

§ 229.33

50 CFR Ch. II (10–1–14 Edition)

stretched mesh from December 1 through March 31 is allowed if:

(i) The gear complies with the gear marking requirements specified in paragraph (b) of this section;

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69; and

(iii) The vessel owner/operator and crew are in compliance with observer requirements found in § 229.7.

(3) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery vessels in transit.* Possession of gillnet gear with webbing of 5 inches (12.7 cm) or greater stretched mesh aboard a vessel in transit from December 1 through March 31 is allowed if:

(i) All gear is stowed as specified in 50 CFR 229.2; and

(ii) The vessel owner/operator is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(i) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat or restricted areas.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (i.e., trap/pot or gillnet) for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may, in consultation with the Take Reduction Team, revise the requirements of this section through a publication in the FEDERAL REGISTER if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

[79 FR 36610, June 27, 2014; 79 FR 49718, Aug. 22, 2014]

§ 229.33 Harbor Porpoise Take Reduction Plan Regulations—New England.

(a) *Restrictions—(1) Northeast Closure Area—(i) Area restrictions.* From August 15 through September 13, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Northeast Closure Area. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Northeast Closure Area is bounded by straight lines connecting the following points in the order stated:

NORTHEAST CLOSURE AREA

Point	N. Lat.	W. Long.
NE1	44°27.3'	68°55.0' (ME shoreline)
NE2	43°29.6'	68°55.0'
NE3	44°04.4'	67°48.7'
NE4	44°06.9'	67°52.8'
NE5	44°31.2'	67°02.7'

NORTHEAST CLOSURE AREA—Continued

Point	N. Lat.	W. Long.
NE6	44°45.8'	67°02.7' (ME shoreline)

(2) *Mid-Coast Management Area*—(i) *Area restrictions.* From September 15 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Mid-Coast Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Mid-Coast Management Area is the area bounded by straight lines connecting the following points in the order stated:

MID-COAST MANAGEMENT AREA

Point	N. Lat.	W. Long.
MC1	42°30.0'	70°50.1' (MA shoreline)
MC2	42°30.0'	70°15.0'
MC3	42°40.0'	70°15.0'
MC4	42°40.0'	70°00.0'
MC5	43°00.0'	70°00.0'
MC6	43°00.0'	69°30.0'
MC7	43°30.0'	69°30.0'
MC8	43°30.0'	69°00.0'
MC9	44°17.8'	69°00.0' (ME shoreline)

(3) *Massachusetts Bay Management Area*—(i) *Area restrictions.* From November 1 through February 28/29 and from April 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area. These

restrictions do not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Massachusetts Bay Management Area is bounded by straight lines connecting the following points in the order stated:

MASSACHUSETTS BAY MANAGEMENT AREA

Point	N. Lat.	W. Long.
MB1	42°30.0'	70°50.1' (MA shoreline)
MB2	42°30.0'	70°30.0'
MB3	42°15.0'	70°30.0'
MB4	42°15.0'	70°00.0'
MB5	42°00.0'	70°00.0'
MB6	42°00.0'	70°01.2' (MA shoreline)
MB7	42°00.0'	70°04.8' (MA shoreline)
MB8	42°00.0'	70°42.2' (MA shoreline)

(4) *Stellwagen Bank Management Area*—(i) *Area restrictions.* From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Stellwagen Bank Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Stellwagen Bank Management Area is bounded by straight lines connecting the following points in the order stated:

STELLWAGEN BANK MANAGEMENT AREA

Point	N. Lat.	W. Long.
SB1	42°30.0'	70°30.0'
SB2	42°30.0'	70°15.0'
SB3	42°15.0'	70°15.0'
SB4	42°15.0'	70°30.0'
SB1	42°30.0'	70°30.0'

(5) *Southern New England Management Area*—(i) *Area restrictions.* From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Southern New England Management Area,

§ 229.33

unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Southern New England Management Area is bounded by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND MANAGEMENT AREA

Point	N. Lat.	W. Long.
SNE1	Western boundary as specified ¹ .	
SNE2	40°00.0'	72°30.0'
SNE3	40°00.0'	69°30.0'
SNE4	42°15.0'	69°30.0'
SNE5	42°15.0'	70°00.0'
SNE6	41°58.3'	70°00.0' (MA shoreline)

¹ Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30.0' W. long.

