

Fisheries, NOAA, finds there is good cause to waive prior and an opportunity for public comment notice under 5 U.S.C. 553(b)(B) as such notice and public procedure thereon are unnecessary.

The AA finds that under 5 U.S.C. 553(d) the need to protect the resource by having the regulation in place by March 1, 1996, when the current temporary crew-size limit expires, constitutes good cause to waive the 30-day delay in effectiveness of this rule. Delay in effecting this crew-size limit would significantly increase the danger to the new incoming year class of sea scallops during early spring.

#### List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

#### PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

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

2. In § 650.21, paragraph (c) is revised to read as follows:

##### § 650.21 Gear and crew restrictions.

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Director, Alaska Region, NMFS.

\* \* \* \* \*

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#### 50 CFR Part 651

[Docket No. 960226048-6048-01; I.D. 020996A]

RIN 0648-A179

#### Northeast Multispecies Fishery

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework Adjustment 14 to Amendment 5 of the Northeast Multispecies Fishery Management Plan (FMP). This rule implements a spring closure for gillnet gear in the Revised Mid-coast Closure Area and establishes a new Cape Cod South Closure Area off Southern New England. The intent of this rule is to further reduce harbor porpoise mortality in the Gulf of Maine sink gillnet fishery to meet the New England Fishery Management Council's (Council) bycatch reduction goals.

**EFFECTIVE DATES:** The addition of § 651.32(a)(1)(iv) and Figure 9 is effective March 8, 1996. The amendment to § 651.32(a)(1)(ii)(B) is effective March 25, 1996.

**ADDRESSES:** Copies of Amendment 5, its regulatory impact review (RIR) and the final regulatory flexibility analysis (FRFA) contained with the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 14 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, 508-281-9272.

#### SUPPLEMENTARY INFORMATION:

##### Background

Regulations implementing Amendment 5 to the FMP were published on March 1, 1994 (59 FR 9872). One of Amendment 5's principal objectives was to reduce the bycatch of harbor porpoise in the Gulf of Maine sink gillnet fishery by the end of Year 4 of plan implementation to a level not to exceed 2 percent of the population, based on the best available estimates of abundance and bycatch. In addition, Amendment 5 established a requirement that by September 15 of each year, the Council's Harbor Porpoise Review Team (HPRT) complete an annual review of harbor porpoise bycatch and abundance data in the Gulf of Maine and evaluate the impacts of other measures that reduce harbor porpoise take. It also encouraged the HPRT to make recommendations on other "reduction-of-take" measures to achieve the harbor porpoise mortality reduction goals and established a framework procedure for timely implementation of appropriate measures.

With the issuance of implementing regulations for Framework Adjustment 4 to Amendment 5 of the Northeast Multispecies Fishery Management Plan (59 FR 26972, May 25, 1994), a series of time and area closures to sink gillnet

gear were implemented based on an analysis by the Northeast Fisheries Science Center (NEFSC) of the seasonal and spatial distribution of harbor porpoise and sink gillnet fishing activity in the Gulf of Maine.

This action is necessary in order to make further progress toward the Council's bycatch reduction goals for Year 2 (1995-96) of the Program. The target adopted by the Council was a 40 percent reduction in the bycatch or approximately 780 animals. Due in part to the increased bycatch rates in the Mid-coast region, incidental take of harbor porpoise for that year may still exceed 1,500 animals. This information and the fact that porpoise takes had also been well documented in late March, April and May of 1995 in the Revised Mid-coast Closure Area creates a situation in which total bycatch for the 1994-95 season had likely exceeded target levels. Prior to the proposed framework adjustment, there have been no closures implemented to reduce entanglement as animals move northward into the northern Gulf of Maine and the Bay of Fundy in the spring.

