

geographic area of the fishery for biological sampling and monitoring the status of the stock;

(B) The current year catches from the particular geographic area relative to the catches recorded for that area during the preceding 4 years;

(C) The catches from the particular geographic area to date relative to the entire category and the likelihood of closure of that entire category of the fishery if no allocation is made;

(D) The projected ability of the entire category to harvest the remaining amount of Atlantic bluefin tuna before the anticipated end of the fishing season.

It is essential for domestic and international management purposes that NMFS collect complete information from the bluefin fishery and stocks from as wide a geographic range and for as many months during the year as possible. Extensive information on the 1997 winter fishery has been collected. Therefore, an interim closure of the entire Angling category fishery at this time would allow for increased monitoring activities once the bluefin have migrated further north, where fishing has not yet begun, and the fishery is reopened.

Current year catches cannot be compared to landings of the last 4 years, because it was not until 1995 that an Angling category winter fishery began to develop and not until 1996 that NMFS began to monitor these Angling category landings through the Large Pelagic Survey and through state assistance. In 1996, the Angling category subquotas for large school/small medium bluefin and for school bluefin off Delaware and states south were filled prematurely, due to high catch rates early in the season in southern areas, thus reducing fishing opportunities further north, even for school bluefin. While the final 1997 annual quota for the Angling category of ABT has not yet been established (the 1996 allocation was 243 mt), if the current harvest rate continues, it is possible that a significant portion of the entire Angling category quota might be taken prior to the time that the species migrates north to the eight other states in which there is a recreational fishery for bluefin. Because it is relatively early in the fishing season, and given catch rates over the past few years, it is reasonable to expect that Angling category fishermen will harvest the remaining quota before the end of the season.

Given current catch rates, the public interest in an equitable distribution of catch among fishermen in the Angling category, and the need for scientific data from throughout the species' range,

NMFS has decided to close the Angling category fishery for school, large school, and small medium bluefin tuna in all areas. Therefore, retaining, possessing, or landing any school, large school or small medium ABT under the Angling category quota must cease at 11:30 p.m. local time on March 2, 1997.

NMFS may reopen the fishery when it is determined that the bluefin have migrated further north and will publish that effective date in the Federal Register. In 1995 and 1996, bluefin tuna were observed to leave North Carolina waters in April. Historically, school bluefin tuna arrive off of Virginia in May and move northward through the mid-Atlantic region during the summer feeding migration. Determination of migration shall be based on catch reports from anglers fishing for other large pelagic species such as yellowfin tuna and anglers fishing for bluefin tuna under the catch and release program. Dockside intercepts from the Marine Recreational Fishing Statistics Survey and logbook reports filed by commercial fishermen shall also be used to document the migration to northern areas.

Anglers may continue to fish for school, large school and small medium ABT, measuring 27 inches (69 cm) to less than 73 inches (119 cm) total curved fork length under the NMFS tag and release program (50 CFR 285.27). Additionally, pending attainment of the annual quota for trophy fish, large medium or giant ABT (73 inches (119 cm) total curved fork length or greater) may still be landed under the Angling category subject to the trophy fish limit of one per vessel per year. Such large medium or giant ABT must be reported to the nearest NMFS enforcement office as required under § 285.24. In North Carolina, trophy fish must be reported to the Coast Guard at 919-995-6403 or to NMFS Enforcement at 919-808-2393. Anglers should verify that the trophy category remains open by calling the NMFS 24-hour Information Line at 301-713-1279 prior to each fishing trip.

#### Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: February 25, 1997.

Gary C. Matlock,

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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#### 50 CFR Part 648

[Docket No. 970214031-7031-01; I.D. 011697C]

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 16

**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 16 to the Northeast Multispecies Fishery Management Plan (FMP). This rule prohibits the use of all gillnets capable of catching Northeast multispecies during the periods in which the harbor porpoise time/area closures are in effect unless the gillnet meets certain specifications. The intent of this action is to restrict the use of small mesh pelagic gillnets, which are currently exempt from the multispecies regulations, to avoid increasing the risk of harbor porpoise entanglements but still allow a traditional bait fishery to continue by specifying the size and method of deployment of the gear.

**EFFECTIVE DATE:** April 2, 1997.

**ADDRESSES:** Copies of Amendment 7 to the Northeast Multispecies Fishery Management Plan (Amendment 7), 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 16 documents are available upon request from Paul Howard, Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906-1097.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Pearson, NMFS, Fishery Policy Analyst, 508-281-9279.

#### SUPPLEMENTARY INFORMATION:

##### Background

Regulations governing the Northeast Multispecies fishery prohibit sink gillnet vessels from fishing in defined areas of the Gulf of Maine (GOM) during certain time periods based on the historic bycatch of harbor porpoise in that fishery.

Framework Adjustment 9 to the FMP (60 FR 19364, April 18, 1995) prohibited any fishery using small mesh gear capable of catching multispecies unless the fishery qualified for an exemption based on a finding that it had less than 5 percent bycatch of regulated species. This had the effect of prohibiting small

mesh pelagic gillnets in the harbor porpoise time/area closures even though the regulation was unrelated to harbor porpoise protection.

