 45 ft (13.7 m) or less in length is exempt from the DAS effort reduction program of this part unless effort reduction measures are implemented pursuant to subpart C of this part.

(3) *Hook-gear-only vessels.* Vessels issued a limited access permit under § 651.4(a) and fishing with per trip, or possessing on board the vessel, no more than 4,500 rigged hooks are exempt from the effort reduction program of this part, subject to the requirements specified in § 651.33.

(e) *Scallop dredge vessels.* Scallop dredge vessels issued a limited access permit under § 650.4(a) of this chapter, except for combination vessels, may not participate in and are not subject to the DAS program and may not possess regulated species.

9. In § 651.23, paragraph (c) is revised to read as follows:

**§ 651.23 Minimum fish size.**

\* \* \* \* \*

(c) The minimum fish size applies to the whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (d) of this section, and to whole fish only, after landing. Fish or parts of fish must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed.

\* \* \* \* \*

10. Section 651.27 is revised to read as follows:

**§ 651.27 Possession limits.**

(a) *Regulated species possession limit—(1) Small-mesh possession restriction.* Unless otherwise restricted pursuant to § 651.20 (a), (e), or (f), vessels with Federal multispecies permits issued under this part and vessels in the EEZ that possess nets smaller than the minimum size specified in § 651.20, are prohibited from fishing for, possessing on board, or landing regulated species, unless said net is stowed and not available for immediate use in accordance with the provisions of § 651.20(c)(4) or unless the vessel is fishing for winter flounder under the state waters winter flounder exemption specified under § 651.20(j).

(2) *Large-mesh possession restriction.* Vessels that are subject to minimum possession restrictions that are fishing with nets that conform to the minimum mesh size requirements specified in § 651.20 may possess and land up to 500 lb (226.8 kg) of regulated species subject to the requirements of paragraphs (a)(2) (i) through (iii) of this section, provided that the regulated species were not harvested by nets of mesh size smaller than the minimum size specified in § 651.20. A limited access vessel subject to the DAS program, when not fishing under the DAS program and fishing with a net of mesh size smaller than the minimum size under the winter flounder exemption specified at § 651.21(j), may possess or land up to 500 lb (226.8 kg) of winter flounder, and may not fish for, possess, or land other fish, except as provided in § 651.20(j)(8).

(i) Vessels subject to the large mesh possession restriction shall have on board the vessel at least one standard box or one standard tote.

(ii) The regulated species stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the regulated species in a standard box or standard tote if requested by an authorized officer.

(iii) The maximum possession limit of regulated species, as specified in paragraph (a)(2) of this section, is equal to 500 lb (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

(b) *Haddock possession limits—(1) Scallop dredge vessels.*

(i) No person owning or operating a scallop dredge vessel issued a permit under this part may land haddock from, or possess haddock on board, a scallop dredge vessel, from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel may possess

haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) From July 1 through December 31, scallop dredge vessels and persons owning or operating scallop dredge vessels, are subject to the haddock possession limitations and provisions specified in § 651.27(b)(2), unless otherwise restricted pursuant to § 651.20(i).

(2) *Other vessels.* (i) No person owning or operating a vessel issued a permit under this part may land, or possess on board a vessel, more than 500 lb (226.8 kg) of haddock.

(ii) No person may land or possess on board a vessel more than 500 lb (226.8 kg) of haddock in, or harvested from, the EEZ.

(iii) Vessels subject to the haddock possession limit shall have on board the vessel at least one standard box or one standard tote.

(iv) The haddock stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the haddock in a standard box or standard tote if requested by an authorized officer.

(v) The haddock possession limit is equal to 500 lb (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

11. Section 651.32 is revised to read as follows:

**§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.**

(a) *General.* In addition to the measures specified in §§ 651.20 and 651.21, persons owning or operating vessels using, possessing on board a vessel, unless stowed in accordance with § 651.20(c)(4), or fishing with, sink gillnet gear are subject to the following restrictions unless otherwise authorized in writing by the Regional Director:

(1) *Area closed to sink gillnets.* All persons owning or operating vessels must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with § 651.21(e)(4), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (a)(1) (i) through (iii) of this section; and, all persons owning or operating vessels issued a Federal multispecies limited access permit must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board a vessel, unless stowed in accordance with § 651.21(e)(4), a sink gillnet in the areas, and for the times specified, in

paragraphs (a)(1) (i) through (iii) of this section.

