

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 960830238-6238-01; I.D. 082096B]

RIN 0648-AJ07

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 15**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework Adjustment 15 to the Northeast Multispecies Fishery Management Plan (FMP). This rule extends the timing of the Mid-coast Closure Area for vessels fishing with sink gillnet gear from the current November through December period to September 15 through December 31. The intent of this action is to reduce further the incidental mortality of harbor porpoise in the Gulf of Maine sink gillnet fishery to meet porpoise bycatch reduction goals. This rule also makes several corrections to the regulatory text.

**EFFECTIVE DATE:** September 6, 1996.

**ADDRESSES:** Copies of Amendment 7 to the Northeast Multispecies Fishery Management Plan (Amendment 7), its regulatory impact review (RIR) and the final regulatory flexibility analysis (FRFA) contained with the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 15 documents are available upon request from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906-1097.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, NMFS, Fishery Policy Analyst, 508-281-9272.

**SUPPLEMENTARY INFORMATION:****Background**

In 1993, at the request of NMFS, the Council agreed to develop a strategy to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by integrating a mitigation plan with fishery management measures. Subsequently, one of Amendment 5's (59 FR 9872, March 1, 1994) principal objectives was to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by the end of year 4

of the plan's implementation to a level not to exceed 2 percent of the population, based on the best available estimates of abundance and bycatch. Amendment 7 to the FMP (61 FR 27710, May 31, 1996), implemented in July 1996 included an objective for harbor porpoise that was revised to be consistent with the 1994 amendments to the Marine Mammal Protection Act (MMPA). The Council's new provision requires reductions in the incidental mortality and serious injury of harbor porpoise in the Gulf of Maine sink gillnet fishery to the potential biological removal (PBR) level identified for this stock through the process described in section 117 of the MMPA by April 1, 1997, the date required for compliance with section 118(f)(5)(A) of the MMPA. Based on current population and life history information, the PBR level is 403 animals for Gulf of Maine harbor porpoise.

In view of the Council's revised objective, which is to reduce the harbor porpoise bycatch to the PBR level by April 1, 1997, coupled with the most recent bycatch estimate (2,000 harbor porpoise in 1994) and the fact that the Mid-coast Closure Area in the fall accounts for more than 50 percent of the harbor porpoise bycatch in the Gulf of Maine, management action is necessary in order to make further progress toward the Council's bycatch reduction goals. The 1995 bycatch estimate is not yet available but is expected to be somewhat lower than the most recent figure (2,000 animals in 1994). In addition, analysis of recent survey data have resulted in a larger population estimate that will revise the PBR level to 490 animals (pending approval by the Atlantic Scientific Review Group). However, there is no preliminary information that indicates that the current bycatch approaches even the newly projected PBR level of 490 animals.

There are currently four time/area closures in place to protect harbor porpoise. This action extends the existing Mid-coast Closure Area in time to sink gillnet gear based on information collected for the fall period, 1990-95. During the September through December period analyzed, bycatch was highest in October and November. September and December were months with more variability but, in some years, accounted for a significant percentage of the fall bycatch. Framework Adjustment 15 will close the Mid-coast Closure Area to gillnet gear from September 15 through October 31. This will precede the November 1 through December 31 closure to all gear capable of catching multispecies and will result in a total

closure period for gillnet gear in this area of September 15 through December 31.

The Council, in consideration of recommendations by the Harbor Porpoise Review Team (HPRT) and Marine Mammal Committee, proposed this September 15 through October 31 additional Mid-coast Closure Area period and also requested the Director, Northeast Region, NMFS (Regional Director), to investigate the possibility of the use of acoustic deterrents as a condition or requirement to fish with sink gillnets in the area to mitigate harbor porpoise bycatch. The Regional Director agreed to investigate the feasibility of further use of the devices in a concurrent action.

