governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Feed additives, Food additives, Reporting and recordkeeping requirements.

Dated: September 2, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.507(a) is amended by redesignating the existing text as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

(a)(1) * * *

(2) *Temporary tolerance*. A tolerance to expire on September 13, 1999 is established for the combined residues of azoxystrobin [methyl (E)-2-{2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl}-3-methoxyacrylate)] and its Z isomer in or on potatoes at 0.03 parts per million (ppm) .

* * * * *

[FR Doc. 98–24338 Filed 9–10–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–8157–07; I.D. 042597B]

RIN 0648–AI84

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; notice of availability of proposed take reduction plan.

SUMMARY: NMFS announces the availability of a proposed harbor porpoise take reduction plan (HPTRP) to reduce the bycatch of harbor porpoise (*Phocoena phocoena*) in gillnet fisheries throughout the stock's U.S. range. NMFS also proposes regulations to implement the HPTRP. The proposed plan, including a discussion of the recommendations of the Gulf of Maine Take Reduction Team (GOMTRT) and the Mid-Atlantic Take Reduction Team (MATRT), is contained in the HPTRP/Environmental Assessment/Initial Regulatory Flexibility Analysis (HPTRP/EA/IRFA), available upon request (see addresses below). Changes to the recommendations of the GOMTRT and the MATRT are described within this document. This action replaces the proposed rule issued on August 13, 1997 (62 FR 43302).

The potential biological removal (PBR) level for Gulf of Maine harbor porpoise throughout their range is 483 animals (62 FR 3005, January 21, 1997). The incidental bycatch of harbor porpoise in the Gulf of Maine (GOM) and Mid-Atlantic gillnet fisheries exceeds the PBR level. The proposed HPTRP would use a wide range of management measures to reduce the bycatch and mortality of harbor porpoise. In the GOM, the HPTRP proposes time and area closures and time/area periods during which pinger use would be required in the Northeast, Mid-coast, Massachusetts Bay, Cape Cod South and Offshore Closure Areas. In the Mid-Atlantic area, the HPTRP proposes time/area closures and modifications to gear characteristics, including floatline length, twine size, tie downs, and number of nets, in the large mesh and small mesh fisheries. NMFS seeks comment on the proposed HPTRP/EA/IRFA, and the proposed regulations to implement the plan.

DATES: Comments due October 13, 1998.

ADDRESSES: Copies of the draft plan prepared by the GOMTRT, the final report from the MATRT and the HPTRP/EA/IRFA may be obtained from Donna Wieting, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Donna Wieting, NMFS, 301–713–2322 or Laurie Allen, NMFS, Northeast Region, 978–281–9291.

SUPPLEMENTARY INFORMATION: The 1994 amendments to the Marine Mammal Protection Act (MMPA) require the preparation and implementation of TRPs for strategic marine mammal stocks that interact with Category I or II fisheries. A Category I fishery is a fishery that has frequent incidental mortality and serious injury of marine mammals. A Category II fishery is a fishery that has occasional incidental mortality and serious injury of marine mammals. A Category III fishery is a fishery that has a remote likelihood of causing incidental mortality or serious injury of marine mammals.

This proposed rule addresses preparation and implementation of a take reduction plan (TRP) for harbor porpoise, a strategic marine mammal stock, that interacts with the NE multispecies gillnet fishery and with the Mid-Atlantic coastal gillnet fisheries. The 1996 Stock Assessment Report (SAR) (Waring et al., 1997) states that harbor porpoise bycatch has been observed by the NMFS Sea Sampling program in the following fisheries: (1) the Northeast (NE) multispecies sink gillnet, (2) the mid-Atlantic coastal gillnet, (3) the Atlantic drift gillnet, (4) the North Atlantic bottom trawl fisheries, and (5) the Canadian Bay of Fundy sink gillnet fishery. The fisheries of greatest concern, and the subject of this TRP, are the NE multispecies sink gillnet fishery (Category I), and the Mid-Atlantic coastal gillnet fishery (Category II).

The Atlantic drift gillnet fishery, a Category I fishery, is being addressed by the Atlantic Offshore Cetacean Take Reduction Team (AOCTRT). The North Atlantic bottom trawl fishery is a Category III fishery and is not the subject of take reduction efforts at this time. The Canadian sink gillnet fishery

takes approximately 100 harbor porpoise per year. This proposed rule is expected to reduce harbor porpoise bycatch below the PBR level, including the 100 takes by the Canadian fishery.

The NE multispecies sink gillnet fishery comprises the majority of the overall multispecies gillnet activity in New England. Harbor porpoise may, however, interact with other gillnet fisheries capable of capturing multispecies. Additionally, new non-sink gillnet fisheries could be introduced into harbor porpoise conservation areas. Therefore, this proposed rule would apply to all gillnets in New England capable of catching NE multispecies.

Under the 1994 Amendments to the MMPA, the short-term goal of a TRP is to reduce, within 6 months of its implementation, the mortality and serious injury of strategic stock(s) incidentally taken in the course of commercial fishing operations to less than the PBR level established for those stock(s). The PBR level is the maximum number of animals, not including natural mortalities, that may be annually removed from a marine mammal stock without compromising the ability of that stock to reach or maintain its optimum population level. The goal of this TRP is to bring the combined incidental take of the GOM harbor porpoise stock below the PBR level for all U.S. fisheries that interact with that stock.

NMFS convened the GOMTRT in February 1996. The goal of the GOMTRT was to develop a consensus draft TRP to reduce the incidental take of harbor porpoise in sink gillnets in the GOM to the PBR level for that stock within 6 months of the TRP's implementation. NMFS limited the geographic scope of the 1996 team to focus only on bycatch off New England's coast (Maine to Rhode Island). The reason for this approach was because the proportion of incidental take in the NE multispecies sink gillnet fishery constituted the majority of the total fishery-related mortality in the United States and because of uncertainty about the extent of fisheries interactions south of New England. Data on the bycatch of harbor porpoise in the Mid-Atlantic were not available until 1996 due to low observer effort prior to 1995 and the lag in availability of appropriate effort data to estimate bycatch. The GOMTRT convened with the understanding that a separate take reduction team would be convened to address the harbor porpoise bycatch problem in the Mid-Atlantic (discussed here).

The GOMTRT included representatives of the NE multispecies sink gillnet fishery, NMFS, state marine resource management agencies, the New England Fishery Management Council (NEFMC), environmental organizations, and academic and scientific organizations. The GOMTRT met five times between February and July 1996 and submitted a consensus draft TRP (the GOMTRP) to NMFS in August 1996.

Soon after the GOMTRT submitted a draft TRP, the NEFMC enacted Framework Adjustment 19 (61 FR 55774, October 29, 1996) to the NE Multispecies Fishery Management Plan (FMP) which changed the time and area of the NE Multispecies FMP Mid-Coast Closure Area within the GOM and established an exemption to allow sink gillnet vessels to fish the reopened area when utilizing pingers on their nets. Based on this action, NMFS modified the draft TRP submitted by the GOMTRT to be consistent with Framework Adjustment 19 and, on August 13, 1997, published a proposed rule to implement a TRP for harbor porpoise in the GOM (GOMTRP) (62 FR 43302, August 13, 1997).

NMFS convened the MATRT in February 1997 to address the incidental bycatch of harbor porpoise in Mid-Atlantic gillnet fisheries (from New York through North Carolina). The MATRT included representatives of the Mid-Atlantic coastal gillnet fisheries, NMFS, state marine resource management agencies, the Mid-Atlantic Fishery Management Council, the NEFMC, the Atlantic States Marine Fisheries Commission (ASMFC), environmental organizations, and academic and scientific organizations. The MATRT did not reach consensus on all issues discussed. The MATRT submitted a report to NMFS on August 25, 1997 which included both consensus and non-consensus recommendations. NMFS has not previously published a proposed rule to implement a Mid-Atlantic Take Reduction Plan (MATRP).

Harbor Porpoise Take Reduction Plan

This proposed rule would implement the HPTRP for the GOM and Mid-Atlantic geographic areas. This HPTRP is based in large part on recommendations in the draft GOMTRP and the MATRT Report. This proposed rule replaces the previous proposed rule published to implement the GOMTRP (62 FR 43302, August 13, 1997). The GOMTRP proposed rule is being replaced because three developments have occurred since the publication of that rule. First, new bycatch information became available which indicated that significant changes were needed in the GOMTRP to achieve the PBR level for harbor porpoise. NMFS reconvened the GOMTRT on December 16 and 17, 1997, to discuss this new information and to provide additional comments to NMFS. Secondly, Framework 25 to the NE Multispecies FMP, published on March 31, 1998 (63 FR 15326), was implemented on May 1, 1998; this framework implements gillnet fishing closures throughout the GOM to conserve cod (Gadus morhua). Some of these closures may indirectly provide harbor porpoise conservation. Thirdly, the MATRT submitted its report to NMFS which presented new information on the level of harbor porpoise bycatch in the mid-Atlantic region.

The combination of these actions led NMFS to integrate the initially separate plans into one comprehensive TRP. Since the revised plan is substantially different from the 1997 GOMTRP, NMFS is replacing the 1997 proposed rule with this proposed rule.

Stock Assessment

The range of the harbor porpoise extends from the Bay of Fundy, Canada, to the southern border of North Carolina. The cumulative levels of incidental mortality and serious injury of harbor porpoise occurring in the New England, Mid-Atlantic, and Canadian gillnet fisheries exceed the PBR level for this stock.

The PBR level for harbor porpoise is 483 animals per year. This is a strategic stock because average annual fishery-related mortality and serious injury exceeds the PBR level. There are insufficient data to determine population trends for this species. NMFS proposed listing the GOM harbor porpoise as threatened under the Endangered Species Act (58 FR 3108, January 7, 1993), but no final action has been taken on that proposal.

Incidental Takes by Fishery

The estimated total annual average mortality from New England and Mid-Atlantic gillnet fisheries is 2,040. This estimate is based on a 5-year (1990–1995) average mortality estimate of 1,833 (Waring et al., 1997) for the GOM and based on preliminary analysis of 1995 and 1996 data from the Mid-Atlantic of 207 animals (Palka, unpublished data).

The NE multispecies sink gillnet fishery sets nets on the ocean bottom, where they are fixed by anchors. These nets are primarily used to catch groundfish (cod, haddock, hake, pollock and flounders), monkfish, and dogfish.

The fishery primarily consists of small vessels, (about 30–50 feet (10–17 meters) in length), that operate from numerous ports throughout New England. A vessel may fish between 40 and 200 nets, depending on target species. Nets are usually approximately 300 feet (92 meters) long and are tied together in strings of one to 30 nets.

The Mid-Atlantic coastal gillnet fishery comprises several gillnet fisheries, which operate from New York to North Carolina. The mesh sizes range from 2.5 to 12 inches (6.35 to 30.48 cm), with the smallest mesh sizes used to capture small fish, such as spot and shad. Medium mesh sizes are used to capture weakfish, striped bass, spiny dogfish, and bluefish. The largest mesh sizes are used for Atlantic sturgeon and monkfish. Observer coverage of the Mid-Atlantic coastal gillnet fishery was initiated by the Northeast Fisheries Science Center (NEFSC) Sea Sampling Program in July 1993.

HPTRP: Gulf of Maine Component

The GOM portion of the HPTRP would govern and pertain to all fishing with sink gillnets and other gillnets capable of catching multispecies, in the inshore and offshore waters of New England, from Maine through Rhode Island, east of 72°30′ W. longitude.

NMFS proposes a schedule of periods and areas which would be closed to multispecies gillnet fishing unless pingers are employed in the prescribed manner (Table 1). Some areas are total fishery closures where no fishing is allowed. In all closed areas, where pingers are required, vessel operators must complete training in pinger use and have a valid pinger training certificate on board the vessel.

TABLE 1.—GULF OF MAINE TIME/AREA CLOSURES TO GILLNET FISHING AND PERIODS DURING WHICH PINGER USE WOULD BE REQUIRED

Northeast Area:
August 15–September 13—Closed.
Mid-Coast Area:
September 15–May 31—Closed, gillnet with pingers allowed.
Massachusetts Bay Area:
February 1–28/29—Closed, gillnet with pingers allowed.
March 1–31—Closed
April 1–May 31—Closed, gillnet with pingers allowed.
Cape Cod South Area:
September 15–February 28/29—Closed, gillnet with pingers allowed.
March 1–31—Closed
April 1–30—Closed, gillnet with pingers allowed.
Offshore Area:
September 15–May 31—Closed, gillnet with pingers allowed.
Cashes Ledge Area:
February 1–28/29—Closed

Discussion of the Gulf of Maine Component

NMFS determined that the August 13, 1997, proposed rule (62 FR 43302) would not adequately reduce harbor porpoise bycatch in the GOM. The results of the new GOM bycatch estimates presented at the December 16–17, 1997 GOMTRT meeting suggest that: (1) bycatch reduction is being achieved in the Mid-Coast and Northern Maine closure areas; (2) bycatch in 1997 was greater than in 1996 in the Massachusetts Bay and the Cape Cod South areas; (3) bycatch offshore was noted in 1996 and 1997; however, it is difficult to compare these data with years prior to 1996, since the offshore fishery had very little observer coverage in those years; (4) although bycatch reduction is occurring in specific areas and times, the PBR level is not being achieved overall; and (5) the August 13, 1997, proposed rule to implement the GOMTRP is unlikely to achieve the PBR level. Additionally, Framework 25 to the NE Multispecies FMP has significantly changed the management measures that are implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to protect GOM cod. Existing closures for marine mammals (which were a key part of the GOMTRP) and Framework 25 closure periods partially overlap and result in a very complex system of closures (see Figure 1).