(i) *Northeast Closure Area.* During the period August 15 through September 13 of each fishing year, the restrictions and requirements specified in the introductory text of paragraph (a)(1) of this section shall apply to an area known as the Northeast Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 4 to part 651).

NORTHEAST CLOSURE AREA

| Point     | Latitude        | Longitude   |
|-----------|-----------------|-------------|
| NE1 ..... | Maine shoreline | 68°55.0' W. |
| NE2 ..... | 43°29.6' N.     | 68°55.0' W. |
| NE3 ..... | 44°04.4' N.     | 67°48.7' W. |
| NE4 ..... | 44°06.9' N.     | 67°52.8' W. |
| NE5 ..... | 44°31.2' N.     | 67°02.7' W. |
| NE6 ..... | Maine shoreline | 67°02.7' W. |

(ii) *Mid-coast Closure Area.* During the period November 1 through November 30 of each fishing year, the restrictions and requirements specified in the introductory text of paragraph (a)(1) of this section shall apply to an area known as the Mid-coast Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 4 to part 651).

MID-COAST CLOSURE AREA

| Point     | Latitude        | Longitude                |
|-----------|-----------------|--------------------------|
| MC1 ..... | 42°45' N.       | Massachusetts shoreline. |
| MC2 ..... | 42°45' N.       | 70°15' W.                |
| MC3 ..... | 43°15' N.       | 70°15' W.                |
| MC4 ..... | 43°15' N.       | 69°00' W.                |
| MC5 ..... | Maine shoreline | 69°00' W.                |

(iii) *Massachusetts Bay Closure Area.* During the period March 1 through March 30 of each fishing year, the restrictions and requirements specified

in the introductory text of paragraph (a)(1) of this section shall apply to an area known as the Massachusetts Bay Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 4 to part 651).

MASSACHUSETTS BAY CLOSURE AREA

| Point     | Latitude           | Longitude                |
|-----------|--------------------|--------------------------|
| MB1 ..... | 42°30' N.          | Massachusetts shoreline. |
| MB2 ..... | 42°30' N.          | 70°30' W.                |
| MB3 ..... | 42°12' N.          | 70°30' W.                |
| MB4 ..... | 42°12' N.          | 70°00' W.                |
| MB5 ..... | Cape Cod shoreline | 70°00' W.                |
| MB6 ..... | 42°00' N           | Cape Cod shoreline.      |
| MB7 ..... | 42°00' N           | Massachusetts shoreline. |

(2) [Reserved]

(b) *Framework adjustment.* (1) By September 15 of each year, the Council's Harbor Porpoise Review team (HPRT) shall complete an annual review of harbor porpoise bycatch and abundance data in the Gulf of Maine sink gillnet fishery, evaluate the impacts on other measures that reduce harbor porpoise take, and may make recommendations on other "reduction-of-take" measures in light of the harbor porpoise mortality reduction goals.

(2) At the first Council meeting following the HPRT annual meeting, the team shall make recommendations to the Council as to what adjustments or changes, if any, to the "reduction-of-take" measures should be implemented in order to meet harbor porpoise mortality reduction goals.

(3) The Council may request at any time that the HPRT review and make recommendations on any alternative "reduction-of-take" measures or develop additional "reduction-of-take" proposals.

(4) Upon receiving the recommendations of the HPRT, the

Regional Director will publish notification in the **Federal Register** of any recommended changes or additions to the "reduction-of-take" measures and provide the public with any necessary analysis and opportunity to comment on any recommended changes or additions.

(5) After receiving public comment, the Council shall determine whether to recommend changes or additions to the "reduction-of-take" measures at the second Council meeting following the meeting at which it received the HPRT's recommendations.

(6) If the Council decides to recommend changes or additions to the "reduction-of-take" measures, it shall make such a recommendation to the Regional Director, which must include supporting rationale, and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the factors specified in § 651.40(d).

