

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****49 CFR Chapter III, Parts 367–368, 371–374, and 376–378**

RIN 2125–AE12

**Technical Amendments to Former Interstate Commerce Commission Regulations in Accordance with the ICC Termination Act of 1995****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Final rule; technical amendments.

**SUMMARY:** This document makes technical amendments to former Interstate Commerce Commission (ICC) regulations which were transferred to the FHWA in accordance with section 204 of the ICC Termination Act of 1995. These amendments are necessitated by changes in statutory citations and definitions, and the transfer of regulatory functions to the Secretary of the Department of Transportation (Secretary) or the FHWA.

**EFFECTIVE DATE:** April 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael J. Falk, Office of Chief Counsel, Motor Carrier Law Division, (202) 366–1384, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Background**

The ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803), enacted December 29, 1995, and effective January 1, 1996, eliminated unnecessary ICC regulatory functions and transferred the residual functions partly to a newly established Surface Transportation Board (STB) within the DOT and partly to the Secretary of Transportation. Section 204 of the ICCTA provides, in part, that all rules of the ICC that were legally enacted by the proper official with requisite authority and which are not based upon a provision of law repealed and not substantially reenacted by the ICCTA shall remain in effect after the sunset of the ICC. Notice of the continuation in effect of such rules, as well as other legal documents of the ICC, was issued by the Federal Highway Administration on March 25, 1996 [61 FR 14372, April 1, 1996]. Section 204 also requires the STB to rescind all ICC regulations which were based on statutory

provisions that are no longer in effect following enactment of the ICCTA.

Section 204 expressly recognized the right of the appropriate responsible officials to modify, terminate, supersede, set aside, or revoke the surviving ICC rules in accordance with the law. Congress intended that the Federal Highway Administration would be responsible for overseeing those ICC rules relating to the overall commercial operations of the motor carrier industry. H. Rep. No. 311, 104th Cong., 1st Sess. 85 (1995). The FHWA will undertake an extensive review of those ICC rules under its jurisdiction to determine whether they should be retained, modified, or repealed. Pending this substantive re-examination of the rules, it is necessary to make technical changes to the rules in order to codify the transfer of functions from the ICC to the FHWA, update outdated statutory references, and otherwise harmonize the rules to conform with changes enacted by the ICCTA. The technical changes made in this document pertain to former ICC regulations which are now under the exclusive jurisdiction of the FHWA, and which were removed from Chapter X of Title 49, Code of Federal Regulations, and transferred to Chapter III of that title on October 21, 1996 at 61 FR 54706. The ICC regulations governing matters subject to the jurisdiction of both the FHWA and the STB will be added to Chapter III at a later date, and technical changes will be made to those regulations at that time.

In the near future, the FHWA intends to issue notices of proposed rulemakings regarding registration, process agent and insurance requirements, as well as proposed rules related to freight forwarders and the transportation of household goods. Any technical changes pertinent to such requirements will be handled in those rulemaking proceedings.

**Summary of Changes****Part 367—Standards for Registration With States**

The words “Interstate Commerce Commission” or “Commission”, which appear throughout this part, will be changed to “Secretary of Transportation” or “Secretary”, as appropriate. References to “49 U.S.C. 10922 and 10923” in §§ 367.1(b) and 367.4(a), and to “49 U.S.C. 10928” in § 367.1(b) will be changed to “49 U.S.C. 13902.” The reference to “49 U.S.C. 10521(a)” in § 367.4(h) will be changed to “49 U.S.C. 13501.”

**Part 368—Applications for Certificates of Registration By Foreign Motor Carriers and Foreign Motor Private Carriers****Section 368.1**

Section 13902(c) of title 49 U.S.C., retains the pre-existing system of registration of foreign motor carriers and foreign motor private carriers for limited operations within the commercial zones of United States communities along international borders. However, the ICCTA changed the definition of foreign motor carriers and foreign motor private carriers so that a carrier now owned or controlled by persons of a contiguous foreign country will be considered a foreign motor/motor private carrier regardless of where the carrier itself is domiciled.

All references to “49 U.S.C. 10530” in this part are changed to “49 U.S.C. 13902(c),” except where otherwise indicated. All references to “the Commission” in § 368.1(a) and § 368.2(e) are changed to “the Secretary.” All subsequent references to “the Commission” in this part are changed to “the Federal Highway Administration.” The word “registration” is inserted before the word “jurisdiction” in § 368.1(a). The references to “49 U.S.C. 10922(l)(2)(B)” and “10922(l)(1)” in § 368.1 are changed to “49 U.S.C. 13902(c)(4).”

**Section 368.2**

The words “Truck and Bus Safety and Regulatory Reform Act of 1988” in § 368.2(a) are deleted and replaced by “ICC Termination Act of 1995.” The words “a certificate or permit issued under 49 U.S.C. 10922 or 10923” in § 368.2(b)(1) are changed to “a registration issued under 49 U.S.C. 13902(a).” The words “and is not domiciled in the United States” are deleted from §§ 368.2 (b)(2) and (c)(2). The references to “49 U.S.C. 10526” in § 368.2(d) and (e) are changed to “49 U.S.C. 13506,” and the reference to “49 U.S.C. 10521” in § 368.2(e) is changed to “49 U.S.C. 13501.” The reference to “49 U.S.C. 10530(e)” in § 368.2(f) is changed to “49 U.S.C. 13902(a).”