This final rule implements a spring closure from March 25 through April 25 in the Revised Mid-coast Closure Area (see Figure 8), establishes an additional closure area—the Cape Cod South Closure Area—south of Massachusetts and Rhode Island (Figure 9), and implements the closure of that area from March 8 through March 30 in 1996 and from March 1 through March 30 in subsequent years. These closure areas will be monitored to determine whether displaced gillnet activity, if it occurs, results in increased harbor porpoise takes.

#### Revised Mid-coast Closure Area—Figure 8

This area is closed from March 25 through April 25 for each fishing year.

| Point     | Latitude        | Longitude                |
|-----------|-----------------|--------------------------|
| MC1 ..... | 42°30' N        | Massachusetts shoreline. |
| MC2 ..... | 42°30' N.       | 70°15' W.                |
| MC3 ..... | 42°40' N.       | 70°15' W.                |
| MC4 ..... | 42°40' N.       | 70°00' W.                |
| MC5 ..... | 43°00' N.       | 70°00' W.                |
| MC6 ..... | 43°00' N.       | 69°30' W.                |
| MC7 ..... | 43°15' N.       | 69°30' W.                |
| MC8 ..... | 43°15' N.       | 69°00' W.                |
| MC9 ..... | Maine shoreline | 69°00' W.                |

#### Cape Cod South Closure Area—Figure 9

This area is closed from March 1 through March 30 of each fishing year, except in 1996 when the area is closed from March 8 through March 30.

| Point      | Latitude     | Longitude |
|------------|--------------|-----------|
| CCS1 ..... | RI shoreline | 71°45' W. |
| CCS2 ..... | 40°40' N.    | 71°45' W. |
| CCS3 ..... | 40°40' N.    | 70°30' W. |
| CCS4 ..... | MA shoreline | 70°30' W. |

#### Comments and Responses

The Council has considered information, views and comments made at a meeting of its Marine Mammal Committee (MMC) held in Saugus, MA on November 28, 1995; at an informal meeting between Council staff and southern New England gillnet fishermen in Tiverton, RI on December 7, 1995; and at a full Council meeting (the first meeting for initiating the framework action) held in Danvers, MA on December 13, 1995. Documents summarizing the Council's proposed action, the biological analyses upon which this decision was based and potential economic impacts were available for public review 5 days prior to the second meeting required under the framework adjustment process. Written comments were accepted up to and at the January 25, 1996, Council meeting in Danvers, MA, at which time the decision to finalize this framework adjustment was made. Several individuals commented on the Council's proposal.

*Comment 1:* A gillnet representative requested that the Massachusetts Bay Closure Area continue to be effective from March 1 through March 30.

*Response:* The MMC proposed no change to that closure area. The Council and NMFS agree and the Massachusetts Bay Closure will remain as is, i.e., closed from March 1 through March 30.

*Comment 2:* A gillnet fisherman from Rhode Island asked that the Cape Cod South Closure Area period be from the last 2 weeks in February through the first 2 weeks in March.

*Response:* The analysis prepared by the NEFSC indicates that the harbor porpoise takes for that area are highest in March. There have been no takes observed in February.

*Comment 3:* A member of the HPRT recommended that the spring Mid-coast area closure be longer than just April.

*Response:* The MMC recommended, and the Council and NMFS agree, that effecting the Revised Mid-coast Closure Area from March 25 through April 25 will provide the maximum harbor porpoise bycatch reduction while minimizing the loss of fishing opportunity to harvesters using gillnet gear, as determined by the NEFSC analysis. The Council may seek to adjust this closure period at some future date.

*Comment 4:* A member of the HPRT recommended that the spring closure in

Massachusetts Bay be extended from February 1 through March 30. The commenter also noted that it may be necessary to extend the closures in the Mid-coast and Cape Cod South Closure Areas once additional data are available.

*Response:* The Council considered several changes to the Massachusetts Bay area closure times and determined that it had no basis for making a change. All area closures and experimental fisheries will be evaluated annually by the HPRT and recommendations for adjustments will be made as necessary.

*Comment 5:* A member of the HPRT commented that the Council action represented the best that could be done until more data become available to gauge the effectiveness of previous closures.