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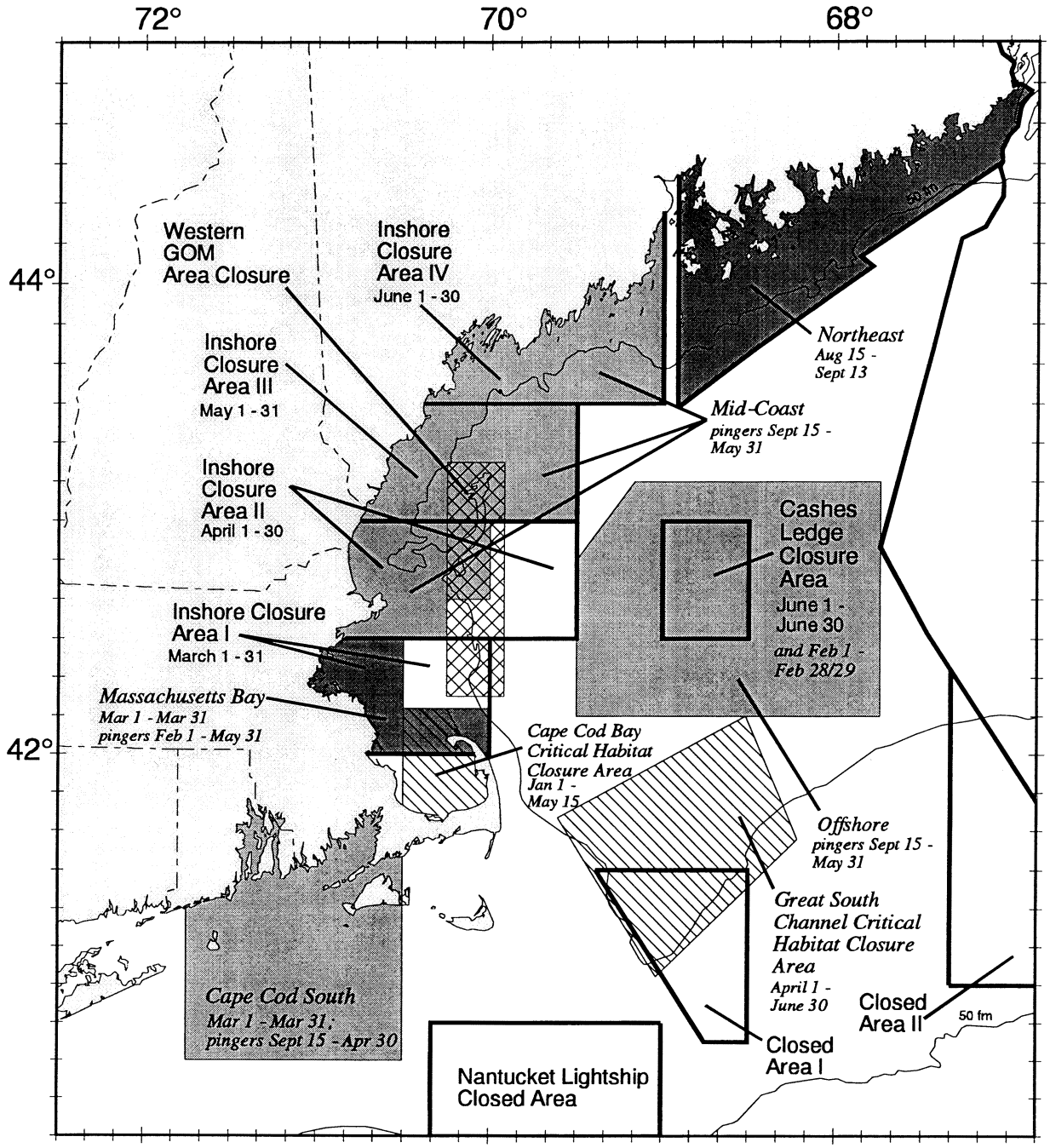

Figure 1. Chart of closures under the Gulf of Maine component of the proposed Harbor Porpoise Take Reduction Plan and closures under the Northeast Multispecies Fishery Managment Plan (FMP). Areas on the chart delineated by bold, linear outline with labels in regular type correspond to NE Multispecies FMP; labels in italic type identify shaded areas of proposed harbor porpoise measures.

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Figure 1 illustrates the change the ''rolling closure'' for cod conservation makes to current marine mammal closure boundaries and times in the GOM. The entire old Massachusetts Bay and Mid-Coast Closure Areas would be divided into four approximately even areas.

The Massachusetts Bay Closure Area would not change on the northern boundary but would be larger to the east; it would still be closed March 1–31. The Mid-Coast Closure Area would then be closed completely in relatively equal sections, Inshore Closure Area II (April), Inshore Closure Area III (May), and Inshore Closure Area IV (June). Previously, the entire shaded area labeled ''Mid-Coast'' was closed May 10–30 for NE Multispecies FMP concerns and March 25-April 25 for harbor porpoise conservation. Under this proposed rule, the boundary of the Mid-Coast Closure Area would not change, with the exception of a small area just east of Inshore Closure Area III, but pingers would be allowed.

The Inshore Area closures provide some protection for harbor porpoise in Areas II and III; however, the closure in Area IV is relatively insignificant for reducing bycatch of harbor porpoise due to the timing of the measures. A year round closure of parts of Jeffreys Ledge and Stellwagen Bank (Western GOM area closure) has been added by Framework 25 to the NE Multispecies FMP and it also provides protection for harbor porpoise. The northeast closure area remains unchanged for either purpose.

Overall, NMFS expects that these proposed HPTRP implementing regulations would reduce harbor porpoise bycatch from the current level of approximately 1,833 animals per year in the Gulf of Maine area to 309 animals per year.

HPTRP: Mid-Atlantic Component

The Mid-Atlantic portion of the HPTRP would govern and pertain to all fishing with gillnets in the inshore and offshore waters of the Mid-Atlantic west of 72°30′ W. longitude to the Mid-Atlantic shoreline from NY to NC, with exemptions inshore of the first bridge over embayments and other similar areas as specified by the proposed regulations.

Tables 2 and 3 set forth management measures for large mesh and small mesh gillnet fisheries in the Mid-Atlantic. Separate gear requirements are specified for large mesh (7 inches (17.78cm) to 18 inches (45.72cm)) and small mesh gear (less than 7 inches (17.78 cm)). There remain some areas that are total closures where no fishing is allowed at all. The effective period for the Mid-Atlantic Component of the HPTRP is:

- New Jersey waters, and U.S. waters off New Jersey out to 72°30′ W. longitude offshore—January 1 through April 30
- Southern Mid-Atlantic (MD, DE, VA, NC) and U.S. waters off the southern Mid-Atlantic out to 72°30′ W. longitude offshore—February 1 through April 30.

TABLE 2.—MANAGEMENT MEASURES FOR THE LARGE MESH GILLNET FISHERY [1] IN THE MID-ATLANTIC

Floatline Length:	
New Jersey Mudhole	Less than or equal to 3,900 ft (1188.7 m).
New Jersey Waters (excluding Mudhole)	Less than or equal to 4,800 ft (1463.0 m).
Southern Mid-Atlantic	Less than or equal to 3,900 feet (1188.7 m).
Twine Size:	
All Mid-Atlantic Waters	Greater than or equal to .90 mm (.035 inches).
Tie Downs:	
All Mid-Atlantic Waters	Required.
Net Cap:	
All Mid-Atlantic Waters	80 nets [2] (nets are 300 ft (91.4 m) long).
Time/Area Closures:	
New Jersey waters out to 72°30′ W. longitude offshore (including the Mudhole).	Closed from April 1–April 20.
New Jersey Mudhole	Closed from February 15–March 15.
Southern Mid-Atlantic waters (MD, DE, VA, NC) out to 72°30′ W. longitude offshore.	Closed from February 15–March 15.

[1] Includes gillnet with mesh size of 7 inches (17.78cm) to 18 inches (45.72cm).
[2] Requires all nets to be tagged by January 01, 2000.

TABLE 3.—MANAGEMENT MEASURES FOR THE SMALL MESH GILLNET FISHERY [3] IN THE MID-ATLANTIC

Floatline Length:
New Jersey waters—less than or equal to 3,000 feet (914.4 m) Southern Mid-Atlantic waters—less than or equal to 2,118 feet (645.6 m).
Twine Size (applies only to mesh sizes greater than 4 inches (10.2 cm)): greater than or equal to .81 mm (.091 inches) in all Mid-Atlantic waters.
Net Cap: 45 nets [4] (nets are 300 feet (91.4 m) long) in all Mid-Atlantic waters.
Time/Area Closures: New Jersey Mudhole Closed from February 15—March 15.

[3] Includes gillnet with mesh size of less than 7 inches (17.78cm).
[4] Requires all nets to be tagged by January 01, 2000.

The New Jersey Mudhole is defined as an area bounded as follows: from the point 40°30′ N. latitude where it intersects with the shoreline of New Jersey east to its intersection with 73°20′ W. longitude, then south to its intersection with 40°05′ N. latitude, then west to its intersection with the shoreline of New Jersey.

Discussion of the Mid-Atlantic Component

The Mid-Atlantic portion of the plan divides gillnet activity into large and small mesh categories and requires gear modifications for those mesh categories based on observer data. Observer data showed patterns or trends where reduced bycatch might be achieved if certain combinations of gear characteristics were used. The gear characteristics that demonstrated the most potential for bycatch reduction in the large mesh and small mesh fisheries were floatline length, twine size, tie downs and soak time. There are no proposed measures to reduce soak time because this measure is very difficult to

enforce. Since NMFS believes that the combination of gear modifications and time/area closures will achieve the PBR goal, soak time is not proposed as a management measure.

None of the gear characteristics alone were strongly correlated with reduced bycatch, therefore a number of measures were combined to achieve the bycatch reduction goal. Since these measures would be ineffective if effort increases, a net cap or net limit is proposed to keep effort at current levels.

Additionally, the proposed rule sets forth a schedule of fishery closures in areas and at times most closely linked with high harbor porpoise bycatch based on the observer data. NMFS agreed with the MATRT that closures were essential to achieving the PBR level given that the correlation between gear modifications and specific levels of reduced bycatch is not clear.

The small mesh and large mesh categories are specifically designed to exclude both the large mesh pelagic fishery for swordfish, tuna, and shark (greater than 18 inches (45.7 cm)) and, for some gear modifications, the very small mesh gear that is commonly used close to shore (less than 4 inches (10.16 cm)). The gear modifications include twine size specifications, net caps, floatline length limits, tie-down specifications and net panel length limits. The large mesh pelagic drift gillnet fishery (Category I fishery) is not addressed in this rule because it is being addressed by the AOCTRT. The inshore fishery, which would include very small mesh, is not subject to this rule because observer data is inadequate at this time to determine the expected take in the inshore fishery. The proposed rule would completely close the large mesh gillnet fishery for three periods and the small mesh gillnet fishery for one period. The proposed TRP would prohibit tie-downs in the small mesh gillnet category to prevent fishers from effectively fishing for certain species, e.g., monkfish, using smaller mesh during the closed period for large mesh. This measure is expected to avoid the potential for effort shifts.

This component of the plan differs from the GOM component because rather than using a series of time and areas closed to fishing and times and areas where acoustic deterrents are required, the Mid-Atlantic portion requires a suite of gear modifications. The distinction in management measures between the two regions is appropriate in this case for a number of reasons. The regions differ markedly in stages of development with regard to harbor porpoise conservation. Whereas the GOMTRT has been meeting and proposing various bycatch reduction measures for the GOM for many years, the MATRT has only met in the last two years. The GOMTRT proposed a number of measures initially which did not include mandated pinger use prior to the current recommendation. Based on new information, those measures were determined to be unsuccessful in achieving the PBR level. With regard to the use of pingers as an appropriate management measure in the GOM, no data exist to support other options, except for total closure to sink gillnet fishing. In the Mid-Atlantic, data indicated other options in the form of gear modifications that might be successful in reducing bycatch without some of the uncertainties surrounding widespread pinger use.