**Section 368.3**

The words “ICC Register” in § 368.3(a) are changed to “Federal Highway Administration’s Office of Motor Carriers Register.” The words “(except for intervention by the Department of Transportation)” are deleted in § 368.3(a). The words “Commission’s Regional Offices or by contacting the Commission’s Office of Public Assistance” in § 368.3(c) are changed to “FHWA Regional Offices or

by contacting the FHWA's Office of Motor Carriers, Section of Licensing." Section 368.3(d) gave the FHWA the right to oppose an application for certificate of registration by permitting the FHWA to intervene in any proceeding on the issue of safety fitness. Since the FHWA will be receiving and processing these applications and, consequently, evaluating them for safety compliance, a formal intervention provision is no longer necessary. Accordingly, this paragraph is removed.

#### Section 368.5

The words "Commission" and "Interstate Commerce Commission" in § 368.5(a) are changed to "Federal Highway Administration's Office of Motor Carriers." This paragraph retains the reference to 49 CFR 1002.2(f)(1) because the FHWA has not yet issued its own regulations governing fees for services in connection with motor carrier licensing. Once such regulations are adopted, the necessary modification will be made to § 368.5. Section 368.5(b) is removed.

#### Section 368.6

The heading of the section is revised to delete the word "Commission," and paragraphs (a), (b)(1), and (b)(2) are revised to change the word "Commission" to "Federal Highway Administration." The words "Except in those proceedings in which the Department of Transportation intervenes under § 1171.3(d)," are deleted from § 368.6(b), and the word "compliance" is changed to "Compliance" in that same section. The word "statute" in § 368.6(b) is changed to "Act" to conform with the definitional reference in § 368.2(a). In paragraph (b)(2), the reference to "49 CFR 1044" is changed to read "49 CFR part 366." Paragraph (c) of this section is removed as superfluous.

#### Section 368.7

This section contains a nomenclature change from "Commission" to "Federal Highway Administration" and a reference correction to the applicable appeal regulations found at 49 CFR part 386. Accordingly, the reference to § 1115.2" in § 368.7 is changed to "49 CFR part 386."

#### Part 371—Brokers of Property

Section 13904 of title 49, U.S.C., provides for registration of brokers by the Secretary of Transportation in place of the licensing system maintained by the ICC under the Interstate Commerce Act. While the details regarding broker registration requirements will be handled in a separate rulemaking

proceeding, this change in regulatory treatment necessitates changes in the terminology employed in the broker regulations in part 371. Consequently, "lead docket number" and "lead MC-number" in the introductory text to § 371.3(a) and in § 371.3(a)(2), respectively, are changed to "registration number," and the word "license" in § 371.7(a) is changed to "registration." The words "a Commission" in § 371.10 are changed to "the FHWA."

#### Part 372—Exemptions, Commercial Zones and Terminal Areas

In part 372, subpart A, the words "Part II of the Interstate Commerce Act" and "Part II of the act" in § 372.101 are changed to "49 U.S.C. subtitle IV, part B" and the reference to "section 203(b)(9) of the act" is changed to "49 U.S.C. 13506(b)." The reference to "section 203(b)(1) of the act" in § 372.103 is changed to "49 U.S.C. 13506(a)(1)." Section 372.105 is deleted in its entirety since certificates of registration (except for foreign carriers under 49 CFR part 368) are no longer provided for in the ICCTA. The FHWA has proposed the repeal of § 372.107 through 372.113, which relate to agricultural cooperative associations, in another rulemaking proceeding. The references to "49 U.S.C. 10526(a)(6)" in § 372.115 are changed to "49 U.S.C. 13506(a)(6)." References to the "Commission" and "Interstate Commerce Commission" in § 372.117 are changed to "Secretary." All references to "section 203(b)(7a) of the Interstate Commerce Act" appearing in that section are changed to "49 U.S.C. 13506(a)(8)(A)."

In part 372, subpart B, §§ 372.201 through 372.237 contain references to either "section 203(b)(8) of the Interstate Commerce Act [49 U.S.C. 303(b)(8)]" or its successor "49 U.S.C. 10526 (b)(1)." These references are changed to "49 U.S.C. 13506(b)(1)." The reference to "part II, Interstate Commerce Act" in § 372.241 is changed to "49 U.S.C. subtitle IV, part B." The reference to the safety requirements of "section 204 of the Interstate Commerce Act" is deleted since the Secretary's safety jurisdiction is independent of the jurisdiction conferred by the ICCTA and was removed from part II of the Interstate Commerce Act some time ago.

While the ICC's licensing authority over freight forwarders was limited to household goods freight forwarders, the ICCTA expressly made all freight forwarders subject to the Secretary's registration jurisdiction. Part 372, subpart C, defines terminal areas of motor carriers and household goods

freight forwarders which were exempt from regulation under 49 U.S.C. 10523, and remain exempt under the ICCTA pursuant to 49 U.S.C. 13503. Accordingly, all references to "household goods" in subpart C are deleted to reflect the expansion of the Secretary's registration jurisdiction. Furthermore, all references in this subpart to "section 202(c) of the Interstate Commerce Act [49 U.S.C. 302(c)]" are changed to "49 U.S.C. 13503." The words "this Commission" in § 372.301(a) are changed to "the Secretary." References to "part II (49 U.S.C. 301 et seq.)," "part IV of the act," and "part IV thereof (49 U.S.C. 1001 et seq.)" are changed to "49 U.S.C. subtitle IV, part B." As was the case with § 372.241, the reference to "section 204 of the Interstate Commerce Act" is deleted as no longer necessary.

#### Part 373—Receipts and Bills

In part 373, subpart A, the reference to "49 CFR part 1220" in § 373.103 is replaced with "49 CFR 379." The words "under the released rates provisions at 49 U.S.C. 10730" in § 373.105 are changed to "under the provisions of 49 U.S.C. 14706(c)."