Amendment 7 to the FMP (61 FR 27710, May 31, 1996) exempted pelagic gillnets, including the small mesh pelagic gear used in the bait fishery, from the multispecies management measures, because the gear type has virtually no bycatch of multispecies. The Council's intent was, and still is, to allow vessels to fish for bait with certain pelagic nets, and to exempt pelagic drift gillnets used to catch swordfish, tunas, and sharks with large mesh in offshore fisheries that are not managed by the Council. The unintended consequence of the measure in Amendment 7 pertaining to gillnets was that there were no restrictions on the size, use, and deployment of small mesh pelagic gillnets in the harbor porpoise time/area closures even though certain types of small mesh gillnets are capable of entangling harbor porpoise.

In the GOM, small mesh pelagic gillnets are either anchored or fished on the surface of the water and are used seasonally by tuna and lobster fishermen to collect herring, menhaden, mackerel, and whiting for bait. Periods of highest use overlap both in time and area with the harbor porpoise closures. Although, at this time, harbor porpoise bycatch in small mesh pelagic gillnets does not appear to be a significant problem, NMFS and the Council are specifying the size and characteristics of these nets and their method of deployment because the gear is currently unrestricted and has accounted for harbor porpoise entanglements. The intent of this action is to avoid any increased risk of entanglement but still allow for the prosecution of traditional bait fisheries.

#### Regulatory Provisions

This rule extends the time and area closures implemented to reduce entanglements of harbor porpoise in the GOM to all gillnets capable of catching multispecies with the following exception: vessels may fish with a single pelagic gillnet, not longer than 300 ft (91.44 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.62 cm); the net must be attached to the boat, fished in the upper two-thirds of the water column, and marked with the owner's name and vessel identification number.

These restrictions apply to all pelagic gillnets capable of catching multispecies deployed in any of the harbor porpoise time/area closures. Gillnets used to capture highly migratory species, that

are incapable of capturing multispecies finfish, are not restricted by this action.

A 1990 gillnet survey indicates that approximately 200 vessels occasionally use pelagic gillnets primarily to harvest bait. The cost and availability of bait in the tuna and lobster fisheries may increase as a result of this action, but these costs will probably be offset by lower enforcement costs due to the enforceability of the measure as the net must be attached to the vessel and tended at all times. According to comments received at public meetings, vessels should still be able to capture enough bait to meet their requirements.

The Council considered information, views and comments made at Marine Mammal Committee meetings held on April 2, 1996, May 12, 1996, and July 30, 1996, and at three Council meetings, on April 17, 1996, June 5, 1996, and July 17, 1996. Documents summarizing the Council's proposal, the biological analyses upon which this decision was based, and potential economic impacts were available for public review 5 days prior to the final meeting as required under the framework adjustment process. Written comments were accepted up to and during the August 20, 1996, Council meeting in Danvers, MA.

#### Comments and Responses

Comments on the action were received at several meetings from individuals representing the International Wildlife Coalition, Maine Department of Marine Resources, East Coast Tuna Association, and the Massachusetts Netters Association. Fishermen's concerns centered chiefly on a possible alteration in fishing practices, while all groups supported the specifications for net length, mesh size, deployment and gear marking.

*Comment*: Several groups and a number of individuals were concerned about the net tending requirement. Nets are often anchored to the bottom and are left unattended if an opportunity such as a giant bluefin tuna presents itself. Because of this, an individual representing the tuna industry stated that it would be very inconvenient to attach the net to the vessel, although it would still be possible to prosecute both fisheries. Greater concern was expressed by individuals representing the lobster industry, since lobstermen fishing for bait with pelagic gillnets anchor their nets on the bottom and leave them to check traps before returning to haul the net.

*Response*: Harbor porpoise are present in significant numbers inshore in the northern GOM during the summer and early fall months. Given that both tuna

and lobster fisheries are fishing for the same prey species as harbor porpoise and that their fishing season and the presence of porpoise overlap, the possibility for entanglement is likely, particularly without any restrictions on bait nets. Although the porpoise bycatch in such nets appears to be low at this time, the restrictions provided for in this action would enhance protection in areas where they are most susceptible to entanglement. The requirement that the net be attached to the vessel and its size essentially guarantees that vessel operators would be aware of any marine mammal interactions. Restricting the use of baitnets to small pelagic gillnets in the harbor porpoise closure areas also addresses the dilemma of enforcing the porpoise measures for one type of gillnet while exempting another that may be fished in much the same manner.

#### Adherence to Framework Procedure Requirements

The Council considered public comment prior to making its recommendation to the Administrator, Northeast Region, NMFS, under the provisions for abbreviated rulemaking in this FMP. The Council requested publication of these management measures as a final rule after considering the required factors stipulated under the framework measures in the FMP, 50 CFR 648.90, and has provided supporting analyses for each factor considered. NMFS concurs.