For the Mid-Atlantic area, the HPTRP would institute the first set of management measures to reduce harbor porpoise bycatch in that region. Since a number of options are available which may be successful, NMFS would implement non-acoustic measures before proposing pinger testing. Additionally, the MATRT did not fully support a pinger experiment in the Mid-Atlantic area at this time. The gear modifications and time/area closures recommended by the MATRT and proposed in this proposed rule are expected to be sufficient to reduce the incidental mortality of harbor porpoise from approximately 207 animals per year to less than 50 animals per year in the Mid-Atlantic area. Non-Regulatory Components of the HPTRP

In addition to recommending regulatory measures, both the GOMTRT and the MATRT recommended certain non-regulatory measures. The GOMTRT provided specific recommendations at the December 1997 meeting upon which its acceptance of more widespread pinger use and closures was contingent. These recommendations included the need for: (1) an assessment of pingers on habituation and displacement of harbor porpoise, and long term ecosystem impacts, (2) a census of the gillnet fleet, (3) investigation of funding for pinger technology development and purchase, (4) development and implementation of a training and certification program for fishers that will use pingers, and (5) additional analytical support for NMFS to ensure the progress of the plan's effectiveness can be adequately monitored. These components are part of the proposed HPTRP. A specific discussion of these recommendations and NMFS'' response to the recommendations are contained in the HPTRP/EA/IRFA. The following summarizes NMFS efforts to address the concerns raised by the GOMTRT:

(1) A study to evaluate the habituation and displacement question is already funded and underway. As part of the HPTRP, NMFS is developing a research plan to assess long-term ecosystem impacts from widespread use of pingers.

(2) As part of monitoring strategy for the HPTRP, NMFS is working with the ASMFC on the Atlantic Coastal Cooperative Statistics Program (ACCSP) in order to provide managers with more timely bycatch and fisheries information on the Atlantic Coast. Meanwhile, NMFS is continuing to look for ways to improve data collection efforts within the current system.

(3) NMFS is investigating options for providing support to fishers for pinger technology.

(4) The proposed rule would require all fishers who wish to use pingers in the closed areas to attend training and obtain certification. This certification program would not only provide training in technical aspects of pinger use, but also provide information on the bycatch problem and the need for fishers to use pinger technology properly to meet bycatch reduction objectives. NMFS is investigating the best method of delivering this program to fishers.

(5) NMFS will consider the GOMTRT's recommendation for analytical resources during normal funding and staffing allocation discussions in light of other agency responsibilities.

The MATRT made several recommendations that were considered important in achieving the long-term goals for bycatch reduction in the Mid-Atlantic. The non-regulatory measures recommended by the team primarily focus on NMFS' long-term research, monitoring, and management objectives.

The MATRT recommended that NMFS obtain a characterization of winter coastal gillnet and small boat fisheries and to designate observer coverage accordingly.

NMFS has proposed to expand its observer coverage of the Mid-Atlantic fisheries in 1998 to obtain a better characterization of other coastal fisheries to ensure observer coverage is representative of actual fishing effort.

The MATRT recommended that an outreach program be conducted to inform fishers of both new and existing regulations regarding incidental takes in their fisheries. The MATRT believes that these educational efforts should, if possible, be specifically directed toward those fishers using the fishing gear and/or practices that have higher levels of harbor porpoise bycatch.

NMFS agrees. The HPTRP provides for voluntary skipper education

workshops. Additionally, NMFS plans to prepare educational materials which will describe the take reduction process and explain the key components of the MATRP and its accompanying regulations. NMFS will ensure that these educational materials are widely distributed throughout the fishery.

The MATRT recommended several measures to enhance the effectiveness of NMFS' observer program, including expanding marine mammal observer coverage to include all areas covered by the MATRT, increased observer coverage in small mesh fisheries and better coordination between the activities of the stranding and observer programs to allow shifts of observer coverage in response to stranding information.

NMFS is planning to expand observer coverage to ensure that all components of the fishery are observed. Due to limited resources, NMFS will not be able to increase observer coverage in areas of the fishery that are already being observed at some level. Additionally, NMFS is expanding stranding observer coverage to allow for responsiveness to observed strandings.

To provide the necessary coordination between the teams and consistency across the regions, NMFS, at the recommendation of the GOMTRT, included several members of the GOMTRT on the MATRT. NMFS will strive to ensure that data on bycatch and effort in both areas will be shared with both teams.

NMFS' long-term goal is to combine the GOMTRT and the MATRT to allow for the development of comprehensive strategies to reduce harbor porpoise bycatch on the east coast. Team Recommendations and NMFS'' Proposed Changes

Gulf of Maine Component

The GOMTRT developed a comprehensive approach to the problem and included: (1) a core management plan that consisted of a schedule of time/area closures and periods when pingers would be required for each of the established management areas, (2) an implementation plan, and (3) a series of recommendations regarding data collection and analysis (details regarding these elements can be found in 62 FR 43302, August 13, 1997, and is incorporated by reference).

The August 13, 1997 proposed rule (62 FR 43302) would have implemented a schedule of time/area closures and periods during which pingers would be required for each of the established sink gillnet management areas. The proposed regulations included a comprehensive approach based on the GOMTRT's draft plan and on the measures implemented by the NEFMC as discussed above. The proposed GOMTRP regulations maintained the comprehensive approach recommended by the GOMTRT. Comments on the proposed rule are addressed in this document.

Following is a discussion of the area-by-area management recommendations and data and the explanations for why NMFS is proposing to retain some provisions as recommended by the GOMTRT at its December 16 and 17, 1997 meeting, and why some changes to the GOMTRT's recommendations are being proposed.

Northeast Area

Currently, the Northeast Area is closed to sink gillnet fishing from August 15 through September 13 of each year. This closure remains in effect under Framework 25 to the NE Multispecies FMP so no further management measures (pingers) are being considered at this time. This measure was considered sufficient by the GOMTRT and NMFS, and represents no change from the proposed rule issued on August 13, 1997.

Mid-Coast Area

Since Framework 4 to the NE Multispecies FMP (59 FR 26972, May 25, 1994) went into effect, the Mid-Coast Area has been closed to fishing with sink gillnets from March 25 to April 25 of each year (this first took effect in 1995). In the past, the Mid-Coast Area has been closed from September 15 through the end of the year. In 1995, sink gillnet fishers were allowed to operate in the area with no restrictions from September 15 through October 31, and were allowed to participate in an experimental fishery in certain parts of the area in November and December, provided they used pingers in accordance with NMFS specifications. In 1996, gillnetters were also allowed to participate in an experimental fishery from September 15 to October 31, and Framework Adjustment 19 to the NEFMP authorized sink gillnet fishing with pingers in the area for the months of November and December. Framework Adjustment 19 also closed a portion of the Mid-Coast Area known as Jeffreys Ledge Closure Area from May 1–May 31 in 1997.

While the HPTRP does not include a complete closure in the Mid-Coast Area, Framework 25 to the NE Multispecies FMP provides three, month-long closures in different parts of the Mid-Coast Area (previously described). The months of April and May had significant harbor porpoise bycatch in 1994–1996 and therefore, the Framework 25 closure is expected to reduce harbor porpoise bycatch, but it is not clear to what extent. The requirement for pingers in March will reduce the likelihood that significant takes would occur because of effort shifts back into that month. The Western GOM Area Closure (includes portions of Jeffreys Ledge and Stellwagen Bank) is being implemented as a year-round closure under Framework 25 to the NE Multispecies FMP. This overlaps the eastern edge of the current Mid-Coast closure.

The GOMTRT agreed that pingers were likely to reduce harbor porpoise bycatch by 90 percent during the fall in the Mid-Coast area. This plan assumes 80 percent effectiveness which would allow for some uncertainty in spring.

Massachusetts Bay

Currently, Massachusetts Bay is closed to fishing with sink gillnets during the month of March. This is the time of year during which most known takes in the region were recorded. This measure is considered sufficient by the GOMTRT and NMFS and is consistent with Framework 25 to the NE Multispecies FMP. When combined with the pinger measure described here, no change in the closures for this area appears warranted.

In March 1996, NMFS authorized fishers to operate in Massachusetts Bay as part of an experimental fishery, provided they used pingers in accordance with NMFS's instructions. The GOMTRT was uncertain that pingers would significantly reduce the take of harbor porpoises during the spring in Massachusetts Bay. The GOMTRT agreed, however, to assume that pingers might reduce the take of harbor porpoises by 50 percent during the spring, and it recommended that pingers be required during February, April, and May. Again, NMFS is reluctant to assume percentages contradictory to the results of controlled scientific experiments and is proposing to assume 80 percent for the first year of plan implementation. Refer to the section on acoustic deterrent devices for further explanation.

Closures during these months would decrease fishing opportunity significantly, with relatively little additional reduction in bycatch of harbor porpoises. Because March is the month with the highest risk of entanglement, the Team recommended that March be closed to sink gillnet fishing. April bycatch in 1996 was high for this area, possibly a result of shifted effort from March to April, or differences in harbor porpoise abundance and distribution. The goal of

the HPTRP is to reduce the bycatch resulting from such effects by requiring pingers on the months on either side of the complete closure.

Cape Cod South Closure Area

The possibility that harbor porpoise may be entangled in sink gillnets operating just south of Cape Cod has only recently been documented. Observer coverage of sink gillnet trips in this area began in 1992.

Currently, the Cape Cod South Closure Area is closed to fishing with sink gillnets during the month of March. Up until 1996, most known takes in the region occurred during this month. The current closures are considered sufficient by the GOMTRT and NMFS, and no change in the complete closures for this area is warranted. Given the relatively low level of bycatch during these months, the Team believed that the use of pingers to minimize bycatch would be sufficient.

Offshore Closure Area

Observer coverage in the offshore closure area was limited until 1996, and harbor porpoise takes that year were very high, estimated at 258 in the winter (mostly February) and 45 in the fall (September–December). This raised significant concerns at the GOMTRT meeting in December 1997 and offset some of the expected positive effects of many of the other harbor porpoise measures at reducing the overall bycatch estimate from 1995 (total bycatch in GOM was approximately 1400 in 1995 and 1500 in 1996). In 1997, there were observed takes in January and May, again demonstrating the variable nature of these interactions.

Consequently, a complete closure in this area was discussed by the GOMTRT in December 1997, with a closure requiring pingers in the months adjacent to that closure to address the possible shifts in bycatch. Since 71 percent of the bycatch occurred in the Cashes Ledge Area during February in 1996, complete closure of this area was a logical choice, with pinger use required in the larger offshore area from September through May.

Mid-Atlantic Component

The MATRT draft report recommended modifications of those gear characteristics and fishing activities that appeared to be most closely linked with higher harbor porpoise bycatch. The intent of the MATRT was to focus management measures on those fisheries that appeared most responsible for higher bycatch. In the Mid-Atlantic, those fisheries are the monkfish and dogfish fisheries. Based on observer data, the draft report also recommended a schedule of fishery closures in areas and at times most closely linked with high harbor porpoise.

The MATRT's report reflected the results of the data analysis, indicating that nets with finer twine size and longer floatline lengths were correlated with more cetacean interactions than were nets with larger twine sizes and shorter nets. The MATRT recommended that, in observed areas of high bycatch, decreasing the total length of nets and increasing the twine size in fisheries operating in those areas at critical times might reduce the number of interactions.

The MATRT determined the time frame for effectiveness of the management measures based on when and where harbor porpoise takes have been observed to occur. Harbor porpoise takes were observed between January and April from New Jersey to North Carolina, although January takes were only observed in New Jersey. The month with the highest bycatch was March, followed by January. Areas with highest bycatch were in New Jersey waters and, particularly for the monkfish subfishery, in the area off New Jersey called the Mudhole.

The MATRT recommended that a number of management measures be combined to achieve bycatch reduction below the PBR level because none of the gear characteristics alone were strongly correlated with reduced bycatch. Since these measures would be ineffective if effort increased, the MATRT recommended a net cap or net limit to keep effort at current levels. The net cap was set at the current average of 80 nets for monkfish and 45 nets for dogfish. Additionally, because of the uncertainty inherent in the data analysis, the MATRT recommended the use of time and area closures during times and within areas of highest bycatch.

Specifically, the MATRT report recommended the following gear modifications and time/area closures for the monkfish and dogfish fisheries (Tables 4 and 5): Effective period for both Tables.

- New Jersey waters, and U.S. waters off New Jersey out to 200 miles—January 1 through April 30.
- Southern Mid-Atlantic (MD, DE, VA, NC) and U.S. waters off the southern Mid-Atlantic out to 200 miles—February 1 through April 30.

TABLE 4.—MANAGEMENT MEASURES FOR THE MONKFISH FISHERY, AS RECOMMENDED BY THE MATRT IN ITS REPORT TO NMFS

Floatline Length:
- New Jersey Mudhole: Less than or equal to 3,900 ft (1188.7 m) New Jersey Waters (excluding Mudhole): Less than or equal to 4,800 ft (1463.0 m).
- Southern Mid-Atlantic: Less than or equal to 3,900 ft (1188.7 m).