(7) The Regional Director may accept, reject, or, with Council approval, modify the Council's recommendation, including the Council's recommendation to publish a final rule. If the Regional Director does not approve the Council's specific recommendation, he/she must provide in writing to the Council the reasons for his/her action prior to the first Council meeting following publication of his/her decision.

11. The figure added to part 651 at 59 FR 26978 (May 25, 1994) is designated as Figure 4 to part 651.

12. Figure 5 to part 651 is removed and Figures 1 and 3 to part 651 are revised to read as follows:

Figure 1 to Part 651—Regulated Mesh Areas

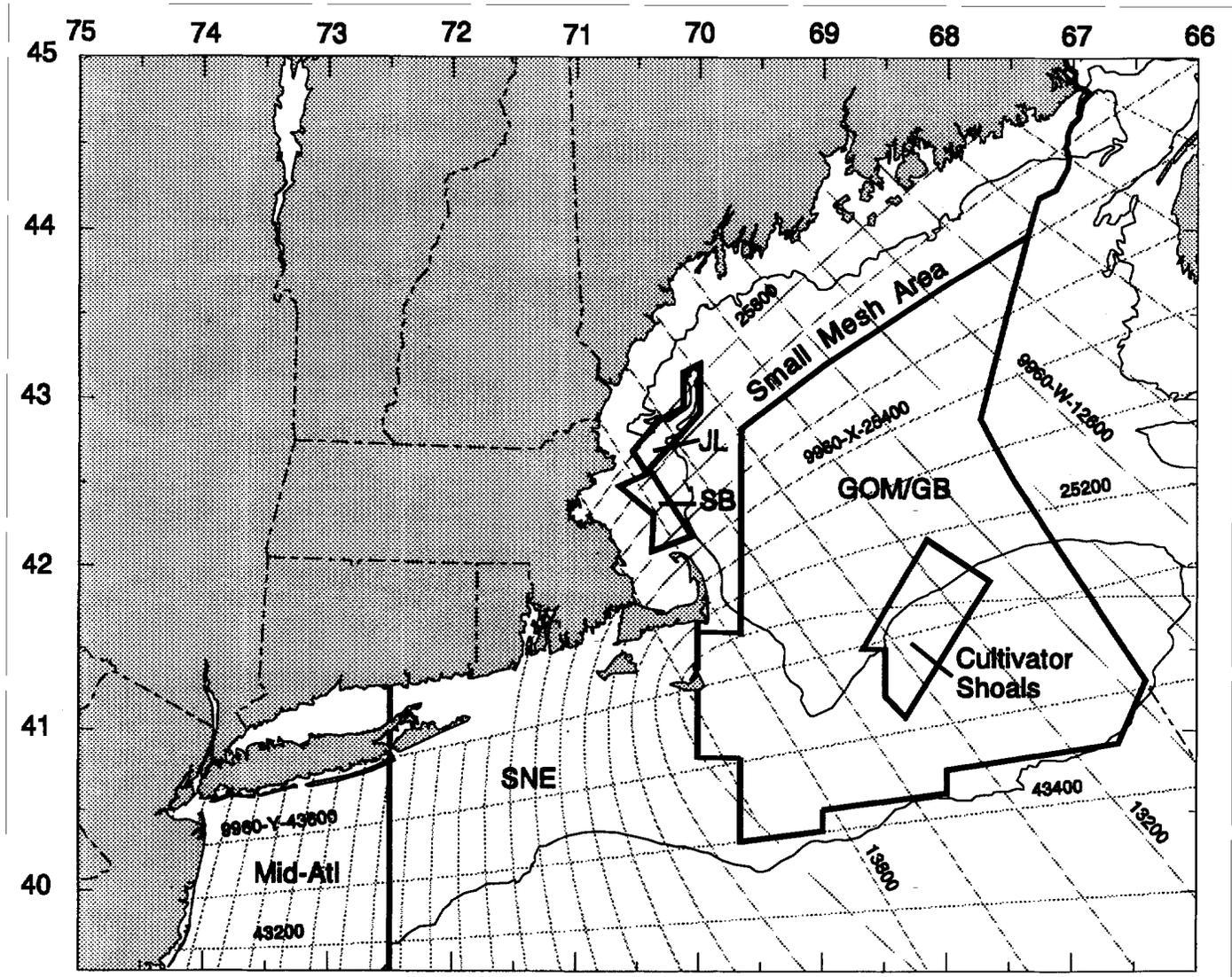
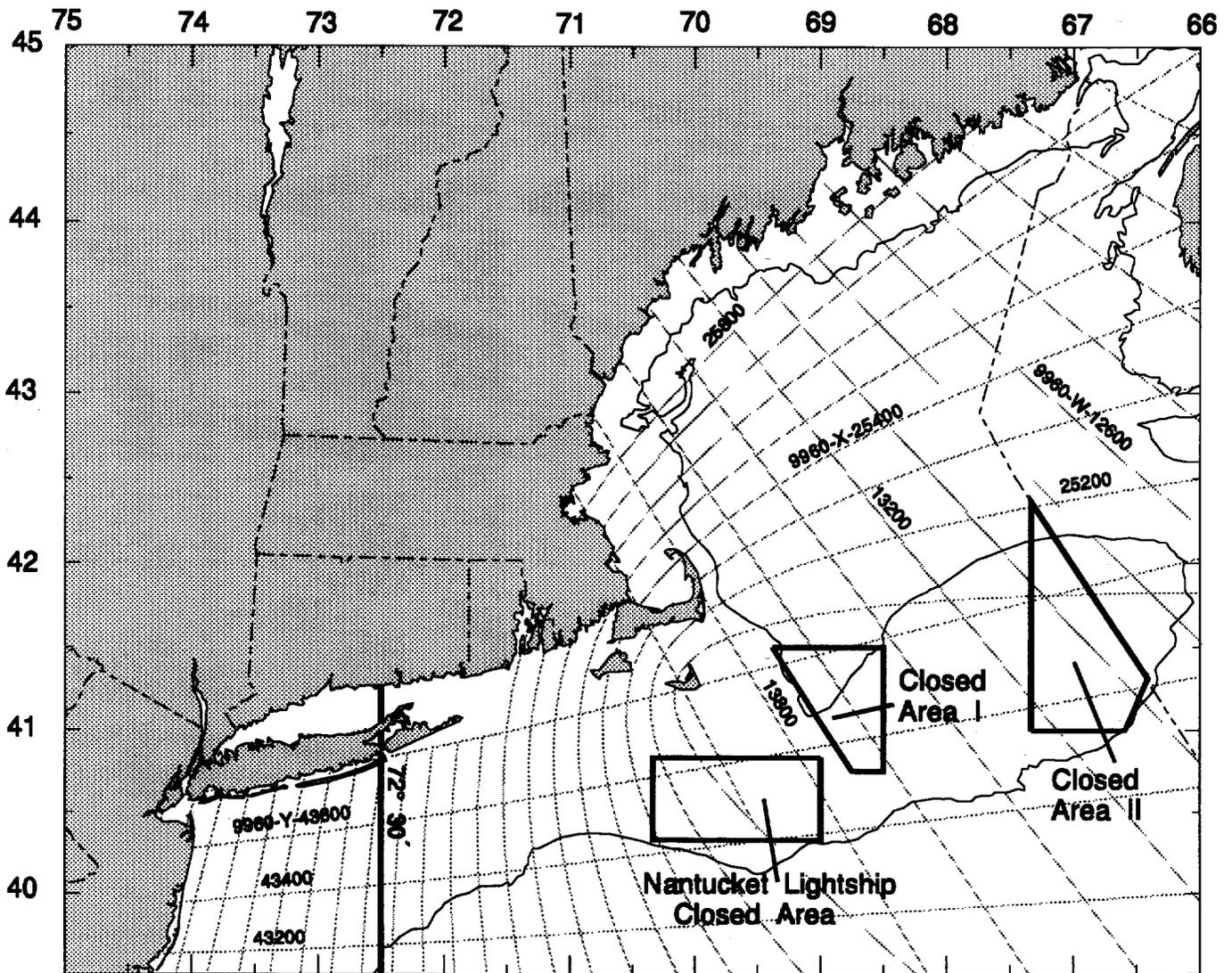


Figure 3 to Part 651—Closed Areas



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