#### Part 374—Passenger Carrier Regulations

In part 374, subpart A, all references to "section 216 of the Interstate Commerce Act" are changed to "49 U.S.C. subtitle IV, part B." The words "Interstate Commerce Commission" or "Commission" are changed to either "United States Department of Transportation," "Secretary," or "Federal Highway Administration," as appropriate. The words "Interstate Commerce Act" in § 374.109 are changed to "49 U.S.C. subtitle IV, part B."

In part 374, subpart B, the words "subchapter II of chapter 105 of title 49, United States Code" in § 374.201(a) are changed to "49 U.S.C. subtitle IV, part B." The reference "49 CFR 1054.2(a)" in § 374.201(c) is revised to read "49 CFR 374.503 of this part."

Part 374, subpart C, is revised by changing the reference "49 CFR part 1064" in § 374.307 to "subpart D of this part." In § 374.307(g), change the reference "49 CFR 1005.5" to "49 CFR 370.9." In § 374.311, the words "Commission's appropriate Regional Office(s)" are replaced with "Federal Highway Administration's Regional Office(s)." In § 374.319 (a) and (b), the word "Commission" is replaced with "Federal Highway Administration."

In part 374, subpart D, the words "49 U.S.C. 10521" in § 374.401 are changed to "49 U.S.C. 13501." The words "part II of the Interstate Commerce Act" in

§§ 374.403(a) and 374.405 are changed to "49 U.S.C. subtitle IV, part B." The word "I.C.C." in § 374.403(b) is changed to "FHWA".

In part 374, subpart E, the words "49 U.S.C. 10932(e)" in § 374.501 are changed to read "49 U.S.C. 13506 [49 U.S.C. 10932(e)]." The words "49 U.S.C. 10922(c)(1)(F)" in § 374.505(d) are changed to "49 U.S.C. 13902(b)(8)."

#### *Part 376—Lease and Interchange of Vehicles*

The words "holding permanent or temporary operating authority from the Commission" in § 376.1 are changed to "registered with the Secretary." All subsequent references to "Commission" in this part are changed to either "Secretary" or "FHWA" as appropriate. The words "common or contract carrier under the provisions of 49 U.S.C. 10921, 10922, 10923, 10928, 10931, or 10932" in § 376.2 are changed to "motor carrier under the provisions of 49 U.S.C. 13901 and 13902." The words "Commission's requirements in part 1058" in §§ 376.11(c) and 376.31(d) are changed to "FHWA's requirements in 49 CFR part 390." The reference to "49 U.S.C. 11107" in § 376.12(c)(4) is changed to "49 U.S.C. 14102." The reference to "49 U.S.C. 10927" in § 376.12(j) is changed to "49 U.S.C. 13906." Section 376.31(b) is changed to eliminate references to operating authority and certificates of public convenience and necessity. Changes to obsolete 49 CFR part 1057 section numbers, which appear throughout part 376, are identified in the amendatory language.

#### *Part 377—Payment of Transportation Charges*

The words "part II of the Interstate Commerce Act" in §§ 377.101 and 377.103, and "the Interstate Commerce Act" in § 377.105, are changed to "49 U.S.C. 13702." This reflects the fact that only household goods carriers and motor carriers engaged in the noncontiguous domestic trade are still required to maintain tariffs following enactment of the ICCTA.

The reference to "Interstate Commerce Commission" in § 377.201 is changed to "Federal Highway Administration" and the references to "rail and water carriers" in that section are removed. The words "within the meaning of 49 U.S.C. 10562 (3) and (4)" are removed from § 377.205(d)(3) since the referenced statutory provisions were repealed in 1986. Section 377.205(e) is removed because it involves rail and water export traffic not subject to the FHWA's jurisdiction. The reference to "49 CFR 1104.7(a)" in § 377.211 is changed to "49 CFR 386.32(a)," which

is the equivalent, virtually identical FHWA regulation for the computation of time periods involving calendar days. It should be noted that the notice of proposed rulemaking in FHWA Docket No. MC-96-18 (61 FR 18866, April 29, 1996) proposes to recodify this provision without change as 49 CFR 363.302(a). Section 377.213 is removed because it pertains to railroad demurrage charges not subject to the FHWA's jurisdiction. The words "Interstate Commerce Commission jurisdiction under Subchapters I, II, or III of Chapter 105 of Title 49, Subtitle IV, of the United States Code" in § 377.217 are changed to "the Secretary's jurisdiction under 49 U.S.C. subtitle IV, part B."

#### *Part 378—Procedures Governing the Processing, Investigation, and Disposition of Overcharge, Duplicate Payment, or Overcollection Claims*

The references to "part II or IV of the Interstate Commerce Act" in §§ 378.1 and 378.2 are changed to "49 U.S.C. subtitle IV, part B." The reference to "section 11705(b)(1) of the Interstate Commerce Act" in § 378.2(b) is changed to "49 U.S.C. 14704(b)." The words "this Commission" in § 378.2(d) are changed to "the United States Department of Transportation's Surface Transportation Board."

#### **Rulemaking Analyses and Notice**

This final rule makes only minor, technical corrections to existing regulations. The rule replaces outdated language with terms more consistent with current statutory authority and codifies the transfer of regulatory responsibilities from the Interstate Commerce Commission to the Department of Transportation. Substantive regulatory standards are not changed in any way. Therefore, the FHWA finds good cause to adopt the rule without prior notice or opportunity for public comment [5 U.S.C. 553(b)]. The DOT's regulatory policies and procedures also authorize promulgation of the rule without prior notice because it is anticipated that such action would not result in the receipt of useful information. The FHWA is making the rule effective upon publication in the **Federal Register** because it imposes no new burdens and merely corrects or clarifies existing regulations [5 U.S.C. 553(d)].