Twine Size:
- All Mid-Atlantic Waters: Greater than or equal to .90 mm (.35 inches).

Mesh Size:
- All Mid-Atlantic Waters: 12 inches (3.1 cm).

Tie Downs:
- All Mid-Atlantic Waters: Required.

Net Cap:
- All Mid-Atlantic Waters: 80 nets (nets are 300 ft (91.4 m) long).

Time/Area Closures:
- New Jersey waters and 200 nm (370.4 km) offshore (including the Mudhole): Closed from February 15—March 15.
- Southern Mid-Atlantic (MD, DE, VA, NC) waters and 200 nm (370.4 km) offshore: Closed for a block of 20 days between February and April.[1]

[1] The specific timing of the southern Mid-Atlantic 20-day closure would be determined by individual fishers.

TABLE 5.—MANAGEMENT MEASURES FOR THE DOGFISH FISHERY, AS RECOMMENDED BY THE MATRT IN ITS REPORT TO NMFS

Floatline Length:
New Jersey waters: Less than or equal to 3,000 feet (914.4 m) Southern Mid-Atlantic waters: Less than or equal to 2,118 feet (645.6 m).
Twine Size:
All Mid-Atlantic Waters: Greater than or equal to .81 mm (.32 inches).
Mesh Size:
All Mid-Atlantic Waters: Less than or equal to 6.5 inches (1.7 cm).
Net Cap:
All Mid-Atlantic waters:[2] 45 nets.
Time/area Closures:
None.

[2] Nets are 300 feet long.

The Mid-Atlantic component of the HPTRP follows the MATRT's recommendations, except as discussed below. The non-consensus portions of the MATRT's report are discussed in the HPTRP/EA/IRFA. NMFS concurs with the MATRT's determination that the proposed management measures be effective from January 1 through April 30 in waters off New Jersey and from February 1 to April 30 in the southern Mid-Atlantic waters. The difference in effective dates between New Jersey and the southern Mid-Atlantic is based on the difference in observed harbor porpoise takes between those areas. There were no observed takes of harbor porpoise between July and December throughout the Mid-Atlantic because there is little evidence that harbor porpoise are present in the Mid-Atlantic during the summer, fall, and winter months.

The proposed HPTRP varies from the recommendations of the MATRT because the HPTRP proposes extending jurisdiction from the seaward edge of the coast to 72°30′ W. longitude offshore instead of 200 miles offshore.

The proposed HPTRP differs from the MATRT's recommendations with regard to basing management measures on subfisheries. The Mid-Atlantic coastal gillnet fishery consists of both local Mid-Atlantic vessels and New England vessels that fish in Mid-Atlantic waters during the winter months. The New England vessels fishing in the Mid-Atlantic region use a finer-twine gear type and more nets than the local Mid-Atlantic vessels.

Current data indicate that the fine-twine gear used by New England vessels is associated with a higher level of harbor porpoise bycatch than the gear used by local fishers. As a result, the MATRT's Report was based on bycatch reduction options that reinforced or were based on the fishing practices used by local Mid-Atlantic fishers. The intent of the MATRT was to address those fisheries that appeared to be correlated with higher bycatch.

The MATRT recommended management measures specific to the two predominant coastal gillnet fisheries, i.e., the monkfish and dogfish fisheries. NMFS proposes management measures specific to large and small mesh size fisheries. This approach should not change the effectiveness of the management measures in achieving the PBR level because the mesh size categories are consistent with the mesh size categories of the dogfish (small mesh) and monkfish (large mesh) fisheries. The major benefits of this modification is to make the provisions of this action more enforceable.

Given the considerable assumptions inherent in the bycatch analysis by subfishery, NMFS determined that regulatory measures should not be based on subfisheries, as the MATRT intended. Rather, the regulatory measures should be based on the characteristic(s) that appear most related to harbor porpoise bycatch, regardless of which subfishery employs such gear characteristics. It is the nature of the gear and how that gear is employed, rather than the target species, that determines whether harbor porpoise are entangled. In addition, basing regulatory measures on the dogfish and monkfish subfisheries would be very difficult to enforce, since the definition and prosecution of those fisheries differs greatly among fishermen and no FMP or permit system is currently in place under the Magnuson-Stevens Act for either fishery. Likewise, defining ''directed fishing'' for these species and imposing bycatch restrictions would be difficult to administer and enforce.

In this case, twine size and floatline length appear to be the predominant gear characteristics that are correlated with harbor porpoise bycatch in the Mid-Atlantic. NMFS has partitioned the regulatory measures according to large and small mesh categories. The large mesh category, defined as mesh of 7 inches (17.78 cm) to 18 inches (45.72 cm), includes the monkfish subfishery; the small mesh category, defined as mesh size less than 7 inches (17.78 cm), includes the dogfish fishery.

Given the models used in the subfishery bycatch analysis, and with the same assumptions that were used in the subfishery bycatch analysis (with the exception of the assumption that the only subfisheries that could potentially ever catch harbor porpoise are the dogfish and monkfish subfisheries), the predicted effect of using the recommended gear characteristics based on large mesh and small mesh gillnet categories instead of dogfish and monkfish subfisheries is still expected to result in a 79 percent or greater reduction in harbor porpoise bycatch in the Mid-Atlantic.

The proposed HPTRP differs from the MATRT's recommendations with regard to the timing of area closures. For the large mesh fishery (the monkfish fishery), the MATRT recommended New Jersey waters, including the Mudhole be closed from February 15 through March 15. NMFS proposes that the February 15 through March 15 closure apply only to vessels fishing in the Mudhole. Data indicate high bycatch in the rest of New Jersey in April, therefore NMFS proposes a closure in the rest of New Jersey from April 1 through April 20. The MATRT also recommended that the southern Mid-Atlantic be closed for a block of 20 days between February and April, the timing of the closure to be determined by the individual fishers. Such a closure would be very difficult to enforce, therefore NMFS proposes a set closure from February 15 through March 15 in the southern Mid-Atlantic. The timing of this closure is consistent with the timing of high harbor porpoise bycatch and is consistent with the timeframe envisioned by the MATRT.

For the small mesh fishery (the dogfish fishery), the MATRT recommended no time and area closures. Closures may not be necessary for most of the small mesh fishery, except in the Mudhole. The majority of the takes in the northern area are from

vessels landing in New Jersey from February through April and the fishing activity in the is particularly high during the February through March time period. The level of effort for both the small mesh and large mesh fisheries are very high in the Mudhole, therefore NMFS proposes a one month closure from February 15 through March 15 in the Mudhole for the small mesh fishery consistent with the one month closure for the large mesh fishery. Data on Acoustic Deterrent Devices and Implications for TRP Bycatch Reduction

NMFS, the fishing community, and the NEFMC have been exploring the potential of mitigating incidental bycatch of harbor porpoise in gillnets by using active acoustic alarms to warn harbor porpoise of the presence of a gillnet. These devices have shown promise as a bycatch reduction measure with varying success rates in both controlled scientific experimentation and experimental fisheries. However, scientists note that the results of these experiments should be cautiously applied when evaluating the success or failure of bycatch reduction in very different geographic areas or during other times than those investigated within the experiment. Harbor porpoise may respond differently seasonally, between geographic areas, or with differing oceanographic conditions.

In the fall of 1994, NMFS authorized and provided support for a cooperative scientific experiment by New England gillnet fishers and scientists. Building on work completed in previous years (1992–1993), the experiment sought to evaluate the effectiveness of pingers attached to gillnets to prevent entanglement of harbor porpoise. The pingers used in this experiment employed a wide range of frequencies, and acoustic features of the devices may have varied due to battery life; yet the result was a dramatic reduction in harbor porpoise bycatch (Kraus et al., 1995). Scientific concerns remained after this experiment. It was still uncertain why the alarms worked; harbor porpoise may have responded directly to the sound or the sound may have mediated the behavior of harbor porpoise prey (herring). Other unanswered questions include the possibility of habituation of harbor porpoise and other mammals to pingers over time and the overall environmental effects of widespread pinger use.

As a result of the success of the scientific experiment, experimental fisheries (an experimental fishery is not a scientifically designed experiment, but pinger use under uncontrolled fishing conditions) operated in the fall of both 1995 and 1996 and in the spring of 1996. In the fall of 1996 (Sept. 15–Oct 31) experimental fishery, three harbor porpoise were caught in 51 observed trips (198 hauls). Unfortunately, the results of the spring 1996 experimental fishery were different from the other experiments—11 harbor porpoise were caught in nets with pingers in the Jeffreys Ledge area (88 hauls, 9 harbor porpoise), Massachusetts Bay (171 hauls, 2 harbor porpoise), and in the Cape Cod South Closure Area (53 hauls, no harbor porpoise) (Waring et al., 1997).

One possible explanation is that the positive fall results may have been due to the pingers' deterrent effects on herring (a prey species), which are not present in the region in spring. Consequently, the GOMTRT recommended an additional scientific pinger experiment in the spring of 1997. No harbor porpoise were caught in nets with active pingers in the 1997 experiment, demonstrating that pingers reduced the incidental catch of harbor porpoise in sink gillnets during the spring by almost 100 percent (Kraus et al., 1997). Based on these findings, Kraus concluded that these results appear to disprove the hypothesis that deterrent effects on herring explain the discrepancy between results of the fall and spring experimental fisheries. However, the 1997 experiment did not yield any alternative explanations for the contradictory results of the spring experimental fishery.

The unanswered questions regarding pinger success add uncertainty to predictions of pinger effectiveness in areas other than those where the experiments occurred (in both time and area). In addition, because of a lack of a control in the 1996 experimental fishery, conclusions cannot be drawn about the high bycatch observed during that experiment. Because of these uncertainties, this proposed rule uses the results of the scientific experiments to assess the effectiveness of pingers in reducing harbor porpoise bycatch in the GOM. NMFS recognizes that sufficient monitoring of this fishery must occur during plan implementation to ensure that pingers adequately reduce harbor porpoise bycatch.

Closures for short periods of time in discrete areas have a number of problems that decrease their effectiveness in reducing marine mammal bycatch. Changes in distribution of fishing effort or in annual abundance and distribution of harbor porpoise may render these closures ineffective. The advantage of using pingers is that they can be employed over a wide geographic area for a long period of time while still allowing the fishery to continue. The principle findings of the Acoustic Deterrence Workshop in 1996 (Reeves, et al.) noted that ''it is appropriate to proceed with the full-scale integration of pingers into the management regime for the NE multispecies sink gillnet fishery provided that the regime includes observer and monitoring programs adequate to verify that the bycatch remains acceptably low and that no non-target species is affected adversely'.

Summary

In summary, based on reviewing the results of previous pinger experiments, the recommendations from the 1996 Acoustic Deterrence Workshop, and the discussion during the GOMTRT meeting in December 1997, this proposed rule would require widespread pinger use in the NE multispecies sink gillnet fishery. Data from the scientific experiments support a minimum 80 percent effectiveness rate estimate in the Mid-Coast area in the fall and in the spring. Therefore, NMFS will apply these pinger effectiveness rates to fall and spring pinger closures proposed in other areas (Cape Cod South and Offshore) that lack experimental data.

After implementation of this plan, NMFS will review harbor porpoise bycatch rate by June 30 (i.e., after the spring fishing season) of each calendar year to ensure that the expected pinger effectiveness rate is being realized. Additionally, this proposed rule includes a provision that would allow the Assistant Administrator to make adjustments in the time or area of closures if unexpected high bycatch occurs during a given year.

The major benefit of this aspect of the HPTRP is that by establishing closures requiring pingers, it implements a bycatch reduction strategy for several months on either side of complete closures. This should help with the inter-annual and monthly variability problem that may have contributed to keeping total bycatch at relatively unchanged or increasing levels for the last several years.

Pingers were discussed at length as a management option by the MATRT. As a management strategy, it is appropriate for many reasons to proceed with full scale integration of pingers to reduce the incidental bycatch of marine mammals in the NE multispecies sink gillnet fishery as a whole. However, caution has been urged by scientists and the GOMTRT and MATRT in applying the assumptions demonstrated in New England to other geographic areas, gear types, and times. Based on recommendations of the Acoustic Deterrence Workshop, acoustic

deterrents should not be used in fisheries where other non-acoustic management strategies are likely to be equally effective.

Comments and Responses

NMFS received numerous comments during the 60-day comment period following its August 13, 1997, proposed rule. NMFS received further comments when it reopened the public comment period following the December 16–17, 1997, meeting of the GOMTRT (97 FR 32474). The following are NMFS' responses to the comments received on the August 1997 proposed rule.