#### Classification

Public meetings held by the Council to discuss the management measures implemented by this rule provided prior notice and opportunity for public comment to be heard and considered. The Council's Marine Mammal Committee discussed the framework adjustment at public meetings on April 2, 1996, May 21, 1996, and July 30, 1996, and at the Multispecies (Groundfish) Committee meetings held on April 11, 1996, and April 13, 1996. Therefore, the Assistant Administrator for Fisheries, NOAA, finds there is good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice or an opportunity for public comment as such procedures are unnecessary.

As prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirement of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are applicable. Nevertheless, this action does not significantly increase the impact beyond the scope of impact on

small entities already analyzed, discussed, and described in Amendments 5 and 7 to the FMP. This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 21, 1997.

Rolland A. Schmitt, Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition for "Gillnet gear capable of catching multispecies" is added in alphabetical order to read as follows:

**§ 648.2 Definitions.**

*Gillnet gear capable of catching multispecies* means all gillnet gear except pelagic gillnet gear specified at § 648.81(f)(2)(ii) and pelagic gillnet gear that is designed to fish for and is used to fish for, or catch, tunas, swordfish and sharks.

3. In § 648.14, paragraph (a)(89) is revised and paragraph (c)(11) is added to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \* (89) Fish with, set, haul back, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the EEZ portion of the areas, and for the times, specified in § 648.87(a) and (b), except as provided in § 648.81(f)(2)(ii) and in § 648.87(b)(1)(i), or unless authorized in writing by the Regional Administrator.

(c) \* \* \* (11) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from, or be in the areas, and for the times, described in § 648.87(a) and (b), except as provided in § 648.81(d), (f)(2), (g)(2), and (h)(2), and in § 648.87(b)(1)(i).

4. In § 648.81, paragraph (f)(2)(ii) is revised to read as follows:

**§ 648.81 Closed areas.**

\* \* \* \* \*  
 (f) \* \* \*  
 (2) \* \* \*  
 (ii) That are fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear and pelagic gillnet gear capable of catching multispecies, except vessels may fish with a single pelagic gillnet, not longer than 300 ft and not greater than 6 ft deep, with a maximum mesh size of 3 inches, provided the net is attached to the boat, is fished in the upper two-thirds of the water column and is marked with the owner's name and vessel identification number, and provided there is no other gear on board capable of catching multispecies finfish; or

5. In § 648.87, the section heading and paragraph (a) and paragraph (b) heading and introductory text are revised to read as follows:

**§ 648.87 Gillnet requirements to reduce harbor porpoise takes.**

(a) *Areas closed to sink gillnets and other gillnets capable of catching multispecies.* Sections 648.81(f) through (h) set forth closed area restrictions to reduce the take of harbor porpoise consistent with the harbor porpoise mortality goals.

(b) *Additional areas closed to sink gillnets and other gillnets capable of catching multispecies.* All persons owning or operating vessels in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, must remove all of their sink gillnets and other gillnet gear capable of catching multispecies, and may not use, set, haul back, fish with, or possess on board (unless stowed in accordance with the requirements of § 648.23(b)), a sink gillnet or other gillnet gear capable of catching multispecies except for a single pelagic gillnet as described in § 648.81(f)(2)(ii); and all persons owning or operating vessels issued a limited access multispecies permit must remove all of their gillnet gear capable of catching multispecies and may not use, set, haul back, fish with, or possess on board (unless stowed in accordance with the requirements of § 648.23(b)), a gillnet capable of catching multispecies in the areas and for the time specified in paragraphs (b)(1) and (2) of this section, except for a single pelagic gillnet as described in § 648.81(f)(2)(ii).

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**50 CFR Part 679**

[Docket No. 961107312-7021-02; I.D. 022697A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Offshore Component Pollock in the Aleutian Islands Subarea**

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

ACTION: Modification of a closure; inseason adjustment.

SUMMARY: NMFS is opening directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of pollock in that area.

DATES: The modification is effective 1200 hrs, Alaska local time (A.l.t.), February 26, 1997, until 2400 hrs, A.l.t., February 27, 1997. Comments must be received at the following address no later than 1630 hrs, A.l.t., March 17, 1997.

FOR FURTHER INFORMATION CONTACT: Mike Sloan, 907-581-2062.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20 (c)(3)(iii), the allowance for the pollock TAC apportioned for vessels catching pollock for processing by the offshore component in the AI was established by the Final 1997 Harvest Specifications for Groundfish (62 FR 7168, February 18, 1997) as 16,835 metric tons (mt). The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 14,835 mt, and set aside the remaining 2,000 mt as bycatch to support other anticipated groundfish fisheries. The fishery for pollock by vessels catching pollock in the AI of the BSAI was closed to directed fishing under § 679.20(d)(1)(iii) on February 23, 1997, in order to reserve amounts anticipated to be needed for incidental catch in other fisheries. This action was