• do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 7, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013–20651 Filed 8–23–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 130703586–3586–01]

RIN 0648–BD43

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Harbor Porpoise Take Reduction Plan Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS hereby proposes to amend the regulations implementing the Harbor Porpoise Take Reduction Plan (Plan). This proposed rule would revise the Plan by eliminating the consequence closure strategy enacted in 2010 based on deliberations by the Harbor Porpoise Take Reduction Team. This action is necessary to prevent the improper triggering of consequence closure areas based on target harbor porpoise bycatch rates that no longer accurately reflect actual bycatch in New England sink gillnets due to fishery-wide changes in fishing practices.

DATES: Submit comments on or before September 10, 2013.

ADDRESSES: You may submit comments on this document, identified by RIN 0648–BD43, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal at *www.regulations.gov.*

• *Mail:* Submit written comments to Mary Colligan, Assistant Regional Administrator for Protected Resources, NMFS Northeast Region, 55 Great Republic Dr., Gloucester, MA 01930, Attn: Harbor Porpoise Proposed Rule.

• *Fax:* 978–281–9394 Attn: Harbor Porpoise Proposed Rule

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kate Swails, NMFS, Northeast Region, 978–282–8482, *Kate.Swails@noaa.gov;* Kristy Long, NMFS Office of Protected Resources, 301–427–8440, *Kristy.Long@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the Plan and the take reduction planning process can be downloaded from the Plan Web site at *http://www.nero.noaa.gov/hptrp/.* Copies of the draft Environmental Assessment for this action can be found on the Plan's Web site. The complete text of the regulations implementing the Plan can be found either in the Code of Federal Regulations (CFR) at 50 CFR 229.33 or downloaded from the Web site, along with a guide to the regulations.

Background

The Harbor Porpoise Take Reduction Plan (Plan) was implemented in late 1998 pursuant to section 118(f) of the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of the Gulf of Maine/Bay of Fundy (GOM/BOF) stock of harbor porpoises (63 FR 66464, December 2, 1998). NMFS amended the Plan in 2010 (75 FR 7383, February 19, 2010) to address increased mortalities of harbor porpoises in New England and Mid-Atlantic commercial gillnet fisheries due to non-compliance with the Plan requirements and observed interactions occurring outside of existing management areas.

The 2010 amendments, based largely on consensus recommendations from the Team, included the expansion of seasonal and temporal requirements within the Plan's management areas, the incorporation of additional management areas, and the creation of a consequence closure strategy in which three closure areas off the coast of New England would prohibit the use of gillnet gear if target rates of harbor porpoise bycatch were exceeded.

The Plan was projected to reduce harbor porpoise bycatch below the potential biological removal (PBR) level without the implementation of the consequence closures. Consequence closures were intended only as a backstop measure to ensure compliance with pinger requirements. The intent of implementing the consequence closure

strategy was to provide an incentive for the gillnet fishing industry to comply with pinger requirements in areas with historically high harbor porpoise bycatch levels resulting from relatively low levels of compliance. It was anticipated that the consequence closures would further reduce harbor porpoise mortalities by virtue of the times and areas chosen for their implementation in areas with poor pinger compliance.

Consequence Closure Strategy

The consequence closure strategy closes specific areas to gillnet gear during certain times of the year if observed average bycatch rates exceed specified target bycatch rates over two consecutive management seasons. Once triggered, Plan regulations state that the consequence closures will remain in place until the Plan achieves the Marine Mammal Protection Act's zero mortality rate goal (ZMRG) for harbor porpoises or until the Team recommends modifications to the Plan.

Three areas of historically high harbor porpoise bycatch were chosen by NMFS and the Team to close if observed bycatch rates exceeded the target rates: The Coastal Gulf of Maine, Eastern Cape Cod, and Cape Cod South Expansion Consequence Closure Areas. NMFS and the Team established the target bycatch rates for these three Plan management areas by examining the bycatch rates (number of observed harbor porpoises taken per observed amount of landings) that were recorded from observed gillnet hauls from 1999–2007 that had the correct number of pingers on their net.

The Coastal Gulf of Maine Closure Area would be triggered if the observed average bycatch rates of harbor porpoises in the Mid-Coast, Stellwagen Bank, and Massachusetts Bay Management Areas (combined) exceed the target bycatch rate of 0.031 harbor porpoise takes/metric tons of fish landed (takes/mtons) (equal to 1 harbor porpoise taken per 71,117 pounds of fish landed) after two consecutive management seasons. This area would prohibit the use of gillnet gear during the months of October and November, which historically have been the months with the highest amount of observed harbor porpoise bycatch. When this area is not closed, the seasonal requirements of the three overlapping management areas would remain in effect, including the March gillnet closure in the Massachusetts Bay Management Area.