Proposed Schedule of Closures/Pinger Use

NMFS received several comments regarding the proposed schedule of fishery closures and required pinger use. NMFS has considered these comments in light of new information on harbor porpoise bycatch and relevant fishery management actions that have occurred since the publication of the proposed rule. NMFS believes that the proposed HPTRP represents the best comprehensive management strategy for both reducing U.S. harbor porpoise bycatch and rebuilding groundfish stocks under Framework 25 the NE Multispecies FMP.

Comment 1: For the Mid-Coast Area, several commenters suggested alternative schedules of fishery closures and required pinger use from that proposed.

Response: The new proposed rule would close the Mid-Coast Area from September 15 through May 31, but allow sink gillnet gear with pingers during that time period. The proposed rule does not include a complete closure in the Mid-Coast Area. However, Framework 25 to the NE Multispecies FMP provides three 1-month closures in different sections of the Mid-Coast Area. Additionally, Framework 25 includes a year-round closure of parts of Jeffreys Ledge and Stellwagen Bank which NMFS expects will provide protection for harbor porpoise.

NMFS expects that the closures under Framework 25, in combination with pinger requirements for extended periods of time in the months on either side of the closure, will ensure adequate bycatch reduction. If the NEFMC makes changes to Framework 25 that NMFS expects would result in increased harbor porpoise bycatch, the Assistant Administrator could, under the new proposed rule, make adjustments to the timing or area of a closure.

Comment 2: One commenter proposed an alternative schedule of closures and pinger use for the Massachusetts Bay area as follows: (1) maintain March 1 through March 31 closure and (2) close this area to fishing during February and April except to vessels participating in an experimental fishery with pingers.

Response: NMFS is proposing for the Massachusetts Bay Area: (1) March 1 through March 31 closure, (2) February 1 through February 28/29 and April 1 through May 31 closures, but fishing with pingers allowed. Therefore, an experimental fishery under the Magnuson-Stevens Act will not be necessary because the NEFMC will be asked to mirror the MMPA regulations in the current Magnuson-Stevens Act closures.

Comment 3: One commenter supported the Downeast closure as proposed by both the GOMTRT and NMFS in its draft plan.

Response: NMFS is maintaining this closure, referred to as the Northeast closure, in the proposed rule.

Comment 4: One commenter proposed an alternative schedule of closures South of Cape Cod: (1) maintain March 1 through March 31 closure and (2) close this area to fishing during January, February, April, May, September, October, November, and December except to vessels participating in an experimental fishery with pingers.

Response: NMFS is proposing a similar schedule of closures and pinger use for the Cape Cod South Area: (1) March 1 through March 31 closure and (2) September 15 through February 28/29 and April 1 through April 30 closures, but fishing with pingers allowed.

Comment 5: One commenter mentioned that harbor porpoise takes have now been observed in the offshore gillnet area, which was previously unobserved. The commenter proposed closing the offshore gillnet area from January 1 through May 31, and September 1 through December 31, except to vessels participating in a experimental fishery with pingers.

Response: NMFS is proposing to close the offshore area from September 15 through May 31, allowing pingers during that time period, with the exception of the Cashes Ledge Closure Area (as defined in Framework 25 to the NEFMP), which will be closed February 1 through February 28/29. In 1996, the Cashes Ledge Closure Area contained 71 percent of approximately 258 total takes in the month of February. The high bycatch previously undocumented in the offshore area was one of the reasons that overall bycatch in the GOM has not decreased, in spite of efforts by the NEFMC. Consequently, in order for the overall plan to achieve its bycatch reduction objectives, NMFS is proposing a closure in February with pingers required in the months adjacent to that closure to address possible shifts in bycatch. This is the approach used in all the other high bycatch areas (Mid-Coast, Massachusetts Bay, and Cape Cod South).

Comment 6: One commenter stated that the harbor porpoise bycatch data presented to the GOMTRT for the Southern New England area exhibited significant inter-annual variability within the 3 years of data collected. The GOMTRT agreed to extend pinger usage to this area, but expressed concern over the minimal amount of observed data (1992–1994) and the lack of current data. As a result, the commenter recommended a re-examination of the alternatives for the area to better substantiate the optimal period for closures and pinger usage.

Response: NMFS agrees that there is seasonal variability in both harbor porpoise bycatch and fishing effort. However, based on recent data, overall harbor porpoise distribution, and fishing effort distribution, the HPTRP incorporates adequate bycatch reduction measures during those months (September—April) when harbor porpoise and fishing effort are most likely to result in high bycatch, taking into account possible shifts in harbor porpoise distribution and abundance or shifts in fishing effort.

Comment 7: One commenter urged NMFS to maintain and enforce the current closures mandated by the NEFMC.

Response: See response to Comment 1 for a description of NEFMC and harbor porpoise proposed closures. The only change to the current NEFMC closures is in the Mid-Coast where pingers would be allowed during March 25 through April 25. In combination with the other components of the HPTRP, this is not expected to result in increased bycatch overall.

Pingers: Specifications and Implementation Issues

Comment 8: Two commenters noted that NMFS defined pinger broadcast parameters in the proposed rule, but did not provide regulatory guidance as to how it intends to either certify pingers as ''NMFS approved'' or test and enforce the defined parameters.

Response: The proposed rule included specifications for pingers that are required to be used in the NE multispecies sink gillnet fishery. All pingers used in this fishery must meet those specifications. Pinger manufacturers would be required to provide documentation that their

pingers meet the specifications of this proposed rule. NMFS is not requiring that manufacturers have their pingers certified by an independent company to ensure they meet the specifications. NMFS will periodically monitor whether the pingers used by the fishery meet the specifications.

Because the harbor porpoise bycatch rate will be carefully monitored, NMFS expects that both manufacturers and fishers will be aware of the importance of technically correct and properly maintained pingers. If bycatch increases because of improper pinger use or non-effective acoustics, more restrictive measures to reduce bycatch may be warranted. Additionally, a program that is part of the HPTRP would be in place to monitor pingers during normal use to ensure that acoustics of pingers do not change with time and that they maintain the acoustical characteristics specified by the manufacturer.

Comment 9: In the proposed rule, NMFS included a description of a pinger, including specific pinger parameters. The manufacturer and technical supporter which provided pingers used in the GOM pinger tests believes the following to be a more accurate description of the acoustic deterrent device used in the NE multispecies sink gillnet fishery: ''operates at 10kHz (plus-minus 1 kHz) broadband (contains important harmonics) frequency at 134dB (plus-minus 4dB) re 1 micropascal at 1 meter output level, with 300 milliseconds (plus-minus 30 milliseconds) pulse width, and 4 seconds (plus-minus 400 milliseconds) pulse rate''.

Response: The pinger specifications defined in NMFS' August 13, 1997, proposed rule accurately reflect the pingers used in the GOM pinger experiments, yet allow for a reasonable range of manufacturing variability to ensure these pinger broadcast parameters can be produced by different manufacturers. Therefore, no change in the specifications is proposed.

Comment 10: One commenter suggested that NMFS require that vessels carry four spare pingers in case of pinger malfunction.

Response: NMFS does not agree that vessel owners should be required to carry a specific number of spare pingers in case of pinger malfunction; the requirement that all pingers deployed must be ''operating and functional'' provides adequate direction to vessel owners.

Comment 11: One commenter supported the NMFS proposal that gillnetters be required to use the same pinger placement as was used in the GOM pinger experiment.

Response: NMFS has maintained this provision in this proposed rule.

Comment 12: Two commenters urged NMFS to immediately conduct the GOMTRT's recommended research on the effect of pingers on harbor porpoise and other marine life and on the habituation of harbor porpoise to pingers.

Response: A study to evaluate the habituation and displacement question has been funded. As part of the non-regulatory components of this HPTRP, NMFS is developing a research plan to assess long-term ecosystem impacts from widespread use of pingers.

Comment 13: One commenter suggested that if pingers are shown to have an adverse impact on harbor porpoise and other animals in the ecosystem, NMFS should close those areas that are currently proposed to be open with required pinger usage.

Response: If pingers are shown to have an adverse impact on harbor porpoise, NMFS will reconvene the TRTs to evaluate other alternatives, including, but not limited to, fishery closures.

Comment 14: Three commenters stated that NMFS' proposal to provide printed educational material on pingers is inadequate, and that NMFS should conduct pinger workshops and make attendance mandatory. Additionally, one comment added that the GOMTRT, at its December 1997 meeting, strongly urged NMFS to undertake the recommended certification process.

Response: NMFS agrees and plans to conduct a pinger certification training program. After reviewing the 1996 bycatch data and proposing to rely further on the widespread use of pingers in this proposed rule, NMFS determined that a pinger certification program should be required for fishers that want to fish with pingers in closed areas. NMFS believes that this is an important aspect of the plan, especially given the anomalous results of the 1996 experimental fishery. If these results were partially due to improper pinger use by fishers, NMFS would expect that this mandatory training and certification program would increase the chances that pingers would be highly effective.

The GOM component of the HPTRP would require that all fishers who wish to fish in an area where pingers are required must attend a pinger certification training program. The exact delivery method of this program has not been determined, but operators of fishing vessels would be required to have a certificate documenting that they have received training/certification on board their vessels if they are fishing in a closed area, with pingers.

Comment 15: Two commenters stated that concerns of unintended effects of pinger use are greatly overblown. Based on the results of the spring 1997 experiment, NMFS should allow widespread use of pingers in GOM.

Response: Uncertainties do exist surrounding potential unintended effects of pinger use, but these effects are not expected to be significant. However, this cannot be tested until put into application. Therefore, NMFS is proposing widespread pinger use, accompanied by scientific studies, to evaluate both habituation and displacement of harbor porpoise and over-reaching environmental effects from widespread use. If data from the monitoring program indicate that pingers are not working, the Assistant Administrator could, under this proposed rule, make adjustments in the time or area of closures.

Census of Gillnet Fleet

Comment 16: Several commenters stressed the need for NMFS to conduct a census of the NE multispecies sink gillnet fishery. Without this, one commenter questioned how NMFS will conduct outreach to the fishing community, determine if all fishers are registered, calculate an accurate bycatch estimate, or evaluate whether it is achieving the goals of the MMPA.

Response: The GOMTRT recommended that NMFS conduct or support a census of the sink gillnet fleet to determine seasonal effort type, and amount of gear fished, target species, and areas fished. NMFS has assessed the usefulness of vessel logbooks for a number of purposes and has more clearly defined the procedures used in collecting both fisher and dealer information to insure accuracy. However, the GOMTRT noted that development of a reporting system that provides timely, consistent, and thorough measures of fishery effort may require an overhaul of existing reporting mechanisms. Toward this end, NMFS is working as a partner in a cooperative effort between the Atlantic coastal states and the ASMFC on development of the ACCSP. The ACCSP has been designed to solve some of the inherent problems of current fishery statistic data collection systems. NMFS partially funded and participated in development of the bycatch component of this system and expects that it will improve the agency's ability to accurately reflect fishing effort and bycatch in both state and Federal fisheries. When fully operational, this system is expected to solve some of the problems addressed by this comment.

Comment 17: In the preamble to the earlier proposed rule, NMFS stated that it was examining the usefulness of fishing logbooks for effort estimation and the feasibility of technological alternatives and requested comments. One commenter recommended that NMFS summarize what it has done to investigate the possible alternative methods of estimating fishing effort and the results of such efforts. Two additional commenters urged NMFS to make the technological changes necessary to achieve real-time monitoring of effort, landings, and bycatch.

Response: The ACCSP (discussed in response to Comment 16) has been designed to solve some of the inherent problems of current fishery statistic data collection systems. This system was designed with considerations such as whether or not new reporting mechanisms or new methods of effort calculation were needed. The program's implementation phase has already begun, but NMFS expects that such a comprehensive system will require a significant amount of time to become completely operational. NMFS will provide an update on the progress of this program at the next meeting of the GOMTRT.

Reconvening the GOMTRT

Comment 18: Three commenters suggested that NMFS reconvene the GOMTRT and provide it with the results of the spring 1997 pinger experiment.

Response: NMFS reconvened the GOMTRT on December 16 through 17, 1997. NMFS provided the GOMTRT with an analysis of the results of the spring 1997 pinger experiment and with updated estimates of harbor porpoise takes in both the GOM and Mid-Atlantic. Based on this information, the GOMTRT made recommendations to NMFS for further reducing the incidental take of harbor porpoise in the GOM which have been incorporated into this proposed rule.

Comment 19: One commenter commended NMFS for conducting the spring 1997 pinger experiment, immediately completing the experimental analysis, and providing this information to the GOMTRT.

Response: No response necessary.

Comment 20: NMFS should consider combining the two harbor porpoise TRTs, or having joint meetings to more effectively reduce harbor porpoise bycatch throughout the range of the species.