#### **Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive

Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action makes only technical corrections to the current regulations, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

#### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, and since this rulemaking action makes only technical corrections to the current regulations, the FHWA hereby certifies that this action will not have a significant impact on a substantial number of small entities.

#### **Executive Order 12612 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### **Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### **Paperwork Reduction Act**

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

#### **National Environmental Policy Act**

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

#### **Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be

used to cross reference this action with the Unified Agenda.

#### List of Subjects

##### 49 CFR Part 367

Commercial motor vehicle, Financial responsibility, Insurance, Motor carriers, Motor vehicle safety, Registration, Reporting and recordkeeping requirements.

##### 49 CFR Part 368

Administrative practice and procedure, Highways and roads, Insurance, Motor carriers.

##### 49 CFR Part 371

Administrative practice and procedure, Brokers, Highways and roads, Motor carriers.

##### 49 CFR Part 372

Buses, Commercial zones, Freight forwarders, Highways and roads, Motor carriers of property.

##### 49 CFR Part 373

Buses, Highways and roads, Motor carriers, Reporting and recordkeeping requirements.

##### 49 CFR Part 374

Baggage liability, Buses, Civil rights, Discrimination, Freight forwarders, Handicapped, Highways and roads, Motor carriers—intercity passenger service.

##### 49 CFR Part 376

Highways and roads, Motor carriers—equipment leasing, Reporting and recordkeeping requirements.

##### 49 CFR Part 377

Credit, Freight forwarders, Highways and roads, Motor carriers.

##### 49 CFR Part 378

Claims, Freight forwarders, Highways and roads, Investigations, Motor carriers.

Issued on: March 21, 1997.

**Jane F. Garvey,**

*Acting Administrator, Federal Highway Administration.*

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, Chapter III, as follows:

#### PART 367—[AMENDED]

1. The authority citation for Part 367 is revised to read as follows:

**Authority:** 49 U.S.C. 13301 and 14504; 49 CFR 1.48.

2. In part 367, in the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
367.1(a) .....	The Commission. The Interstate Commerce Commission	The Secretary. The Secretary of Transportation.
367.1(b) .....	49 U.S.C. 10922, 10923, or 10928 .....	49 U.S.C. 13902.
367.1(c) .....	Commission .....	Secretary.
367.3(c) .....	§ 1023.4(b)(2) .....	§ 367.4(b)(2).
367.4(a) .....	Commission .....	Secretary.
367.4(a) .....	49 U.S.C. 10922 or 10923 .....	49 U.S.C. 13902.
367.4(b) introductory text	Commission .....	Secretary.
367.4(c)(2) .....	Commission (in three places) .....	Secretary (in three places).
367.4(c)(2) .....	49 CFR part 1043 .....	49 CFR part 387, subpart C.
367.4(c)(3) .....	Commission .....	Secretary.
367.4(c)(3) .....	49 CFR part 1044 .....	49 CFR part 366.
367.4(d) .....	Commission .....	Secretary.
367.4(d) .....	49 CFR part 1043 .....	49 CFR part 387, subpart C.
367.4(h) .....	Commission's .....	Secretary's.
367.4(h) .....	49 U.S.C. 10521(a) .....	49 U.S.C. 13501.
367.5(a) introductory text	§ 1023.4 .....	§ 367.4.
367.5(b) .....	§ 1023.4(b)(2) .....	§ 367.4(b)(2.)
367.6(c) .....	§ 1023.4(c) .....	§ 367.4(c).
Heading to Appendix A .....	Part 1023 .....	Part 367.
Heading to Appendix A .....	Operating under authority issued by the Interstate Commerce Commission	Registered with the Secretary of Transportation.
Appendix A .....	ICC (14 places) .....	FHWA (14 places).
Appendix A .....	49 CFR part 1043 (two places)	49 CFR part 387, subpart C (two places).
Appendix A .....	Title 49 CFR 1043.2 .....	49 CFR 387.303.

#### PART 368—[AMENDED]

3. The authority citation for part 368 is revised to read as follows:

**Authority:** 49 U.S.C. 13301 and 13902; 49 CFR 1.48.

4. The heading of part 368 is revised to read as follows:

#### PART 368—APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 13902(c)

5. Section 368.1 is revised to read as follows:

##### § 368.1 Controlling legislation.

(a) This part governs applications filed under 49 U.S.C. 13902(c). Under this section certain foreign motor carriers and motor private carriers must

hold a certificate of registration to provide certain interstate transportation services otherwise outside the registration jurisdiction of the Secretary. Neither a foreign motor carrier nor a foreign motor private carrier may provide interstate transportation of property unless the Secretary has issued the carrier a certificate of registration. The service allowable under a certificate of registration is described in 49 U.S.C. 13902(c)(4).

(b) This part applies only to carriers of a contiguous foreign country with

respect to which a moratorium is in effect under 49 U.S.C. 13902(c)(4).

6. In § 368.2 paragraphs (a), (b) (1) and (2), (c)(2) and (d) through (f) are revised to read as follows:

#### § 368.2 Definitions.

(a) *The Act.* The ICC Termination Act of 1995.

\* \* \* \* \*

(b) \* \* \*

(1) Which does not hold a registration issued under 49 U.S.C. 13902(a);

(2) Which is domiciled in any contiguous foreign country, or is owned or controlled by persons of any contiguous foreign country; and

\* \* \* \* \*

(c) \* \* \*

(2) Which is owned or controlled by persons of any contiguous foreign country; and

\* \* \* \* \*

(d) *Exempt items.* Commodities described in detail at or transported under 49 U.S.C. 13506(a) (4), (5), (6), (11), (12), (13), and (15).

(e) *Interstate transportation.* Transportation described at 49 U.S.C. 13501, and transportation in the United States otherwise exempt from the Secretary's jurisdiction under 49 U.S.C. 13506(b)(1).