The Cape Cod South Expansion and Eastern Cape Cod Closure Areas would be triggered if the observed average bycatch rate of harbor porpoises in the Southern New England Management Area exceeded the target bycatch rate of 0.023 takes/mtons (equal to 1 harbor porpoise taken per 95,853 pounds of fish landed) after two consecutive management seasons. Both areas would prohibit the use of gillnet gear annually from February 1 through April 30. When the consequence closure areas are not closed, the seasonal pinger requirements of the overlapping Southern New England Management Area would remain in effect.

Consequence Closure Area Monitoring

Consequence closure area monitoring began with the start of first full management season after implementation of the 2010 amendments. The first monitoring season occurred from September 15, 2010, through May 31, 2011, and the second occurred from September 15, 2011, through May 31, 2012. During this time, the two-year average observed harbor porpoise bycatch rate for the areas associated with the Coastal Gulf of Maine Closure Area exceeded the target bycatch rate, triggering the implementation of the Coastal Gulf of Maine Closure Area (Figure 1). During management seasons two and three (September 15, 2011, through May 31, 2012, and September 15, 2012, through May 31, 2013, respectively), the two-year average observed harbor porpoise bycatch rate for the area associated with the Cape Cod South Expansion and Eastern Cape Cod Closure Areas exceeded the target bycatch rate, triggering the implementation of these two closures to start on February 1, 2014.

