



**Billing Code 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 191212-0110]**

**RIN 0648-BJ45**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Essential Fish Habitat**

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

**ACTION:** Final rule.

**SUMMARY:** This implements the prohibition of gillnet fishing in the Nantucket Lightship and Closed Area I Closure Areas as ordered by a Federal Court. Until further notice, gillnet fishing will be prohibited in the Nantucket Lightship and Closed Area I Groundfish Closure Areas.

**DATES:** Effective on *[Insert date of publication in the Federal Register]*.

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Senior Fishery Program Specialist, Greater Atlantic Regional Fisheries Office, [Moira.Kelly@noaa.gov](mailto:Moira.Kelly@noaa.gov), (978) 281-9218.

**SUPPLEMENTARY INFORMATION:** On January 3, 2018, NOAA's National Marine Fisheries Service (NMFS) partially approved the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2. The Omnibus Amendment updated essential fish habitat designations for all Council-managed species and implemented

changes to the spatial management of Council-managed fisheries throughout the Gulf of Maine, Georges Bank, and Southern New England. On April 9, 2018, a final rule implemented the approved measures (83 FR 15240). The final rule opened, modified, and maintained various closed areas, as well as established new closures to implement approved measures of the Amendment. The Nantucket Lightship and Closed Area I Groundfish Closure Areas were opened to fishing by gears capable of catching groundfish, including gillnets and bottom-trawls, throughout the areas in this final rule. (Note, scallop fishing was still prohibited in these areas for a brief time after the Amendment was in effect, pending a subsequent scallop action that incorporated the newly opened areas into the Scallop Fishery Management Plan's rotational management program.) Directed groundfish fishing had been prohibited in these general areas consistently since the 1980s and early 1990s.

The Conservation Law Foundation filed suit against NMFS arguing that the opening of the Nantucket Lightship and Closed Area I Groundfish Closure Areas to gears capable of catching groundfish, including gillnet gear, was not done in compliance with the Endangered Species Act consultation requirements as it pertains to North Atlantic right whales.

On October 28, 2019, Federal District Court Judge James E. Boasberg (see *Conservation Law Found. v. Ross, No. CV 18-1087 (JEB), 2019 WL 5549814 (D.D.C. Oct. 28, 2019)*) enjoined NMFS from allowing gillnet fishing in those previously closed areas until it fully complies with the requirements of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act.

To comply with this Order, this rule suspends the Amendment's opening of the Nantucket Lightship and Closed Area I Groundfish Closures to gillnet fishing and restores

prior regulations that prohibit gillnet gear from fishing in these areas until further notice, which will be provided consistent with the Administrative Procedure Act.

### **Classification**

The NMFS Assistant Administrator has determined that under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, these regulations are necessary to discharge the Secretary's responsibility to ensure the Omnibus Habitat Amendment complies with the provisions of the Act and other applicable law, consistent with the Court's Order.

NMFS has good cause under the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to waive prior notice and comment for this final rule. The Court Order requires NMFS to prohibit gillnet fishing in the areas. Delaying this rule to allow time for notice and comment would be contrary to the Court's Order. Because NMFS has no discretion to revise and implement the gillnet restrictions under the Court Order, no meaningful purpose will be served by public comment, and so providing prior notice and comment of this rule would be impracticable and contrary to public interest. The NMFS Assistant Administrator also finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effective date requirement. In addition to the reasons above, on November 1, 2019, NMFS notified all vessels that had fished with gillnets in the area since the opening (11 vessels), as well as any vessel issued permits for which gillnet is a common gear (groundfish, monkfish, skate, and spiny dogfish), that all gillnet gear needed to be removed from the areas as soon as it was safe to do so in order to facilitate compliance with the Court's Order. This advance notice provided time for gillnet vessels to remove their gear in a safe manner. Therefore, additional time is not necessary for vessel operators to comply with the forthcoming regulations.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 12, 2019.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

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

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

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

2. In § 648.81, add paragraph (a)(6) to read as follows:

**§ 648.81 NE multispecies year-round and seasonal closed areas.**

(a) \* \* \*

(6) *Gillnet Closure Areas.* No fishing vessel using gillnet gear or person on a fishing vessel using gillnet gear may enter, fish, or be in the Closed Area I and Nantucket Lightship Closure Areas. Charts of the areas described in this section are available from the Regional Administrator upon request.

(i) *Closed Area I Closure Area.* The Closed Area I Closure Area is defined by straight lines, unless otherwise noted, connecting the following points in the order stated:

**Table 4 to Paragraph (a)(6)(i) -- Closed Area I**

<b>Point</b>	<b>N lat.</b>	<b>W long.</b>
CI1	41°30'	69°23'
CI2	40°45'	68°45'
CI3	40°45'	68°30'
CI4	41°30'	68°30'
CI1	41°30'	69°23'

(ii) *Nantucket Lightship Closure Area.* The Nantucket Lightship Closure Area is defined by straight lines, unless otherwise noted, connecting the following points in the order stated:

**Table 5 to Paragraph (a)(6)(ii) -- Nantucket Lightship Closed Area**

<b>Point</b>	<b>N lat.</b>	<b>W long.</b>
G10	40°50'	69°00'
CN1	40°20'	69°00'
CN2	40°20'	70°20'
CN3	40°50'	70°20'
G10	40°50'	69°00'

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