Response: NMFS is considering combining the GOMTRT and MATRT (see response to Comment 23). NMFS is proposing one HPTRP to address the bycatch of harbor porpoise throughout their U.S. range. The gillnet fisheries in the GOM and Mid-Atlantic have different characteristics and, thus, have different management strategies available for reducing bycatch. To address the individual management needs of these gillnet fisheries, NMFS'' proposed HPTRP includes separate GOM and Mid-Atlantic components.

Comment 21: NMFS should reconvene the GOMTRT semi-annually and provide it with data necessary to review whether the HPTRP is meeting its objectives.

Response: NMFS intends to continually review the data to determine when a team meeting is warranted. The GOMTRT is expected to be reconvened no less than annually.

Bycatch Reduction—Allocation of PBR

Comment 22: One commenter supported the approach recommended by the GOMTRT for allocating PBR between the GOM and the Mid-Atlantic areas. The commenter stated that PBR can not be allocated by region, and that each fishery should reduce takes by the same percentage.

Response: NMFS has taken this approach, proposing a 79 percent reduction in both regions as agreed to by the TRTs.

Comment 23: Two commenters suggested that NMFS reconvene both teams jointly to address the PBR allocation issue, and that NMFS should provide guidance on what type of allocation would be acceptable.

Response: NMFS agrees that this idea has merit with respect to looking at harbor porpoise bycatch issues overall, but the fisheries involved are so different that it would be difficult to deal with specific plan elements in combination. Accordingly, NMFS will consider reconvening both teams jointly to address several aspects of the bycatch reduction strategies for harbor porpoise.

Comment 24: One commenter noted that the preamble to the earlier proposed rule stated that ''an equitable allocation scheme will be developed for each segment of the fishery''. The commenter further noted that separate plans have been developed between the regions with available PBR accounted for within each plan, and any allocation scheme or reallocation scheme is unnecessary for discussion in the final rule.

Response: No reallocation is proposed. See response to Comment 22.

Implementation of HPTRP

Comment 25: Several commenters opposed implementation of a TRP under the Magnuson-Stevens Act. Three commenters noted that it would not have as broad effect as implementation under the MMPA and would exempt those fishers who fish in state waters but do not have a Federal permit. Two commenters expressed concern that implementation under the Magnuson-Stevens Act would further delay the implementation of the TRP. Two commenters objected because fishery management councils were officially represented on the GOMTRT, and their subsequent involvement in this plan might undermine the take reduction process. Two commenters stated that implementation solely under the Magnuson-Stevens Act violates the intent of the MMPA. Finally, one commenter noted that NMFS would not be able to effectively monitor whether the TRP is achieving its objectives if implemented under the Magnuson-Stevens Act.

Response: The current proposed rule would implement the proposed HPTRP under the authority of the MMPA. Therefore, fisheries in state waters would be subject to the regulations. Baitnets are exempted in this proposed rule, as discussed in NMFS' response to Comment 28. Through the ACCSP program of cooperation with the States, and through NMFS' monitoring activities, fisheries in state waters will be monitored for potential bycatch (see response to Comment 16).

NMFS disagrees that implementation under the Magnuson-Stevens Act violates the MMPA. The MMPA requires NMFS to reduce the incidental bycatch of marine mammals in commercial fisheries to below the PBR level for strategic stocks. If this goal could be accomplished through Magnuson-Stevens Act actions, it would not be in violation of MMPA requirements.

Comment 26: Two commenters urged NMFS to implement a TRP under the emergency authority of the MMPA because harbor porpoise takes exceed the PBR level and because it is illegal for NMFS to delay further.

Response: An emergency action under MMPA requires any such action to be based on a commercial fisheries bycatch that is ''having, or is likely to have, an immediate and significant adverse impact.'' The current bycatch levels have long been recognized as having a significant and adverse, but not immediate, impact on this population. This is recognized by the agency in recent Stock Assessment Reports and the establishment of the GOMTRT. The total bycatch is high, but does not trigger the need for an immediate response due to the possibility for irreversible harm to the population.

Outreach

Comment 27: One commenter commended NMFS for its extensive efforts to educate the fishing industry about whale bycatch issues and to bring about more whale-friendly fishing gear and practices. The commenter suggested that NMFS include harbor porpoise in this initiative. Because the constituent groups largely overlap, the two initiatives could reinforce each other with little additional effort. One commenter suggested that public outreach programs encompass all take reduction plans so that such efforts could be focused and coordinated.

Response: NMFS agrees and has coordinated the public outreach efforts for the Atlantic coast take reduction efforts. NMFS has recently conducted TRP informational programs to communicate the purposes and goals of the plans to the commercial fishing industry. These programs, conducted in conjunction with East Coast commercial fishermen's exhibitions, gave commercial fishers the opportunity to learn more about the TRP process, and to express their concerns in person to NMFS managers and biologists. Informational programs were held in several locations in the Northeast and Mid-Atlantic region. Handouts were developed and distributed describing the TRPs and the new mandated process for managing interactions between commercial fisheries and marine mammals. Educational fact sheets informed fishers of appropriate action to take in cases of whale entanglement and provided guidance on identifying specific species of marine mammals. Seminars and panel discussions were conducted detailing the specific requirements of the existing take reduction process and provided an opportunity for input from fishers and other interest groups.

Harbor Porpoise Mortality in Other Fisheries

Comment 28: Several commenters noted that harbor porpoise bycatch is likely in other fisheries, including baitnets and other fisheries in state waters. NMFS should ensure that bycatch in these fisheries is addressed. One commenter further noted that baitnets and other fisheries in state waters may be exempt from the restrictions of the HPTRP if it is implemented under the Magnuson-Stevens Act.

Response: Because the regulations would be issued under the authority of the MMPA, fisheries in state waters would be subject to them. Baitnets would be exempt under the new proposed rule because they are tended, are limited in length, and only fished for short periods of time. The GOMTRT agreed that they are unlikely to take harbor porpoise. Through the ACCSP program of cooperation with the States, and through NMFS monitoring activities, fisheries in state waters will be monitored for potential bycatch.

Comment 29: One commenter expressed concern that mid-water trawls are operating in harbor porpoise habitat at times of high use by the animals, and urged NMFS to investigate this possible source of mortality.

Response: NMFS is aware that an Atlantic herring trawl fishery may be operating in the Northeast at times and in locations where there is a high density of harbor porpoise. This fishery is comprised of approximately 35 vessels operating in the Northwest Atlantic. NMFS currently has the authority to place observers on pelagic herring trawl vessels under the Magnuson-Stevens Act.

Because this herring trawl fishery uses similar gear to the Atlantic squid, mackerel, butterfish trawl fishery (a Category II fishery), and because of its potential to interact with harbor porpoise, NMFS is analyzing existing information on the levels of serious injury and mortality of marine mammals that are occurring incidental to this fishery and will propose adding this fishery to the List of Fisheries for 1999.

Enforcement

Comment 30: Two comments were received concerning enforcement. At the re-convening of the GOMTRT in December 1997, data indicated that fishers are fishing in closed areas and, in some cases, are fishing without pingers in areas and during periods when they are required. No enforcement action had been taken. Both the U.S. Coast Guard and NMFS Enforcement representatives present at the meeting admitted that, at this time, they have no means to monitor compliance with requirements for using pingers. The commenter urged NMFS to enforce the provisions of the HPTRP and the Multispecies FMP.

Response: NMFS is concerned about enforcement. The primary objective of the observer program, which is a function of the Northeast Fisheries Science Center, is to provide NMFS with unbiased scientific information on protected species and fishery issues for purposes of stock assessments and bycatch estimates. For fisheries where observer coverage is mandated, those data can be made available to investigators if requested. NMFS Enforcement is investigating this information and has already initiated dialogue with the observer program on the issue of confidentiality of observer data, but this has not yet been resolved. However, an important part of the message to fishers is that if pingers are not used, or are used improperly, bycatch will most likely increase. If this occurs, more restrictive measures (i.e., closures) to reduce bycatch will be considered.

Comment 31: One commenter supported NMFS' proposal to have Special Agents from the NMFS' Enforcement Division attend upcoming GOMTRT meetings in an effort to facilitate enforcement of the HPTRP.

Response: Officials from both NMFS Enforcement Division and the U.S. Coast Guard attended the December 1997 meeting of the GOMTRT. This is expected to continue.

Re-Evaluate Proposed HPTRP

Comment 32: Several commenters noted that new information suggests the proposed GOMTRP will not be sufficient to reduce harbor porpoise takes below the PBR level and urged NMFS to reconsider its proposal. One of the commenters recommended that NMFS proceed with a separate emergency rule to reduce harbor porpoise bycatch south of New England in winter/spring 1998 and/or modify the proposed GOMTRP to further reduce projected bycatch levels, given the expected takes south of New England.

Response: NMFS has re-evaluated its August 1997 proposed rule in light of new information on harbor porpoise bycatch, the results of the spring 1997 pinger experiment, and relevant fishery management actions and agrees that the 1997 proposed rule would not be adequate to reduce bycatch to required levels. This new proposed rule is expected to reduce the incidental takes of harbor porpoise in the GOM and Mid-Atlantic to the PBR level.

Comment 33: One commenter indicated that a vessel buyback program in the GOM, designed to reduce groundfish effort, has reduced the number of sink gillnet vessels. Additionally, the commenter noted that some vessels have left the fishery for other fisheries or for other reasons. The commenter urges NMFS to consider this issue, as a reduction in fishing effort should effect the potential for interactions with harbor porpoise.

Response: The bycatch rate for harbor porpoise in the GOM provides the basis for the plan and considers fishing effort. In the past, regardless of the possible decrease in fleet size and/or fishing effort, neither the bycatch rate nor the

total bycatch of harbor porpoise in the GOM has decreased.

General Comments

Comment 34: One commenter was concerned that Canadian bycatch of harbor porpoise has decreased significantly due to the extraordinary limitation of fishing effort in Canada to protect groundfish. As these groundfish stocks recover, and fisheries resume normal operations, the commenter was concerned that mortality of harbor porpoise in Canadian waters will increase. The commenter recommended that NMFS work formally with the Department of Fisheries and Oceans in Canada to assure equivalent planning to reduce mortality.

Response: Canada has, within the last few years, developed its own harbor porpoise conservation strategy. It has developed an observer program to document takes and has also developed its own bycatch estimates. Canada also has a restriction in place that allows them to immediately close the fishery if more than a certain number of animals are caught. Canada has also incorporated pingers into its management strategy. NMFS intends to keep abreast of Canadian conservation activities and the status of the fisheries.

Comment 35: One commenter expressed overall support for the proposed GOMTRP.

Response: Given the information on bycatch and the distribution of fishing effort available when the proposed GOMTRP was published, the proposed take reduction measures were expected to adequately reduce harbor porpoise bycatch levels in the GOM.

Since the publication of the earlier proposed rule, however, new bycatch and fishery information became available which indicated significant changes were needed in the original draft HPTRP and proposed rule to achieve the PBR level. In addition, the MATRT submitted its report to NMFS which presented new information on the level of bycatch in the Mid-Atlantic region. The GOMTRT reconvened on December 16 through 17, 1997, to discuss this information and to provide additional comments to NMFS. The combination of these actions led NMFS to decide to integrate the initially separate plans into one comprehensive plan. Since the HPTRP is substantially different than the GOMTRP, NMFS is publishing this new proposed rule to replace the earlier proposal.

Comment 36: One commenter stated that NMFS is in violation of the MMPA for inadequately protecting harbor porpoise. The most recent data indicate that: (1) current harbor porpoise bycatch is three times the PBR level, and there has been no meaningful reduction in harbor porpoise bycatch; bycatch has actually increased in some areas, (2) there are takes occurring in the offshore gillnet fishery (which was previously unobserved), (3) pingers are not as effective in experimental fisheries as in controlled experiments, (4) NMFS has not completed research on the unintended effects of pingers, (5) illegal fishing with harbor porpoise takes are occurring in closed areas, and (6) no enforcement actions are being taken. Additionally, the commenter noted that NMFS has not complied with the statutory deadlines for convening a GOMTRT or publishing an HPTRP. The commenter noted that NMFS must take strict and immediate action to reduce the deaths of harbor porpoise in the GOM.

Response: NMFS agrees that data indicate that harbor porpoise bycatch is close to 3.5 times the PBR level. Bycatch has decreased in those areas where take reduction measures have been applied, and bycatch has increased outside of those areas. Consequently, the overall bycatch has remained relatively unchanged. NMFS acknowledges that there are harbor porpoise takes in offshore areas and has incorporated management measures into this proposed rule to reduce this bycatch. It is currently unknown whether pingers are as effective in experimental fisheries as they were in scientific experiments since the experimental fisheries had no controls—therefore, it was unknown whether the bycatch rate would have been higher in nets without pingers and if so, how much higher. Consequently, NMFS is preparing to monitor bycatch as an indicator of whether or not pingers are enough of a management option. NMFS is currently supporting a research project to study habituation and displacement of harbor porpoise by pingers. NMFS agrees that observer data are available that appears to indicate that fishers may have been in closed areas, and is conducting an investigation that will result in enforcement actions.