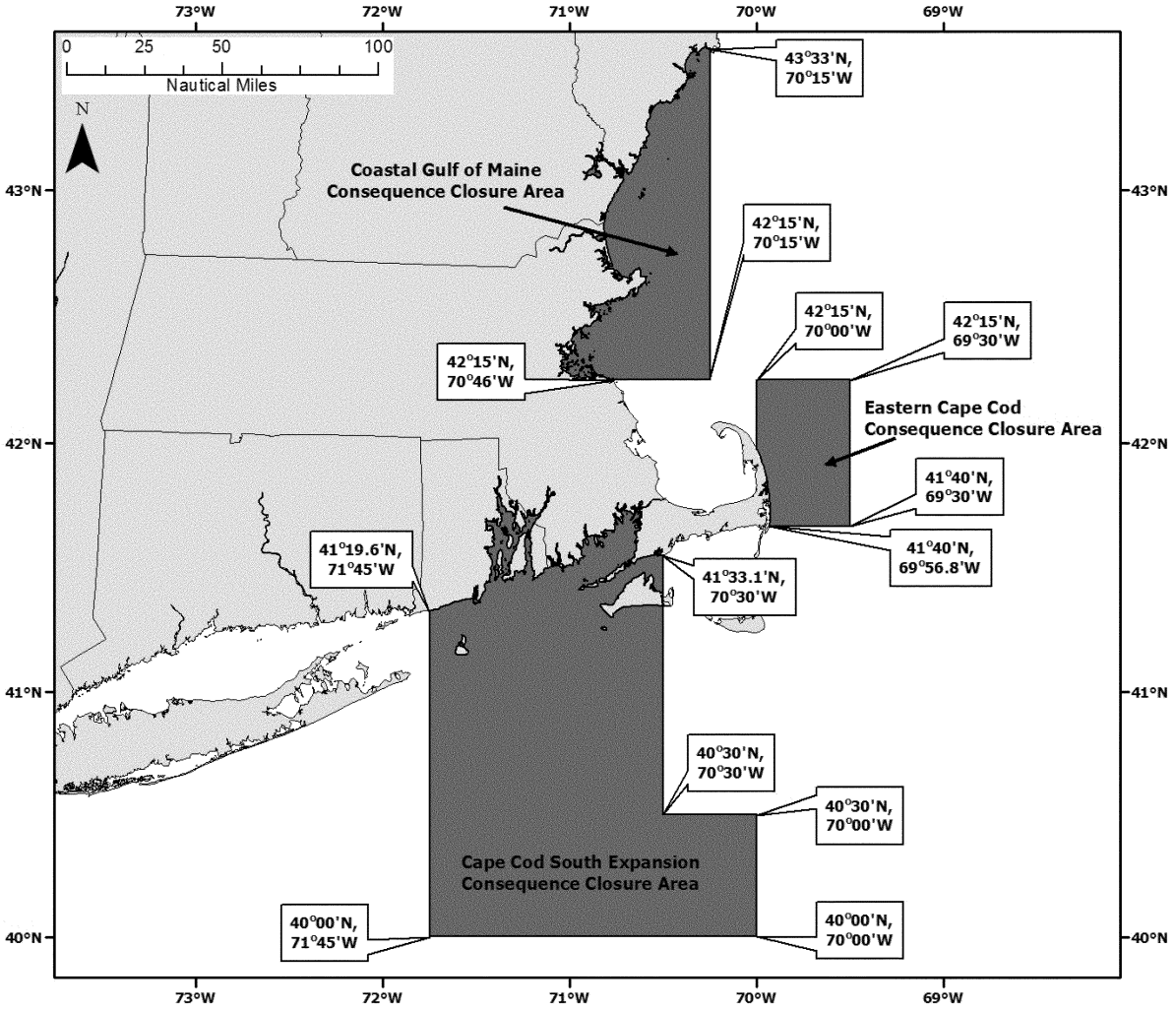

Figure 1. Harbor Porpoise Take Reduction Plan Consequence Closure Areas

Review of the Appropriateness of the Consequence Closure Strategy

In April 2012, NMFS sent letters to gillnet fishermen notifying them of the implementation of the Coastal Gulf of Maine Closure Area beginning October 1, 2012. Following that notification, in August 2012 NMFS received a letter from a fishing industry representative requesting that the agency review harbor porpoise bycatch and fishing effort information in the coastal Gulf of Maine area after the 2010 implementation of the amendments to the Plan and New England Multispecies Fishery Management Plan Amendment 16, which implemented sector management and greatly modified the way New England groundfish fishermen could fish. The letter specifically requested that the timing of the closure be shifted from October and November to mid-February through March. This request suggested that a conservation benefit to harbor porpoises would occur by shifting the timing, as would an economic benefit to the fishing industry by allowing them to fish in the area during October and November. In considering this request, NMFS examined available harbor porpoise bycatch and fishing information from 2010 through 2012. Within the boundaries of the Coastal Gulf of Maine Closure Area, harbor porpoise bycatch data for that period indicated that a higher number of observed takes occurred during the spring, particularly in February and March, than in the fall (October and November), equating to a higher estimated total bycatch in the spring. Additionally, the bycatch rate during the spring was higher than in the fall. As a result, NMFS published a notice in the **Federal Register** on October 3, 2012 (77 FR 60319), that shifted the effective period of the Coastal Gulf of Maine Closure Area from October 1 through November 30, 2012, to February 1 through March 31, 2013.

Identifying a Need for Modifications

As noted above, the target bycatch rates are based on the number of observed harbor porpoises caught per metric tons of fish landed between 1999 and 2007 within the areas subject to a consequence closure. Since the advent of sectors, the overall effort generally remained the same and the number of harbor porpoise caught actually decreased and is below PBR (Table 1). However, because fish landings also decreased, the observed bycatch rates increased above the closure area target bycatch rates resulting in the triggering

of the closures. As stated previously, the bycatch rate trigger was intended to function such that the triggering of it meant that the overall bycatch of harbor porpoise was above PBR. Given the overall reductions in fish landings, however, this calculation no longer holds true.

Preliminary data indicate that the annual 2010–2012 harbor porpoise bycatch estimates are below PBR and that the 5-year averages from 2011–2012 are also below PBR.

TABLE 1—RECENT HARBOR PORPOISE POPULATION ABUNDANCE, PBR, AND BYCATCH ESTIMATES

Year	2009 [1]	2010 [2]	2011 [3]	2012 [3]
Population Abundance (coefficient of variance)	89,054 (CV = 0.47)	79,883 (CV = 0.32)	79,883 (CV = 0.32)	79,883 (CV = 0.32)
Potential Biological Removal	701	706	706	706
Annual U.S. Gillnet Bycatch	792	644	447	249
5-Year Average U.S. Gillnet Bycatch	877	786	671	630

[1] Waring *et al.* 2012.
[2] Waring *et al.* 2013.
[3] Presented as part of meeting materials during the May 2013 Team meeting.

NMFS convened the Team for meetings to discuss potential amendments to the Plan in November 2012, February 2013, April 2013 (workgroup), May 2013, and June 2013. During those meetings the Team discussed the appropriateness of the consequence closure strategy and discussed potential replacement management measures.