*Response:* The Council will consider modifying its harbor porpoise bycatch reduction goal to match the MMPA goal established under the 1994 amendments.

The Council also received several comments pertaining to an experimental fishery using small acoustic devices called pingers to deter harbor porpoise bycatch in the sink gillnet fishery. The Council forwarded these comments to the Regional Director requesting that such an experimental fishery be established in the closure areas during the closure periods. The Regional Director is considering such fisheries, which may mitigate negative economic impacts of the closures for some fishermen. The Council considered the public comments pertaining to this framework adjustment prior to making its recommendation to the Regional Director under the framework provisions for the FMP.

#### Adherence to Framework Procedure Requirements

Data were not available for a proposed rule, and the need for regulations to be in place for an entire fishing season is not an issue for this particular action. The public was provided adequate opportunity to express opinions at several meetings. These opportunities were provided at the Council's MMC held in Saugus, MA, on November 28, 1995; at an informal meeting between Council staff and southern New England gillnet fishermen in Tiverton, RI, on December 7, 1995; and at two full Council meetings held in Danvers, MA, on December 13, 1995, and January 25, 1996. There is an immediate need to provide more protection for the harbor porpoise beyond the existing management measures. There will be further evaluation of these management measures based on landings data, enforcement activity, and an expected

experimental fishery. NMFS has determined that the framework adjustment to the FMP that this rule would implement is consistent with the national standards, other provisions of the Magnuson Conservation and Management Act, and other applicable law. NMFS, in making that determination, has taken into account the information, views, and comments received during the comment period of the FMP's framework adjustment mechanism in 50 CFR 651.40.

#### Classification

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

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

The Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive prior notice and an opportunity for public comment under 5 U.S.C. 553(b)(B) as such notice and public procedure thereon are unnecessary. Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate prior notice and an opportunity for public comment to be heard and considered. The AA finds that under 5 U.S.C. 553(d), the need to have the closure of the Revised Mid-coast Closure Area effective March 25 and the closure of the Cape Cod South Closure Area effective as soon as possible after March 1 while at the same time providing fishermen adequate notice to comply, to avoid delay that would likely impede the achievement of harbor porpoise mortality reduction goals, constitutes good cause to waive a portion of the 30-day delay in effectiveness of this regulation. Accordingly, the closure of the Revised Mid-coast Closure Area is effective March 25, 1996, and the closure of the Cape Cod South Closure Area is effective March 8, 1996.

#### List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 28, 1996.

Gary Matlock,  
Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

**PART 651—NORTHEAST  
MULTISPECIES FISHERY**

1. The authority citation for part 651 continues to read as follows:

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

2. In §651.32 the first sentence of paragraph (a)(1)(ii)(B) is revised and paragraph (a)(1)(iv) is added to read as follows:

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

- (a) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*
- (B) Notwithstanding any other provisions in this part, from March 25

through April 25 of each fishing year the restrictions and requirements specified in the introductory text of paragraph (a) of this section apply to an area known as the Revised Mid-coast Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 8 of this part). \* \* \*

(iv) *Cape Cod South Closure Area.*  
From March 6 through March 30 of fishing year 1996 and from March 1 through March 30 of subsequent fishing years, the restrictions and requirements specified in the introductory text of paragraph (a) of this section apply to an area known as the Cape Cod South

Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 9 of this part).

**CAPE COD SOUTH CLOSURE AREA**

| Point      | Latitude     | Longitude |
|------------|--------------|-----------|
| CCS1 ..... | RI shoreline | 71°45' W. |
| CCS2 ..... | 40°40' N     | 71°45' W. |
| CCS3 ..... | 40°40' N     | 70°30' W. |
| CCS4 ..... | MA shoreline | 70°30' W. |