(f) *Fit, willing and able.* Safety fitness and proof of minimum financial responsibility as defined in 49 U.S.C. 13902(a).

\* \* \* \* \*

7. Section 368.3 is amended by revising paragraphs (a) and (c) and removing paragraph (d) to read as follows:

#### § 368.3 Procedures used generally.

(a) All applicants must file a completed Form OP-2. All required information must be submitted in English on the Form OP-2. The application will be decided based on the submitted Form OP-2 and any attachments. Notice of the authority sought will not be published in either the **Federal Register** or the Federal Highway Administration's Office of Motor Carriers Register. Protests or comments will not be allowed. There will be no oral hearings.

\* \* \* \* \*

(c) Form OP-2 may be obtained at any of the FHWA Regional Offices or by contacting the FHWA's Office of Motor Carriers Section of Licensing.

8. Section 368.5 is revised to read as follows:

#### § 368.5 Where to send the application.

The original and one copy of the application shall be filed with the

FHWA's Regional Office that has jurisdiction over applicant's point of domicile (the instructions to the application provide more specific information), or at such other location as the Secretary may designate in special circumstances. A check or money order for the amount of the filing fee set forth at 49 CFR 1002.2(f)(1), payable to the Federal Highway Administration's Office of Motor Carriers in United States dollars, must be submitted.

9. Section 368.6 is amended by revising the heading; by replacing the word "Commission" wherever it appears in this section with "Federal Highway Administration"; by removing paragraph (c); by replacing the reference "49 CFR 1044" with "49 CFR 366" in paragraph (b)(2); and by revising the introductory text of paragraph (b) to read as follows:

#### § 368.6 Review of the application.

\* \* \* \* \*

(b) Compliance will be determined solely on the basis of the application and the safety fitness of the applicant. An employee review board will decide whether the authority sought falls under the Act, and whether and to what extent the evidence warrants a grant of the authority.

\* \* \* \* \*

10. Section 368.7 is revised to read as follows:

#### § 368.7 Appeals.

A decision disposing of an application subject to this part is a final action of the Federal Highway Administration. Review of such an action on appeal is governed by the FHWA's appeal regulations in 49 CFR Part 386.

#### PART 371—[AMENDED]

11. The authority citation for part 371 is revised to read as follows:

**Authority:** 49 U.S.C. 13301 and 13501; 49 CFR 1.48.

#### § 371.1 [Amended]

12. Section 371.1 is amended by correcting the reference "§ 1045.2" to read as "§ 371.2".

13. In § 371.3, paragraph (a) is amended by revising the introductory paragraph; paragraph (a)(2) is amended by replacing the words "lead MC-number" with the words "registration number"; and the undesignated paragraph after the first sentence in paragraph (a)(6) is removed. As revised, the text of introductory paragraph (a) reads as follows:

#### § 371.3 Records to be kept by brokers.

(a) A broker shall keep a record of each transaction. For purposes of this section, brokers may keep master lists of consignors and the address and registration number of the carrier, rather than repeating this information for each transaction. The record shall show:

\* \* \* \* \*

#### § 371.7 [Amended]

14. Section 371.7 is amended by replacing the word "license" with "registration".

#### § 371.10 [Amended]

15. Section 371.10 is amended by replacing the words "a Commission" with "the FHWA".

#### PART 372—[AMENDED]

16. The authority citation for part 372 continues to read as follows:

**Authority:** 49 U.S.C. 13504 and 13506; 49 CFR 1.48.

#### § 372.101 [Amended]

17. Section 372.101 is amended by replacing the words "Part II of the Interstate Commerce Act" and "part II of the act" with "49 U.S.C. subtitle IV, part B"; and by replacing the words "section 203(b)(9) of the act" with "49 U.S.C. 13506(b)".

#### § 372.103 [Amended]

18. Section 372.103 is amended by replacing the words "section 203(b)(1) of the act" with "49 U.S.C. 13506(a)(1)".

#### § 372.105 [Removed]

19. Section 372.105 is removed.

#### § 372.115 [Amended]

20. Section 372.115 is amended by removing the term "(49 U.S.C. 10526(a)(6))" from the text, and by replacing the words "49 U.S.C. 10526(a)(6)" and "section 10526(a)(6) of the recodified Interstate Commerce Act" with "49 U.S.C. 13506(a)(6)" in the section heading, in the section text, and in the heading and Notes 1 and 2 under "Administrative Ruling No. 133".

#### § 372.117 [Amended]

21. Section 372.117 is amended by replacing the words "Commission" in paragraph (a) and "Interstate Commerce Commission" in paragraph (c) with "Secretary"; by replacing the words "section 203(b)(7a) of the Interstate Commerce Act" in paragraph (d)(1) with "49 U.S.C. 13506(a)(8)(A)"; and by replacing "section 203(b)(7a) of the Interstate Commerce Act (49 U.S.C. 303)" in paragraphs (d)(2) and (d)(3) with "49 U.S.C. 13506(a)(8)(A)".