At the May 2013 meeting, the Team agreed that the consequence area target bycatch rates no longer accurately reflect compliant bycatch rates in New England. As described above, although the target bycatch rates for the consequence closure areas have been exceeded, the number of coastwide harbor porpoises caught has declined below the stock's PBR level and harbor porpoise stock abundance is stable. At the conclusion of the May 2013 meeting, the Team did not agree on whether a replacement was needed for the consequence strategy or what that replacement might be. However, a majority of the Team recommended eliminating the current consequence closure strategy from the Plan and continuing Team discussions on what other actions should be taken in lieu of the consequence closure to ensure compliance with the pinger requirements. The Team also recommended that NMFS modify § 229.32(f), *Other Special Measures,* of the Plan to require a consultation with the Team before action is taken to amend the Plan using this provision. Any input received by Team members would be considered before exercising the Other Special Measures provision of the Plan. These recommendations formed the basis of this proposed rule.

At its June 2013 meeting, the Team continued discussions on what other actions should be taken to ensure compliance with pinger requirements. In particular, the Team discussed increasing enforcement efforts to ensure compliance with pinger requirements in New England. Based on the Team's recommendation, as a mechanism for increasing compliance with pinger requirements in New England, NMFS will examine data collected by fisheries observers regarding pingers on observed hauls, and will provide that data to NOAA's Office of Law Enforcement(OLE). To facilitate enforcement efforts, that data will include the time and area of fishing activity of observed gillnet vessels along with other relevant information, including vessel homeport, registration number etc. NMFS will work with OLE to evaluate any potential enforcement efforts, which may include at-sea operations in collaboration with state joint enforcement agreement partners and the U.S. Coast Guard as well as dockside activities. If as a result of these increased monitoring and enforcement efforts NMFS determines that bycatch is exceeding the PBR level, the Assistant Administrator (after consultation with the Team) may take action to address the situation.

Moving forward, NMFS will continue working with the Team to consider what additional management measures may be necessary to ensure compliance with the pinger requirements. Thus far, NMFS and the Team have formed Monitoring and Enforcement Workgroups to facilitate these discussions.

Classification

The Office of Management and Budget (OMB) has determined that this action is not significant for the purposes of Executive Order 12866.

All of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses. The fisheries affected by this proposed rule are the Northeast sink gillnet and Mid-Atlantic gillnet fisheries. The population of vessels that are affected by this proposed action includes commercial gillnet vessels fishing in state and federal waters from Maine to New York.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Economic impacts for this action were evaluated as part of the 2009 Final Environmental Assessment (EA) that supported the most recent Plan amendment published as a final rule on February 19, 2010 (75 FR 7383). Although changes to the fishery have occurred since the final rule, this analysis is used to illustrate the difference in economic impacts between the preferred action and the status quo. Although overall commercial landings have changed since 2009, the number of vessels and level of overall fishing effort have remained relatively constant. Therefore, NMFS believes that these data provide a basis for concluding that the proposed action, removing the consequence closures, will not have a significant impact on a substantial number of small entities.

The 2009 EA estimated economic impacts of the preferred alternative (which was adopted in the final rule) before and after triggering the three consequence closure areas. The EA estimated that triggering the three closures (now the status quo) would impact 29.7% (290 vessels) of the total gillnet fleet. Revenues for the affected vessels were also estimated to be reduced by 2–28% ($2,600–$26,400) and 1–25% ($1,500–$15,300) for small (<40ft) and large (>40ft) vessels, respectively. By removing the regulations implementing these consequence closure areas from the Plan, the proposed action would

prevent this loss of revenue from occurring. As a result, an initial regulatory flexibility analysis is not required and has not been prepared.

References

Waring GT, Josephson E, Maze-Foley K, Rosel, PE, editors. 2012. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments—2011. NOAA Tech Memo NMFS NE 221; 319 p.

Waring GT, Josephson E, Maze-Foley K, Rosel, PE, editors. 2013. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments—2012. NOAA Tech Memo NMFS NE 223; 419 p.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 21, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 229.33, paragraphs (a)(2)(iii), (a)(3)(iii), (a)(4)(iii), (a)(5)(iii), (a)(6)(iii), and (d) are removed, and paragraph (f) is revised to read as follows:

§ 229.33 Harbor Porpoise Take Reduction Plan Implementing Regulations—Gulf of Maine.

* * * * *

(f) *Other special measures.* The Assistant Administrator may, after consultation with the Take Reduction Team, revise the requirements of this section through notification published in the **Federal Register** if:

(1) NMFS determines that pinger operating effectiveness in the commercial fishery is inadequate to reduce bycatch below the stock's PBR level.

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

[FR Doc. 2013–20759 Filed 8–21–13; 4:15 pm]

BILLING CODE 3510–22–P