\* \* \* \* \*

3. Figure 9 is added to part 651 to read as follows:

**BILLING CODE 3510-22-W**

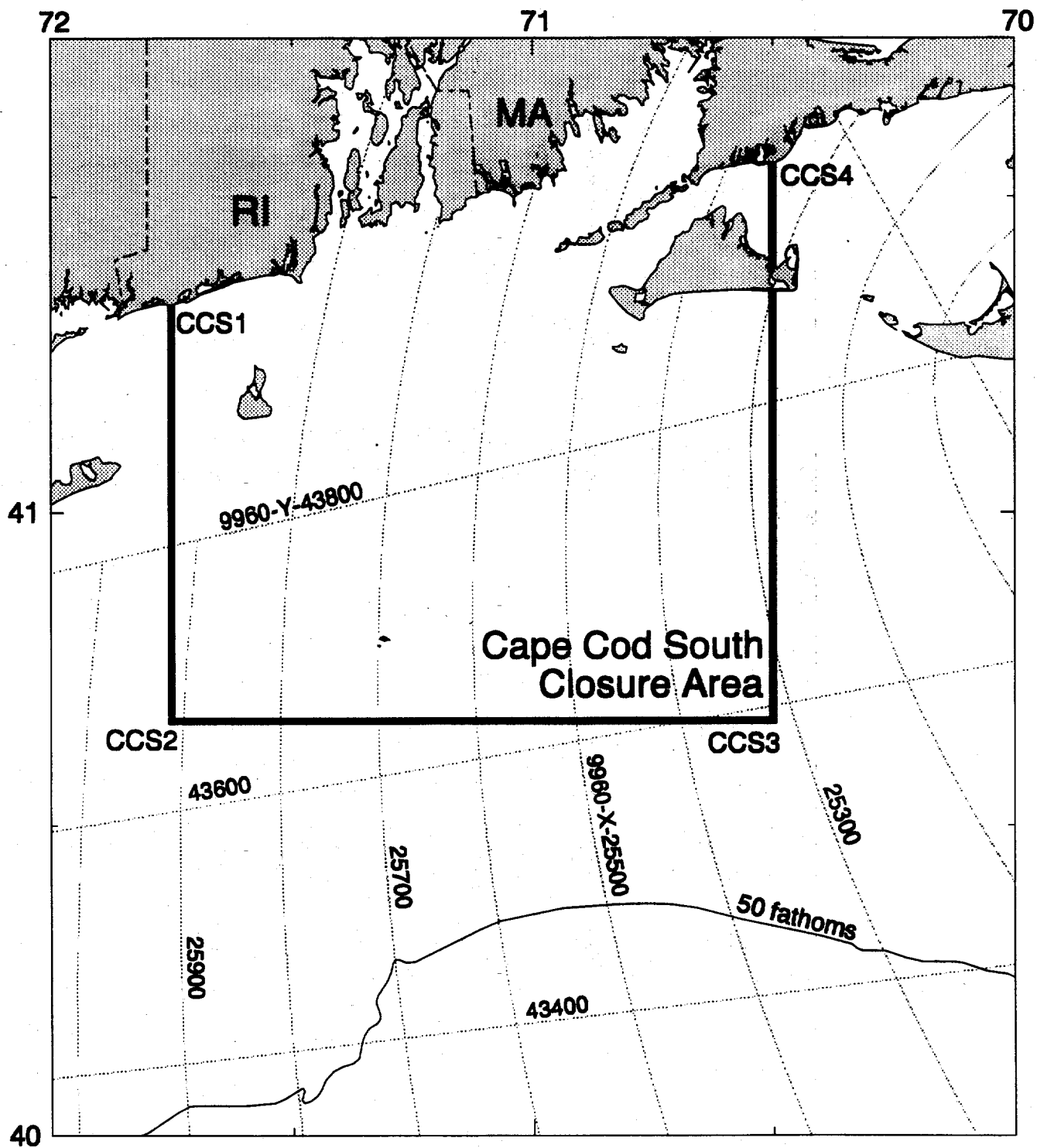


Figure 9 to Part 651—Cape Cod South Closure Area for the Protection of Harbor Porpoise