Comment 37: One commenter suggested that NMFS reevaluate the current weighout landings system for determining bycatch levels because commenter believes it is an inaccurate method of derivation of actual bycatch rate.

Response: In order to estimate bycatch levels, the unit of fishing effort must be correlated to bycatch and must be an accurate representation of what is occurring in the fishery. Currently, weighout data are considered the best and most complete unit of effort for the sink gillnet fishery that meets this requirement. Logbooks are being evaluated for their contributions to effort projections and were used in the 1996 analysis to estimate the distribution of effort by area. As logbooks improve, they may become more useful. However, at the current time many of them are inaccurately or incompletely filled out. Therefore, fishers need to realize the importance of providing complete and accurate information that allows NMFS to make better analyses in many areas including bycatch.

Comment 38: One commenter requested that NMFS consider the trip boat category in developing the final GOMTRP. The commenter noted that this would promote the use of ''day setting'' where vessels retrieve gear before returning to port; this results in shorter trips and a cleaner, more directed fishery.

Response: The HPTRP is expected to meet bycatch reduction goals. However, this idea has merit for future discussions at take reduction team meetings should additional measures be necessary in the future.

Comment 39: One commenter noted that NMFS should specifically state in the final HPTRP that the goal of the HPTRP was to reduce incidental takes of harbor porpoise to below the PBR level within 6 months of the plan's implementation.

Response: This is described above in the supplemental information section.

Comment 40: One commenter requested that NMFS specifically state in the final rule that the HPTRP had determined that its draft plan would reduce incidental take levels in the New England fisheries to 376 harbor porpoises. NMFS should further specify the total number of harbor porpoises projected to be taken under its proposed plan.

Response: The HPTRP and EA document includes a discussion of the expected harbor porpoise bycatch levels under this proposed HPTRP. Overall, NMFS expects harbor porpoise bycatch in the NE multispecies sink gillnet fishery to be reduced to 309 animals per year and expects harbor porpoise bycatch in the Mid-Atlantic coastal gillnet fishery to be reduced to below 50 animals per year.

Comment 41: One commenter requested that NMFS explain the reason for delay in publishing the TRP and how it will avoid delays in future. NMFS should commit to acting expeditiously on future TRPs.

Response: Two primary reasons caused delays in acting on the rule proposed in 1997: (1) New information

on bycatch was available and the GOMTRT had requested that NMFS convene the team when the 1996 bycatch estimates became available and (2) management actions being considered under the Magnuson-Stevens Act for GOM cod were expected to have a significant impact on the sink gillnet fishery in New England in the areas that are also responsible for high bycatch of harbor porpoise. Development of a revised proposal was pending an analysis of the impacts of this new information.

Classification

The proposed rule has been determined to be significant for purposes of E.O. 12866.

NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. The need for, and objectives of this proposed rule and a summary of the significant issues are described elsewhere in this preamble. The GOM sink gillnet and Mid-Atlantic coastal gillnet fisheries are directly affected by the proposed action and are composed primarily of small business entities.

In formulating this proposed rule, NMFS considered a number of alternatives: Alternative 1, the proposed action; Alternative 2, no action; Alternative 3, wide-spread use of pingers; and Alternative 4, wide-spread time and area closures.

Alternative 1, the proposed action, a combination of area closures and pinger requirements, is the preferred alternative because it will achieve the goals of the MMPA while minimizing the overall economic impact.

Under Alternative 1, it is estimated that 113 vessels (41% of total, 64% of impacted) would see their total costs increase more than 5%. If the 10% threshold is used, 70 vessels (26% of total, 40% of impacted) would see their total costs increase more than 10%. The cost increase was due to purchasing new gear or pingers, and the cost of gear marking requirements. Vessels could avoid these cost increases by not fishing during the time periods when they would have to modify their gear or use pingers. However, they would then lose some percentage of their yearly profit. The total economic losses of the proposed action from the New England and the Mid-Atlantic regions are estimated to be between $613 thousand dollars and $5.3 million dollars depending on the number of vessels which can shift their effort to open areas and the number which use pingers.

The costs associated with this proposed rule are not related to reporting requirements. To the extent that the proposed rule would allow fishery participants to select whether to acquire a new gear type or avoid the time/area closures, performance requirements can be substituted for design requirements at the participant's discretion. Since most of the affected entities are small entities, providing an exemption for small entities would not enable the agency to meet the conservation and management goals of the MMPA.

Currently, the NE sink gillnet fishery is subject to regulations under the NE Multispecies Fishery Management Plan. Recent NE groundfish conservation measures were proposed under Framework Adjustment 25 to the NE Multispecies FMP. The predominant Mid-Atlantic gillnet fisheries are not subject to regulations under a fishery management plan at this time. The proposed rule is designed to complement Framework 25 and other fishery management regulations. The recommendations of the GOMTRT were modified by NMFS to take into consideration the combined effect of Framework 25 and the HPTRP on NE fishermen.

Under Alternative 2, there would be no additional costs to the fleet either through gear modifications, purchase of pingers or losses in surplus due to time and area closures. Therefore, based on costs which the fleet would incur, this alternative is the least costly when compared to the proposed action or non-preferred alternatives. However, there is a much larger cost in terms of foregone harbor porpoise protection. Based on the contingent valuation study conducted by the University of Maryland (Strand, et al., 1994), households in Massachusetts were willing to pay between $176 dollars and $364 dollars to eliminate human induced mortality of 1,000 harbor porpoise. Using the lower figure of $176 dollars multiplied by the number of Massachusetts households, and amortizing the total using a 7% rate yielded a yearly value of roughly $28 million dollars. This means that decreasing mortality by 1,000 animals would increase consumer surplus by $28 million dollars. Therefore, when compared against the other alternatives, the status quo is far inferior because it does not achieve the same level of consumer surplus due to a higher level of harbor porpoise mortality.

Alternative 3 would require all vessels fishing between September and May in New England, and between January and April in the Mid-Atlantic to use pingers. Each vessel owner would decide whether to purchase pingers based on their own set of circumstances. Each pinger was estimated to cost $50 dollars based on information obtained from Sea Sampling personnel. It is assumed that there would be one pinger required per net, and one on each buoy line. Using the average number of nets and strings fished in each region, a weighted average $3,437 dollars per vessel was estimated for the cost of pingers which translates into a total fleet cost of $608 thousand dollars.

The cost of pingers was estimated to be $608 thousand dollars if all vessels purchase pingers. However, some vessels may be unable to afford pingers. This would increase the total losses because vessels which were unable to afford pingers would have to stay tied up at the dock and therefore lose revenue. It is assumed that losses in producer surplus are linearly related to the percent of vessels which purchase pingers. For example, if 50 percent of the vessels use pingers, then the losses in producer surplus and crew rents will be reduced by 50 percent. Total pinger costs are also estimated based on the percent of vessels which purchase pingers. Losses calculated using these assumptions are estimated to be between zero and $7.4 million dollars.

In reality, vessels can either purchase pingers and continue to fish, shift their effort to other areas, or elect not to purchase pingers and stay tied up at the dock. Because the time and areas where pingers are required are quite extensive, it is unlikely that vessels will be able to switch areas and continue fishing without pingers. Without a more formal model, it is not possible to predict the number of vessels which will adopt either strategy.

This alternative is not preferred because it is highly unlikely that it could achieve the bycatch reduction goals of the MMPA for harbor porpoise because pingers have not been proven to be effective in all areas at all times. In addition, there are a number of scientific concerns regarding the impacts of widespread pinger use on harbor porpoise and other marine organisms.

The total loss in producer surplus and crew rents for both regions from Alternative 4 would be $7.4 million dollars. Overall, 177 vessels would be impacted for a per vessel loss of roughly $42 thousand dollars. As described in the IRFA, the cost to the fishery in terms of economic impacts would vary by area closure. Refer to the IRFA for a discussion of the impacts of this alternative based on the closure variations.

Vessels could shift their operations to other areas and make up for any revenue loss. This puts bounds on the losses of

between zero, if revenue was totally replaced in other areas, and $7.4 million dollars. For this alternative, it will be more difficult for vessels to shift to other times and areas because the areas are all closed at the same time. There is the opportunity for New England vessels to move to the Mid-Atlantic in the fall, or the NE closure area. Some may do so, but it is likely that most would not be able to switch. Gillnet vessels have traditionally fished in certain times and areas depending on many factors, including the vessels homeport. Because these times and areas are so extensive, it is unlikely that many vessels will be able to shift their operations and replace lost revenue.

Because the times and areas designated for closure are so extensive, it is likely that this alternative would reduce harbor porpoise mortality to close to zero. The trade-off for this reduction would be a much higher cost to the fishing fleet, and possibly higher likelihood of business failure, therefore this alternative is not preferred. However, it is not possible to evaluate the trade-off between reduced harbor porpoise mortality and increased costs. Based on the contingent valuation study (Strand et al., 94) discussed earlier, harbor porpoise are highly valued by consumers.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection-of-information requirement has been submitted to the Office of Management and Budget for approval. Under the PRA, gear marking regulations are considered a reporting requirement, and the burden hours need to be estimated.

The proposed rule requires nets in the Mid-Atlantic region to be marked in order to identify the vessel and enforce net cap provisions. It is estimated that each tag will take 1 minute to attach to the net. Each net requires two net tags. The total number of nets which will need to be tagged is estimated by assuming that combination gillnet vessels are, on average, fishing 60 nets, and all other vessels are, on average, fishing 30 nets. This gives a weighted average of 49 nets per vessel. Using these figures, the total burden hours for all vessels impacted in the Mid-Atlantic region is estimated to be 123.9 hours, or 1.63 hours per vessel.

The 76 vessel owner/operators will have to order net tags. Estimated at 2 minutes per request, this adds a burden of 2.5 hours. Depending on whether net tags are lost or damaged, vessels are expected to only have to comply once over three years. The annual average over the 3 years would be 25.3 vessels affected and 42 hours.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

References

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Reeves, R., R. Hofman, G. Silber, and D. Wilkinson. 1996. Acoustic deterrence of harmful marine mammal-fishery interactions: Proceedings of a workshop held in Seattle, Washington, 20–22 March 1996. U.S. Dept. Commerce, NOAA Tech. Memo. NMFS–OPR–10, 68 pp.

Waring, G., D. Palka, K. Mullin, J. Hain, L. Hansen, and K. Bisack. 1997. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments—1996. Woods Hole, MA: NMFS, NEFSC, NOAA Technical Memo., NMFS-NE–114

List of Subjects in 50 CFR Part 229

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

Dated: September 3, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out 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 part 229 continues to read as follows:

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

2. In § 229.2, definitions for ''large mesh gillnet,'' ''mesh size,'' ''Mudhole,'' ''small mesh gillnet,'' ''southern Mid-Atlantic waters,'' ''stowed,'' ''tie-down,'' and ''waters off New Jersey'' are added, in alphabetical order, to read as follows:

§ 229.2 Definitions.

* * * * *

Large mesh gillnet means a gillnet constructed with a mesh size of 7(17.78 cm) inches to 18 inches (45.72 cm).

* * * * *

Mesh size means the distance between inside knot to inside knot. Mesh size is measured as described in § 648.80(f)(1).

* * * * *

Mudhole means waters off New Jersey bounded as follows: From the point 40°30′ N. latitude where it intersects with the shoreline of New Jersey east to its intersection with 73°20′ W. longitude, then south to its intersection with 40°05′ N. latitude, then west to its intersection with the shoreline of New Jersey.

* * * * *

Small mesh gillnet means a gillnet constructed with a mesh size less than 7 inches (17.78 cm).

Southern Mid-Atlantic waters means all state and Federal waters off the States of Delaware, Maryland, Virginia, and North Carolina, bounded on the north by a line extending eastward from the northern shoreline of Delaware at 38°47′ N. latitude (the latitude that corresponds with Cape Henlopen, DE), east to its intersection with 72°30′W longitude, south to the 33°51′ N. latitude (the latitude that corresponds with the North Carolina/South Carolina border), and then west to its intersection with the shoreline of the North Carolina/South Carolina border.

* * * * *

Stowed means nets that are unavailable for use and that are stored in accordance with the regulations found in § 648.81(e) of this title.

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Tie-down refers to twine used between the floatline and the lead line as a way to create a pocket or bag of netting to trap fish alive.

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Waters off New Jersey means all state and Federal waters off New Jersey, bounded on the north by a line extending eastward from the southern shoreline of Long Island, NY at 40°40′ N. latitude, on the south by a line extending eastward from the northern shoreline of Delaware at 38°47′ N. latitude (the latitude that corresponds with Cape Henlopen, DE), and on the east by the 72°30′W longitude. This area includes the Mudhole.

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3. In § 229.3, paragraphs (l) through (q) are added to read as follows:

§ 229.3 Prohibitions.