(6) *Cape Cod South Closure Area—(i) Area restrictions.* From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cape Cod South Closure Area. This prohibition does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Cape Cod South Closure Area is bounded by straight lines connecting the following points in the order stated:

CAPE COD SOUTH CLOSURE AREA

Point	N. Lat.	W. Long.
CCS1	41°19.6'	71°45.0' (RI shoreline)
CCS2	40°40.0'	71°45.0'
CCS3	40°40.0'	70°30.0'
CCS4	41°20.9'	70°30.0'
CCS5	41°23.1'	70°30.0'
CCS6	41°33.1'	70°30.0' (MA shoreline)

(7) *Offshore Management Area—(i) Area restrictions.* From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink

50 CFR Ch. II (10–1–14 Edition)

gillnet gear or gillnet gear capable of catching multispecies from the Offshore Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Offshore Management Area is bounded by straight lines connecting the following points in the order stated:

OFFSHORE MANAGEMENT AREA

Point	N. Lat.	W. Long.
OFS1	42°50.0'	69°30.0'
OFS2	43°10.0'	69°10.0'
OFS3	43°10.0'	67°40.0'
OFS4	43°05.8'	67°40.0' (EEZ boundary)
OFS5	42°53.1'	67°44.5' (EEZ boundary)
OFS6	42°47.3'	67°40.0' (EEZ boundary)
OFS7	42°10.0'	67°40.0'
OFS8	42°10.0'	69°30.0'
OFS1	42°50.0'	69°30.0'

(8) *Cashes Ledge Closure Area—(i) Area restrictions.* During the month of February, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cashes Ledge Closure Area. This restriction does not apply to vessels fishing with a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Cashes Ledge Closure Area is bounded by straight lines connecting the following points in the order stated:

CASHES LEDGE CLOSURE AREA

Point	N. Lat.	W. Long.
CL1	42°30.0'	69°00.0'
CL2	42°30.0'	68°30.0'
CL3	43°00.0'	68°30.0'
CL4	43°00.0'	69°00.0'
CL1	42°30.0'	69°00.0'

(b) *Pingers—(1) Pinger specifications.* For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (plus or minus 2 kHz) sound at 132 dB (plus or minus 4 dB) re

1 micropascal at 1 m, lasting 300 milliseconds (plus or minus 15 milliseconds), and repeating every 4 seconds (plus or minus 0.2 seconds).

(2) *Pinger attachment.* An operating and functional pinger must be attached at each end of a string of gillnets and at the bridle of every net, or every 300 feet (91.4 m or 50 fathoms), whichever is closer.

(c) *Pinger training and authorization.* The operator of a vessel may not fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in closed areas where pingers are required as specified under paragraph (b) of this section, unless the operator has satisfactorily received pinger training and possesses and retains on board the vessel a valid pinger training authorization issued by NMFS.

(d) [Reserved]

(e) *Research permits.* An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS's existing permit application process, administered by NMFS.

(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.

[75 FR 7396, Feb. 19, 2010, as amended at 78 FR 61826, Oct. 4, 2013]

§ 229.34 Harbor Porpoise Take Reduction Plan Regulations—Mid-Atlantic.

(a)(1) *Regulated waters.* The regulations in this section apply to all waters in the Mid-Atlantic bounded on the east by 72°30' W. long. at the southern

coast of Long Island, NY at 40°50.1' N. lat. and on the south by the NC/SC border (33°51.1' N. lat.), except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* The regulations within this section are not applicable to waters landward of the first bridge over any embayment, harbor, or inlet, or to waters landward of the following lines:

New York

40°45.70' N., 72°45.15' W. to 40°45.72' N., 72°45.30' W. (Moriches Bay Inlet)
40°37.32' N., 73°18.40' W. to 40°38.00' N., 73°18.56' W. (Fire Island Inlet)
40°34.40' N., 73°34.55' W. to 40°35.08' N., 73°35.22' W. (Jones Inlet)

New Jersey/Delaware

39°45.90' N., 74°05.90' W. to 39°45.15' N., 74°06.20' W. (Barnegat Inlet)
39°30.70' N., 74°16.70' W. to 39°26.30' N., 74°19.75' W. (Beach Haven to Brigantine Inlet)
38°56.20' N., 74°51.70' W. to 38°56.20' N., 74°51.90' W. (Cape May Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Delaware Bay)

Maryland/Virginia

38°19.48' N., 75°05.10' W. to 38°19.35' N., 75°05.25' W. (Ocean City Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Chincoteague to Ship Shoal Inlet)

37°11.10' N., 75°49.30' W. to 37°10.65' N., 75°49.60' W. (Little Inlet)
37°07.00' N., 75°53.75' W. to 37°05.30' N., 75°56' W. (Smith Island Inlet)

North Carolina

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.