§§ 372.201, 372.203, 372.205, 372.207, 372.209, 372.211, 372.213, 372.215, 372.217, 372.219, 372.221, 372.223, 372.225, 372.227, 372.229, 372.231, 372.233, 372.235, 372.237, 372.241, and 372.243 [Amended]

word or words indicated in the middle column wherever they appear in the Section, and add the words indicated in the right column:

22. In the list below, for each Section indicated in the left column, remove the

Section	Remove	Add
372.201 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.203 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.205 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.207 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.209 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.211 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.213 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.215 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.217 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.219 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.221 introductory text.	§ 1048.101 .....	§ 372.241.
372.223 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.225 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.227 introductory text.	Section 203(b)(8) of the Interstate Commerce Act (49 U.S.C. 303(b)(8)) .....	49 U.S.C. 13506(b)(1).
372.229 introductory text.	49 U.S.C. 10526(b)(1) .....	49 U.S.C. 13506(b)(1).
372.231 introductory text.	Section 49 U.S.C. 10526(b)(1) of the Interstate Commerce Act .....	49 U.S.C. 13506(b)(1).
372.233 introductory text.	Section 10526(b)(1) of the Interstate Commerce Act (49 U.S.C. 10526(b)(1)) .....	49 U.S.C. 13506(b)(1).
372.235 introductory text.	Section 49 U.S.C. 10526(b)(1) of the Interstate Commerce Act (49 U.S.C. 10526(b)(1)) .....	49 U.S.C. 13506(b)(1).
372.237(a) .....	Section 10526(b)(1) of the Interstate Commerce Act (49 U.S.C. 10526(b)(1)) .....	49 U.S.C. 13506(b)(1).
372.237(b) .....	§ 1048.101 .....	§ 372.241.
372.237(b) .....	Section 10526(b)(1) .....	49 U.S.C. 13506(b)(1).
372.241 introductory text.	Part II, Interstate Commerce Act, except the provisions of section 204 relative to the qualifications and maximum hours of service of employees and safety of operation or standards of equipment.	49 U.S.C. subtitle IV, part B.
372.243 introductory text.	§ 1048.101 .....	§ 372.241.

## PART 372—[AMENDED]

23. Subpart C of part 372 is amended by adding § 372.300 to read as follows:

### § 372.300 Distances and population data.

In the application of this subpart, distances and population data shall be determined in the same manner as provided in 49 CFR 372.243. See also definitions in 49 CFR 372.239.

24. Section 372.301 is revised to read as follows:

### § 372.301 Terminal areas of motor carriers and freight forwarders at municipalities served.

The terminal area within the meaning of 49 U.S.C. 13503 of any motor carrier of property or freight forwarder subject to 49 U.S.C. subtitle IV, part B at any municipality authorized to be served by such motor carrier of property or motor carrier of passengers in the transportation of express or freight forwarder, within which transportation by motor carrier in the performance of transfer, collection, or delivery services may be performed by, or for, such motor carrier of property or freight forwarder without compliance with the provisions

of 49 U.S.C. subtitle IV, part B consists of and includes all points or places which are:

(a) Within the commercial zone, as defined by the Secretary, of that municipality, and

(b) Not beyond the limits of the operating authority of such motor carrier of property or freight forwarder.

25. In § 372.303 the introductory paragraph and paragraph (a) are revised to read as follows:

**§ 372.303 Terminal areas of motor carriers and freight forwarders at unincorporated communities served.**

The terminal areas within the meaning of 49 U.S.C. 13503 of any motor carrier of property or freight forwarder subject to 49 U.S.C. subtitle IV, part B, at any unincorporated community having a post office of the same name which is authorized to be served by such motor carrier of property or motor carrier of passengers in the transportation of express or freight forwarder, within which transportation by motor vehicle in the performance of transfer, collection, or delivery services may be performed by, or for, such motor carrier of property or freight forwarder without compliance with the provisions of 49 U.S.C. subtitle IV, part B, consists of:

(a) All points in the United States which are located within the limits of the operating authority of the motor carrier of property or freight forwarder

involved, and within 3 miles of the post office at such authorized unincorporated point if it has a population less than 2,500, within 4 miles if it has a population of 2,500 but less than 25,000, or within 6 miles if it has a population of 25,000 or more;

\* \* \* \* \*

**PART 373—[AMENDED]**

26. The authority citation for part 373 continues to read as follows:

**Authority:** 49 U.S.C. 13301 and 14706; 49 CFR 1.48.

**§ 373.101 [Amended]**

27. Section 373.101 is amended by removing the reference “49 CFR part 1220” in the undesignated paragraph under (e) and replacing it with “49 CFR part 379”.

**§ 373.103 [Amended]**

28. Section 373.103 is amended by replacing the words “49 CFR part 1220”

with “49 CFR part 379” in the undesignated paragraphs under (a)(11) and (b)(11) of the section.

**§ 373.105 [Amended]**

29. Section 373.105 is amended by replacing the words “released rates provisions at 49 U.S.C. 10730” with “provisions of 49 U.S.C. 14706(c)”.

**PART 374—[AMENDED]**

30. The authority citation for part 374 continues to read as follows:

**Authority:** 49 U.S.C. 13301 and 14101; 49 CFR 1.48.

31. In part 374, Subparts A, B, C, D, and E, in the list below, for each section indicated in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
374.101 .....	Section 216 of the Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
374.103 .....	Section 216 of the Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
374.103 Note .....	§ 1055.2 (the first time it appears) .....	§ 374.103 (formerly § 1055.2).
374.103 Note .....	§ 1055.2 .....	§ 374.103.
374.105 .....	Section 216 of the Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
374.107 .....	Section 216 of the Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
374.107 .....	Interstate Commerce Commission .....	Secretary, U.S. Department of Transportation.
374.109 .....	Section 216 of the Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
374.109 .....	The Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
374.111 .....	Section 216 of the Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
374.111 .....	Secretary of the Interstate Commerce Commission .....	Secretary.
374.113(b) .....	§ 1055.3 .....	§ 374.105.
374.201(a) .....	Subchapter II of chapter 105 of title 49, United States Code.	49 U.S.C. subtitle IV, part B.
374.201(c) .....	49 CFR 1054.2(a) .....	§ 374.503 of this part.
374.307(c)(1) .....	Commission .....	Secretary.
374.307(c)(1) .....	49 CFR part 1064 .....	subpart D of this part.
374.307(c)(2)(iv) .....	Commission .....	Secretary.
374.307(g) .....	49 CFR 1005.5 .....	49 CFR 370.9.
374.311(b) .....	The Commission's appropriate Regional Office(s) .....	the FHWA's Regional Office(s).
374.319(a), (b) .....	The Commission .....	the Federal Highway Administration.
374.401(a) .....	49 U.S.C. 10521 .....	49 U.S.C. 13501.
374.401(a)(3) .....	§ 1063.4(c)(3) .....	§ 374.307(c)(3).
374.403(a) .....	Part II of the Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
374.403(b), under “Identify Your Baggage”.	Under I.C.C. regulations .....	Under FHWA regulations.
374.405 .....	Part II of the Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
374.501 .....	49 U.S.C. 10932(c) .....	49 U.S.C. 13506 [49 U.S.C. 10932(c)].
374.505(d) .....	49 U.S.C. 10922(c)(1)(F) .....	49 U.S.C. 13902(b)(8).

