

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[MM Docket No. 97-173, RM-9134]

**Radio Broadcasting Services; Lexington, TX****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Lee County Broadcasters seeking the allotment of Channel 286A to Lexington, Texas, as the community's first local aural transmission service. Channel 286A can be allotted to Lexington in compliance with the Commission's minimum distance separation requirements with a site restriction 13.3 kilometers (8.3 miles) north in order to avoid a short-spacing conflict with the licensed operation of Station KBUK-FM, Channel 285A, La Grange, Texas. The coordinates for Channel 286A at Lexington 30-31-36 NL and 96-57-45 WL.

**DATES:** Comments must be filed on or before September 29, 1997, and reply comments on or before October 14, 1997.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, Esq., 1150 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-173, adopted July 30, 1997, and released August 8, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission

consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,***Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97-21373 Filed 8-12-97; 8:45 am]

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**DEPARTMENT OF COMMERCE****50 CFR Part 229**

[Docket No. 970129015-7127-03; I.D. 042597B]

RIN 0648-A184

**Taking of Marine Mammals Incidental to Commercial Fishing Operations; Gulf of Maine Harbor Porpoise Take Reduction Plan Regulations**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement a plan to reduce the bycatch and mortality of harbor porpoises that occur incidental to sink gillnet fishing in the Gulf of Maine. These regulations were based on a draft Harbor Porpoise Take Reduction Plan (HPTRP) submitted by the Gulf of Maine Harbor Porpoise Take Reduction Team (HPTRT) pursuant to the Marine Mammal Protection Act (MMPA). NMFS seeks comment on the draft Harbor Porpoise Take Reduction Plan (HPTRP), NMFS' proposed changes to the draft plan, the proposed regulations to implement the plan and the Environmental Assessment (EA) of the plan.

**DATES:** Comments must be received by October 14, 1997.

**ADDRESSES:** Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. Copies of the draft HPTRP and EA are available upon request from Douglas Beach, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930,

or from Donna Wieting, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226.

**FOR FURTHER INFORMATION CONTACT:** Kevin Chu, NMFS, 508-495-2291 or Donna Wieting, NMFS, 301-713-2322.

**SUPPLEMENTARY INFORMATION:** The Gulf of Maine sink gillnet fishery is classified as a Category I fishery under section 118 of the MMPA, 16 U.S.C. 1361 *et seq.* A Category I fishery is a fishery that has frequent incidental mortality and serious injury of marine mammals. The fishery operates year-round in nearshore and offshore waters. Much of the sink gillnet activity in the Gulf of Maine is regulated by the New England Multispecies Fishery Management Plan (FMP). Gillnet fishing for other species, such as monkfish and dogfish, will be governed by FMPs and implementing regulations that are currently under development by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC), respectively.

The Gulf of Maine sink gillnet fishery has a historical incidental bycatch of a strategic marine mammal stock, the harbor porpoise (*Phocoena phocoena*). A strategic stock is a stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) that is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) that is listed as a threatened or endangered species under the ESA. The incidental bycatch of harbor porpoises in the Gulf of Maine sink gillnet fishery exceeds the PBR level established for that stock. The Gulf of Maine Stock of harbor porpoise has been proposed for listing as threatened under the ESA (58 FR 3108, January 7, 1993).

Section 118 of the MMPA requires NMFS to develop and implement a take reduction plan to assist in the recovery or to prevent the depletion of each strategic stock that interacts with a Category I or II fishery. A Category II fishery is a fishery that has occasional incidental mortality and serious injury of marine mammals. The immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the mortality and serious injury of strategic stocks incidentally taken in the course of commercial fishing operations to below the PBR levels established for such stocks. The PBR level is the maximum number of animals that can be removed annually from a marine mammal stock by human causes while allowing that

stock to reach or maintain its optimum sustainable population. The PBR level for harbor porpoises is 483 animals per year (62 FR 3005, January 21, 1997).

Accordingly, NMFS established the HPTRT on February 12, 1996 (61 FR 5384, February 12, 1996), to prepare a draft take reduction plan. The HPTRT included representatives of the sink gillnet fishery, NMFS, state marine resource management agencies, the NEFMC, environmental organizations, and academic and scientific organizations. In selecting these team members, NMFS sought an equitable balance among representatives of resource user and non-user interests.

The HPTRT was tasked with developing a consensus draft plan for reducing incidental mortality and serious injury of harbor porpoises in the Gulf of Maine sink gillnet fishery. The HPTRT met five times between February and July 1996 and submitted a consensus draft plan to NMFS on August 8, 1996. The draft HPTRP is a comprehensive approach to the problem and includes:

1. A Core Management Plan that consists of a schedule of time/area closures and periods when pingers (acoustic deterrent devices) would be required for each of the established management areas. Consensus on the Core Management Plan was contingent on the following understandings: (A) That the regime was recommended only for the first year of the plan and that the team reconvene 7 months after the plan has been implemented; (B) that a scientific experiment be conducted to study the effectiveness of pingers in reducing harbor porpoise bycatch in the Mid-Coast Area in the spring, and (C) that research on the effect of pingers on harbor porpoises and other marine life be conducted at the same time, including the initiation of research on the possible habituation of harbor porpoise to pingers.

2. An Implementation Plan that includes recommendations regarding a detailed census of the gillnet fleet; outreach, training and certification programs for fishers who wish to use pingers; NMFS' and the HPTRT's coordination and consultation with Canadian counterparts regarding the reduction of harbor porpoise takes in Canadian waters; enforcement of the HPTRP; coordination of HPTRT's efforts with those of the Mid-Atlantic Take Reduction Team; investigation of impacts on harbor porpoise by the state gillnet and bait gillnet fisheries; and the reconvening of the team to provide periodic evaluations of the HPTRP.