The Council is making this adjustment to the regulations under the abbreviated framework rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis and opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Director that the measures be published as a final rule if certain conditions are met. The Regional Director may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

This final rule implements an additional closure period from September 15 through October 31 and results in an expanded period for the Mid-coast Closure Area for vessels using gillnet gear. This area will thus be closed to gillnet gear from September 15 through December 31 of each fishing year.

This issue was discussed at a Marine Mammal Committee meeting held on May 21, 1996, and at two Council meetings, the minimum required under the Northeast Multispecies FMP framework adjustment process. Both Council meetings were held in Danvers, MA, the first on June 5, 1996, and the second on July 17, 1996. Documents summarizing the Council's proposed action, the biological analyses upon which this decision was based, and potential economic impacts were available for public review 5 days prior to the second meeting required under the framework adjustment process. Written comments were accepted through July 16, 1996. Comments on the Council's proposal were received at

meetings from individuals and representatives of the International Wildlife Coalition, Cape Ann Gillnetters Association and the Mass Netters Association.

Finally, this rule contains corrections to § 648.87. Specifically, incorrect paragraph references are corrected in § 648.87, paragraphs (b)(1) and (b)(2), and, in paragraph (b)(2), an inconsistent reference to the "Cape Cod South Closure Area" is corrected, an incorrect closure date is corrected, and the word "map" is changed to "chart".

**Comments and Responses**

*Comment:* Several individuals addressed the need to continue to reduce harbor porpoise bycatch in the fall months.

*Response:* The Council concurred based on biological analyses provided by the Northeast Fisheries Science Center (NEFSC) and the recommendation of the HPRT. Information collected during 1990-95 indicates a pattern of high takes of harbor porpoise in the sink gillnet fishery throughout the fall months. The bycatch is highest, however, in October and November. The Mid-coast Closure Area is already closed to most gear to protect multispecies finfish during the months of November and December under Amendment 7 to the FMP. The September 15 to December 31 closure period would remain in effect for the sink gillnet fishery to protect harbor porpoise even if changes occur to the closures implemented for multispecies conservation.

*Comment:* Several fishermen commented that the MMPA and Council goal of reaching the PBR level by April 1997 is neither realistic nor warranted.

*Response:* The PBR level goal and the process for determining the PBR level have a strong biological basis and were developed to meet requirements of other applicable law. This includes the

MMPA, which was reauthorized in 1994 to include the PBR level stipulations.

**Adherence to Framework Procedure Requirements**

The Council considered the public comments received prior to making its recommendation to the Regional Director under the provisions for abbreviated rulemaking in this FMP. The Council requested publication of these management measures as a final rule after considering the required factors stipulated under the framework measures in the FMP, 50 CFR 648.90, and has provided supporting analyses for each factor considered. NMFS concurs.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and an opportunity for public comment to be heard and considered. The AA finds that under 5 U.S.C. 553(d), the need to have this regulation in place by September 15, 1996, is good cause to waive the 30-day delay in effectiveness of this regulation. Delay of implementation of this regulation beyond September 15, 1996, would likely impede the achievement of harbor porpoise mortality reduction goals.

Because this regulation is not being published as a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law, this rule is exempt from the requirement to prepare an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act. As such, none has been prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 5, 1996.

N. Foster,

*Deputy Assistant Administrator for Fisheries, National marine Fisheries Service.*

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

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

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

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

2. In § 648.87, paragraph (b)(1) and the heading and first sentence of paragraph (b)(2) are revised to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) *Mid-coast Closure Area.* From March 25 through April 25 and from September 15 through October 31 of each fishing year, the restrictions and requirements specified in paragraph (b) of this section apply to the Mid-coast Closure Area, as defined under § 648.81(g)(1).

(2) *Cape Cod South Closure Area.* From March 1 through March 30 of each fishing year, the restrictions and requirements specified in paragraph (b) of this section apply to the Cape Cod South Closure Area (copies of a chart depicting this area are available from the Regional Director upon request), which is the area bounded by straight lines connecting the following points in the order stated. \* \* \*

\* \* \* \* \*

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