**PART 376—[AMENDED]**

32. The authority citation for part 376 is revised to read as follows:

**Authority:** 49 U.S.C. 13301 and 14102; 49 CFR 1.48.

33. In part 376, subparts A, B, C, D, and E, in the list below, for each section indicated in the left column, remove the

word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
376.1 introductory paragraph	Holding permanent or temporary operating authority from the Commission.	Registered with the Secretary.
376.1(a) .....	Commission .....	Secretary.
376.1(c) .....	Commission .....	Secretary.

Section	Remove	Add
376.2(a) .....	Common or contract carrier under the provisions of 49 U.S.C. 10921, 10922, 10923, 10928, 10931, or 10932.	Motor carrier under the provisions of 49 U.S.C. 13901 and 13902.
376.11 introductory paragraph. ....	§ 1057.31 .....	§ 376.31.
376.11(a) .....	§ 1057.12 .....	§ 376.12.
376.11(c)(1) .....	Commission's requirements in part 1058 .....	FHWA's requirements in 49 CFR part 390.
376.12 introductory paragraph. ....	§ 1057.11(a) .....	§ 376.11(a).
376.12(b) .....	§ 1057.11(b) .....	§ 376.11(b).
376.12(c)(3) .....	Commission .....	Secretary.
376.12(c)(4) .....	49 U.S.C. 11107 .....	49 U.S.C. 14102.
376.12(j)(1) .....	Commission regulations under 49 U.S.C. 10927 .....	FHWA regulations under 49 U.S.C. 13906.
376.12(l) .....	§ 1057.11(c)(2) .....	§ 376.11(c)(2).
376.21 introductory paragraph. ....	§ 1057.11(c) .....	§ 376.11(c).
376.21(b) .....	Commission .....	Secretary.
376.22(a) .....	§ 1057.11(c) .....	§ 376.11(c).
376.22(c)(2) .....	§ 1057.11(b) (in two places) .....	§ 376.11(b) (in two places).
376.22(c)(4) .....	§ 1057.11(b) .....	§ 376.11(b).
376.22(c)(4) .....	§ 1057.11(d) .....	§ 376.11(d).
376.26 .....	§ 1057.12 (e) through (l) .....	§ 376.12 (e) through (l).
376.31(b) .....	Hold certificates of public convenience and necessity which authorize the transportation.	Be registered with the Secretary to provide the transportation.
376.31(d)(1) .....	Commission's requirements in part 1058 .....	FHWA's requirements in 49 CFR part 390.
376.42 .....	§ 1057.22 .....	§ 376.22.

**PART 377—[AMENDED]**

34. The authority citation for part 377 continues to read as follows:

**Authority:** 49 U.S.C. 13101, 13301, 13701–13702, 13706, 13707, and 14101; 49 CFR 1.48.

35. In part 377, subparts A and B, in the list below, for each section indicated

in the left column, remove the word or words indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
377.101 .....	Part II of the Interstate Commerce Act .....	49 U.S.C. 13702.
377.103 .....	Part II of the Interstate Commerce Act .....	49 U.S.C. 13702.
377.103 .....	§ 1052.1 .....	§ 377.101.
377.105 .....	The Interstate Commerce Act .....	49 U.S.C. 13702.
377.105 .....	§ 1052.1 .....	§ 377.101.
377.201(a) .....	Interstate Commerce Commission regulation by rail, motor, and water.	Federal Highway Administration regulation by motor.
377.205(d)(3) .....	Within the meaning of 49 U.S.C. 10562(3) and (4) .....	
377.205(e) .....	[remove paragraph (e)] .....	
377.211 .....	49 CFR 1104.7(a) .....	49 CFR 386.32(a).
377.213 .....	[removed] .....	[Reserved].
377.215(a) .....	49 CFR 1056.3(d) .....	49 CFR 375.3(d).
377.215(b)(1) .....	49 CFR 1056.19 .....	49 CFR 375.19.
377.217 .....	Interstate Commerce Commission jurisdiction under Subchapters I, II, or III of Chapter 105 of Title 49, Subtitle IV, of the United States Code.	The Secretary's jurisdiction under 49 U.S.C. subtitle IV, part B.

**PART 378—[AMENDED]**

36. The authority citation for part 378 is revised to read as follows:

**Authority:** 49 U.S.C. 13321, 14101, 14704, and 14705; 49 CFR 1.48.

37. In part 378, in the list below, for each section indicated in the left column, remove the word or words

indicated in the middle column wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
378.1 .....	Part II or IV of the Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
378.2(a) .....	Part II or IV of the Interstate Commerce Act .....	49 U.S.C. subtitle IV, part B.
378.2(b) .....	Section 11705(b)(1) of the Interstate Commerce Act .....	49 U.S.C. 14704(b).
378.2(d) .....	Part 1056 .....	Part 375.
378.2(d) .....	This Commission .....	The United States Department of Transportation's Surface Transportation Board.
378.4(a) .....	§ 1008.8 .....	§ 378.8.
378.4(d) .....	§ 1008.5(c) .....	§ 378.5(c).
378.5(a) .....	§ 1008.6 .....	§ 378.6.