* * * * *

(l) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii)) of this title, from the areas and for the times specified in § 229.33(a)(1) through (a)(6), except as provided in § 229.33(d)(1) through (d)(4).

(m) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any gillnet gear from the areas and for the times as specified in § 229.34(b)(1)(ii) or (iii) or (b)(2)(ii).

(n) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in § 229.34(c)(1) through (4) unless the gear complies with the specified gear restrictions set forth in those provisions.

(o) Beginning on January 1, 1999, it is prohibited to fish with, set, or haul back sink gillnets or gillnet gear, or leave such gear in closed areas where pingers are required, as specified under § 229.33(c)(1) through (4), unless the operator possesses on board the vessel a valid pinger certification training certificate issued by NMFS.

(p) Beginning on January 1, 2000, it is prohibited to fish with, set, haul back, or possess any gillnet gear in Mid-Atlantic waters in the areas and during the times specified under § 229.34(d) unless the gear is properly tagged in compliance with that provision and unless a net tag certificate is on board the vessel. It is prohibited to refuse to produce a net tag certificate or net tags upon the request of an authorized officer.

(q) *Net tag requirement.* Beginning on January 1, 2000, no vessel may fish with gillnet gear in New Jersey waters from January 1 through April 30 or in southern Mid-Atlantic waters from February 1 through April 30 unless the gillnet is properly tagged. In order to be properly tagged, one tag must be secured to each bridle of every net within the string of nets. The owner or operator of fishing vessels must indicate to NMFS the number of gillnet tags that they are requesting up to the maximum number of nets allowed in those paragraphs and must include a check for the cost of the tags. Vessel owners and operators will be given notice with instructions informing them of the costs associated with this tagging requirement and directions for obtaining tags. Tag numbers will be unique for each vessel and recorded on a certificate. The vessel operator must produce the certificate and all net tags upon request by an authorized officer.

4. In subpart C, a new § 229.33 is added to read as follows:

§ 229.33 Harbor Porpoise Take Reduction Plan implementing regulations—Gulf of Maine.

(a) *Restrictions*—(1) *Northeast Closure Area.* From August 15 through September 13 of each fishing year, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title), from Northeast Closure Area. The Northeast Closure Area is the area bounded by straight lines connecting the following points in the order stated.

NORTHEAST CLOSURE AREA

Point	N. Lat.	W. Long.
NE1	(1)	68°55.0′,
NE2	43°29.6′	68°55.0′,
NE3	44°04.4 [1]	67°48.7′,
NE4	44°06.9′	67°52.8′,
NE5	44°31.2′	67°02.7′,
NE6	(1)	67°02.7′

[1] Maine shoreline.

(2) *Mid-coast Closure Area.* From September 15 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title), from the Mid-Coast Closure Area, except as provided in § 229.33(d)(1).

The Mid-Coast Closure Area is the area bounded by straight lines connecting the following points in the order stated:

Mid-Coast Closure Area

Point	N. Lat.	W. Long.
MC1	42°30′	(1)
MC2	42°30 [1]	70°15′
MC3	42°40′	70°15′
MC4	42°40′	70°00′
MC5	43°00′	70°00′
MC6	43°00′	69°o30′
MC7	43°30′	69°30′
MC8	43°30′	69°00′
MC9	(2)	69°00′

[1] Massachusetts shoreline.
[2] Maine shoreline.

(3) *Massachusetts Bay Closure Area.* From February 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title), from the Massachusetts Bay Closure Area, except as provided in § 229.33(d)(2). The Massachusetts Bay Closure Area is the area bounded by straight lines connecting the following points in the order stated.

MASSACHUSETTS BAY CLOSURE AREA

Point	N. Lat.	W. Long.
MB1	42°30′	(1)′,
MB2	42°30′	70°30′,
MB3	42°12′	70°30′,
MB4	42°12′	70°00′,
MB5	(2)	70°00′,
MB6	42°00′	(2),
MB7	42°00′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline.

(4) *Cape Cod South Closure Area.* From September 15 through April 30, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title), from Cape Cod South Closure Area, except as provided in § 229.33(d)(3).

The Cape Cod South Closure Area is the area bounded by straight lines connecting the following points in the order stated.

CAPE COD SOUTH CLOSURE AREA

Point	N. Lat.	W. Long.
CCS1	(1)	71°45′,

CAPE COD SOUTH CLOSURE AREA—Continued

Point	N. Lat.	W. Long.
CCS2	40°40′	71°45′,
CCS3	40°40′	70°30′,
CCS4	(2)	70°30′

1 Rhode Island shoreline
2 Massachusetts shoreline.

(5) *Offshore Closure Area.* From September 15 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of a single pelagic gillnet (as described in § 648.81(f)(2)(ii)of this title), from Offshore Closure Area, except as provided in § 229.33(d)(4). This requirement becomes effective November 1, 1998.

The Offshore Closure Area is the area bounded by straight lines connecting the following points in the order stated:

OFFSHORE CLOSURE AREA

Point	N. Lat.	W. Long.
OFS1	42°50′	69°35′
OFS2	43°10′	69°10′
OFS3	43°10′	67°40′
OFS4	42°10′	69°10′
OFS5	42°10′	69°30′

(6) *Cashes Ledge Closure Area.* For the month of February of each fishing year, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title), from the Cashes Ledge Closure Area. The Cashes Ledge Closure Area is the area bounded by straight lines connecting the following points in the order stated:

CASHES LEDGE CLOSURE AREA

Point	N. Lat.	W. Long.
CL1	42°30′	69°00′,
CL2	42°30′	68°30′,
CL3	43°00′	68°30′,
CL4	43°00′	69°00′,
CL5	42°30′	69°00′

(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 (±2 kHz) sound at 132 dB (±4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (± 15 milliseconds), and repeating every 4 seconds (± .2 seconds).

(2) *Pinger attachment.* An operating and functional pinger must be attached at the end of each string of the gillnets and at the bridle of every net within a string of nets.

(c) Pinger training and certification. Beginning on January 1, 1999, the operator of a vessel may not fish with, set or haul back sink gillnets or gillnet gear, or allow such gear to be in closed areas where pingers are required as specified under paragraph (b) of this section, unless the operator has satisfactorily completed the pinger certification training program, and, possesses on board the vessel a valid pinger training certificate issued by NMFS. Notice will be given announcing the times and locations of pinger certification training programs.

(d) Use of pingers in closed areas. (1) Vessels, subject to the restrictions and regulations specified in paragraph (a) of this section, may fish in the Mid-coast Closure Area from September 15 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraph (b) of this section.

(2) Vessels, subject to the restrictions and regulations specified in paragraph (a) of this section, may fish in the Massachusetts Bay Closure Area from February 1 through the last day of February and from April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements of paragraph (b) of this section.

(3) Vessels, subject to the restrictions and regulations specified in paragraph (a) of this section, may fish in the Cape Cod South Closure Area from September 15 through the last day of February and from April 1 through April 30 of each fishing year, provided that pingers are used in accordance with the requirements of paragraph (b) of this section.

(4) Vessels, subject to the restrictions and regulations specified in paragraph (a) of this section, may fish in the Offshore Closure Area from September 15 through May 31 of each fishing year, with the exception of the Cashes Ledge Closure Area. From February 1 through the end of February the area within the Offshore Closure Area defined as ''Cashes Ledge'' is closed to all fishing with sink gillnets. Vessels subject to the restrictions and regulation specified in paragraph (a) of this section may fish in the Offshore Closure Area outside of the Cashes Ledge Area from February 1 through the end of February provided that pingers are used in accordance with the requirements of paragraph (b) of this section.

(e) Other special measures. The Assistant Administrator may revise the requirements of this section through notification published in the **Federal Register** if:

(1) NMFS verifies one year after plan implementation, that pinger operating effectiveness in the commercial fishery is not adequate to reduce bycatch to acceptable levels with the current plan.

(2) NMFS determines that the boundary or timing of a closed area are not appropriate, or that gear modifications (including pingers) are not meeting bycatch reduction expectations. Specifically, observer data shows that PBR has been exceeded between January 1 and April 30 every year between 1992–1996. Therefore, NMFS will review effort and bycatch data and make a determination by June 30 each year if additional bycatch reduction measures beyond the TRP are needed for the remainder of the calendar year to keep the annual bycatch level below the PBR level.

5. In subpart C, a new § 229.34 is added to read as follows:

§ 229.34 Harbor Porpoise Take Reduction Plan—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. longitude and on the south by the North Carolina/South Carolina border (33°51′ N. latitude), except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* All waters landward of the first bridge over any embayment, harbor, or inlet will be exempted. The regulations in this section do not apply 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

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)
39°16.70 N 75°14.60′ W TO 39°11.25′ N 75°23.90′ W (Delaware Bay)

Maryland/Virginia 38°19.48′ N 75°05.10′ W TO 38°19.35′ N 75°05.25′ W (Ocean City Inlet)

37°52.′ N 75°24.30′ W TO 37°11.90′ N 75°48.30′ W (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 the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Restrictions*—(1) *Waters off New Jersey*.

(i) General Restrictions. From January 1 through April 30, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any gillnet gear from the waters off New Jersey unless the gear complies with the applicable gear characteristics specified under paragraph (c)(1) or (2) of this section.

(ii) Closure for large mesh gear. From April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear from the waters off New Jersey.

(iii) Mudhole closure. From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any gillnet gear from the waters off New Jersey known as the Mudhole.

(2) *Southern Mid-Atlantic waters.* (i) General restrictions. From February 1 through April 30, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any gillnet gear from the southern Mid-Atlantic waters unless the gear complies with the applicable gear characteristics specified under paragraph (c)(2) or (3) of this section.

(ii) Closure for large mesh gear. From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed, or fail to remove any large mesh gillnet gear from the southern Mid-Atlantic waters.

(c) Gear requirements and limitations. (1) Waters off New Jersey-large mesh gear requirements and limitations. From January 1 through April 30 of each year, no person may fish with large mesh gillnet gear in waters off New Jersey unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in waters off New Jersey with large mesh gillnet gear on board unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) *Floatline Length.* The floatline is no longer than 4,800 ft (1,463.0 m), and if the gear is used in the Mudhole, the floatline is no longer than 3,900 ft (1,188.7 m).

(ii) *Twine Size.* The twine is at least 0.04 inches (0.090 cm) in diameter.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.44 m), or 50 fathoms, in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(v) *Tie-down system.* The gillnet is equipped with tie-downs spaced not more than 15 ft (4.6 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(2) *Waters off New Jersey—small mesh gillnet gear requirements and limitations.* From January 1 through April 30 of each year, no person may fish with small mesh gillnet gear in waters off New Jersey unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in waters off New Jersey with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) *Floatline Length.* The floatline is less than 3,000 ft (914.4 m).

(ii) *Twine Size.* The twine is at least 0.03 inches (0.080 cm) in diameter. This requirement only applies to mesh more than 4 inches (10.2 cm) but less than 7 inches (17.78 cm) in size.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (1.4 m or 50 fathoms) in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(v) *Tie-down System.* Tie-downs are prohibited.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(3) *Southern Mid-Atlantic waters—large mesh gear requirements and limitations.* From February 1 through April 30 of each year, no person may fish with large mesh gillnet gear in Southern Mid-Atlantic waters unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in Southern Mid-Atlantic waters with large mesh sink gillnet gear on board unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) *Floatline Length.* The floatline is no longer than 3,900 ft (1,188.7 m).

(ii) *Twine Size.* The twine is at least 0.04 inches (0.090 cm) in diameter.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(v) *Tie-down system.* The gillnet is equipped with tie-downs spaced not more than 15 ft (4.6 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(4) *Southern Mid-Atlantic waters—small mesh gillnet gear requirements and limitations.* From February 1 through April 30 of each year, no person may fish with small mesh gillnet gear in waters off New Jersey unless the gear complies with the specified gear characteristics. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in Southern Mid-Atlantic waters with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics or unless the gear is stowed. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(i) *Floatline Length.* The floatline is no longer than 2118 ft (645.6 m).

(ii) *Twine Size.* The twine is at least 0.03 inches (0.080 cm) in diameter. This requirement applies only to mesh sizes <4 inches but >7 inches.

(iii) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(iv) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(v) *Tie-down System.* Tie-downs are prohibited.

(vi) *Tagging requirements.* Beginning January 1, 2000, the gillnet is equipped with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(d) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the **Federal Register** if:

(1) NMFS verifies one year after plan implementation, that pinger operating effectiveness in the commercial fishery is not adequate to reduce bycatch to acceptable levels with the current plan.

(2) NMFS determines that the boundary or timing of a closed area are not appropriate, or that gear modifications (including pingers)are not meeting bycatch reduction expectations. Specifically, NMFS will review effort and bycatch data and make a determination by June 30 each year if additional bycatch reduction measures are needed for the remainder of the calendar year to keep the annual bycatch level below the PBR level.

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