Section	Remove	Add
378.5(b) .....	§ 1008.9 .....	§ 378.9.
378.5(c) .....	§ 1008.8 .....	§ 378.8.
378.6 .....	§ 1008.7 .....	§ 378.7.

[FR Doc. 97-7961 Filed 3-31-97; 8:45 am]

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## DEPARTMENT OF COMMERCE

### 50 CFR Part 648

#### National Oceanic and Atmospheric Administration

[Docket No. 970324064-7064-01; I.D. 021997B]

RIN 0648-AJ32

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 23

**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 23 to the Northeast Multispecies Fishery Management Plan (FMP). This rule closes Federal waters at the times specified to vessels fishing with sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets, in parts of the following right whale critical habitat areas: Cape Cod Bay from March 27, 1997 through May 15, 1997, and from January 1 through May 15 in subsequent years; and the Great South Channel from April 1 through June 30, annually. The intent of this action is to restrict multispecies fishing activities that have been determined to jeopardize the continued existence of the northern right whale.

**EFFECTIVE DATE:** March 27, 1997.

**ADDRESSES:** Copies of Amendment 7 to the FMP, its regulatory impact review (RIR) and the final regulatory flexibility analysis (FRFA) contained with the RIR, and its final supplemental environmental impact statement, are available upon request from Paul Howard, Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906-1097. Framework Adjustment 23 documents, the marine mammal stock assessment report, and biological opinions are available from Andrew A. Rosenberg, Ph.D, Regional Administrator, Northeast Region, NMFS

(Regional Administrator), One Blackburn Drive, Gloucester, MA 01930-2298.

**FOR FURTHER INFORMATION CONTACT:** Lt. Dan Morris (NOAA Corps), Resource Conservation Officer, NMFS, Northeast Region, Habitat and Protected Resources Division, 508-281-9388.

#### SUPPLEMENTARY INFORMATION:

##### Background

Several marine species listed as threatened or endangered under the Endangered Species Act (ESA) occur regularly in waters covered by the FMP. The NMFS, the agency responsible for implementation of the FMP, is required by section 7 of the ESA to consider what impacts fishing activities governed by the FMP and its implementing regulations may have on ESA-listed species. As a result of this deliberative process, NMFS issued a biological opinion<sup>1</sup> on December 13, 1996, concluding that the fishing activities governed by the FMP and its implementing regulations are likely to jeopardize the continued existence of the northern right whale (*Eubalaena glacialis*).

The northern right whale is the most endangered large whale species in the Northwest Atlantic Ocean. The 1995 Stock Assessment Report (Blaylock *et al.*, 1995) prepared by NMFS pursuant to the 1994 Marine Mammal Protection Act amendments reference the 1992 estimate of 295 (Knowlton *et al.*, 1994) as the current minimum population estimate for the northern right whale.

The Potential Biological Removal (PBR) level is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing the stock to reach and or sustain its optimum sustainable population level. The PBR level for right whales is currently set at 0.4 individuals per year, or two human-induced whale mortalities or serious injuries every 5 years (Blaylock *et al.*, 1995). Based on a minimum estimate of known serious injuries or mortalities, the current PBR level has been exceeded in 20 of the

past 27 years. This level of interaction is based on actual reported numbers, rather than an estimate based on extrapolations to total shipping and fishing effort.

During January and February of 1996, an unprecedented number of right whale deaths (six or seven) was reported from the Southeast right whale critical habitat/calving grounds off Georgia and Florida. Because the northern right whale population is so small and its reproductive rate so low, anthropogenic impacts, such as ship strikes and fishery entanglements, inhibit the species' recovery and may jeopardize the population's continued existence. A report on these mortalities was presented by the Right Whale Research Group of the New England Aquarium to the New England and Southeast Right and Humpback Whale Recovery Plan Implementation Teams along with information from 1995 and 1996 on levels of known and estimated right whale mortality. This information reflected a possible change in the status of the species, as measured by the environmental baseline upon which all previous section 7 consultations had been conducted. Based on this new information, NMFS reinitiated consultation on the FMP on October 29, 1996.

The multispecies fishery includes the use of sink gillnets, a gear type that is known to cause serious injury to right whales. Approximately 15 right whale entanglements in gillnet gear were recorded between 1970 and 1996; approximately 13 were sighted in Massachusetts, the Great South Channel, the Bay of Fundy, and the Gulf of Maine combined; and 5 were identified as monofilament or sink gillnet gear. Given the historical record of right whale entanglements in gillnet gear, the level of observed right whale mortalities over the past 18 months from all sources (including ship strikes, fishery interactions and natural causes), and the uncertainties about the status of the population and its rate of recovery, NMFS, on December 13, 1996, concluded that the current and proposed fishing activities carried out under the FMP are likely to jeopardize the continued existence of the northern right whale.

When NMFS concludes that a Federal action is likely to jeopardize the continued existence of a species, the

<sup>1</sup> See National Marine Fisheries Service Biological Opinion, issued on November 30, 1993, relating to Amendment 5 of the Multispecies FMP, for a discussion of the abundance, distribution, and life history of right whales, along with a discussion of factors contributing to the mortality of right whales, including entanglements with sink gillnet gear and other gillnet gear capable of catching multispecies.