3. A series of recommendations regarding NMFS' collection, analysis,

and management of data on the status of the harbor porpoise stock, sink gillnet fishery effort, by-catch rate, and total by-catch estimates; and recommendations regarding design of pinger experiments and gear technology research.

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.

**The Core Management Plan**

As part of the Core Management Plan, the HPTRT recommended a schedule of time/area closures and periods during which pinger use is required for each of the established sink gillnet management areas (Table 1). The HPTRT expects that these restrictions would result in a reduction of harbor porpoise bycatch to below the PBR level.

TABLE 1.—TIME/AREA CLOSURES TO SINK GILLNET FISHING AND PERIODS DURING WHICH PINGER USE WOULD BE REQUIRED, UNDER THE DRAFT HPTRP

Downeast Area: Aug. 15 to Sep. 13	Closed.
Mid-coast Area: Jan. 1–31 .....	Closed.
Mar. 1 to May 15 ...	Closed.
Sept. 15 to Oct. 31	Open, pingers required on all sink gillnets.
Nov. 1 to Dec. 31 ..	Closed.
Massachusetts Bay Area: Feb. 1–28/29 .....	Open, pingers required on all sink gillnets.
Mar. 1–31 .....	Closed.
Apr. 1–30 .....	Open, pingers required on all sink gillnets.
South Cape Cod Area: Feb. 1–28/29 .....	Open, pingers required on all sink gillnets.
Mar. 1–31 .....	Closed.
Apr. 1–30 .....	Open, pingers required on all sink gillnets.

The New England sink gillnet fishery is governed by the Northeast Multispecies FMP and implementing regulations. The NEFMC developed the FMP to meet groundfish conservation and marine mammal conservation goals. Concurrent with the HPTRT's proceeding, the NEFMC considered new FMP changes which would affect sink gillnet fishing. This action—specifically, opening the Mid-Coast Area to gillnet fishing with pingers during November and December—was implemented

subsequent to NMFS' receipt of the HPTRT plan. As the NEFMC actions altered the assumptions upon which the HPTRT's consensus proceedings were based, NMFS has strived to propose a take reduction plan that maintains the spirit of the HPTRT's comprehensive consensus plan. NMFS is proposing to adopt the HPTRT's recommendations for closures and pinger use in the Downeast Area, Massachusetts Bay Area, and Cape Cod South Area. However, for the Mid-Coast Area, NMFS proposes to combine the recommendations from the HPTRT and the NEFMC regarding closures and pinger use (Table 2).

TABLE 2.—SUMMARY OF DIFFERENCES BETWEEN DRAFT AND PROPOSED PLAN IN THE MID-COAST AREA

Period	HPTRT's Plan	NMFS' proposed change to the plan
Jan .....	Closed .....	Closed.
Mar. 1–May 15.	Closed .....	Closed. <sup>1</sup>
Sep. 15–Oct. 31.	Open, pingers required.	Open, pingers required.
Nov. 1–Dec. 31.	Closed .....	Open, pingers required.

<sup>1</sup> In 1996, the Mid-Coast Closure Area was closed from March 25-April 25. Framework Adjustment 19 to Amendment 7 of the Multi-species Fishery Management Plan implemented a closure of Jeffrey's Ledge Closure Area (a subset of the Mid-Coast Area) from May 1 through May 31, 1997. The same regulatory action implements a closure of the entire Mid-Coast Area from May 10 through May 30 of each year after 1997. NMFS' proposed change melds Framework Adjustment 19 with the actions proposed by the HPTRT.

NMFS' proposed change increases the fishing opportunities for sink gillnet fishermen who would have been excluded from fishing during November and December in the draft HPTRP. Based on the historical by-catch records and the determined/assumed effectiveness of pingers in reducing by-catch in the Mid-Coast Area during the fall, this change from the draft HPTRP is expected to result in about eight additional harbor porpoise takes. However, the total annual take of harbor porpoise is still expected to be below the PBR level. The change from the draft HPTRP would increase the amount of time when pingers are broadcasting in the ocean.

NMFS' proposed implementing regulations include the following periods and areas which would be closed to sink gillnet fishing or would be open to sink gillnet fishing only if

pingers are employed in the prescribed manner (Table 3).

TABLE 3.—TIME/AREA CLOSURES TO SINK GILLNET FISHING AND PERIODS DURING WHICH PINGER USE WOULD BE REQUIRED, AS PROPOSED BY NMFS

Downeast Area: Aug. 15 to Sep. 13.	Closed.
Mid-coast Area: Jan. 1–31 .....	Closed.
Mar. 1 to May 15 ...	Closed.
Sep. 15 to Dec. 31	Open, pingers required on all sink gillnets.
Massachusetts Bay Area: Feb. 1–28/29 .....	Open, pingers required on all sink gillnets.
Mar. 1–31 .....	Closed.
Apr. 1–30 .....	Open, pingers required on all sink gillnets.
South Cape Cod Area: Feb. 1–28/29 .....	Open, pingers required on all sink gillnets.
Mar. 1–31 .....	Closed.
Apr. 1–30 .....	Open, pingers required on all sink gillnets.

The proposed regulations would implement the modified Core Management Plan under the authority of the MMPA. As the conservation of harbor porpoise is one of the goals of the Multispecies FMP, NMFS will request that the NEFMC consider the measures herein and prepare regulations implementing the take reduction plan, consistent with groundfish management goals, under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The MMPA regulations proposed herein would govern sink gillnet fishing by anyone in all state and Federal waters of New England from Maine through Rhode Island; the Magnuson-Stevens Act regulations would govern only the fishing of federally permitted fishers in those areas. Otherwise, the actions and management areas described in the regulatory text below are consistent with the Northeast Multispecies FMP at the time of this proposed rule's publication. Council action under the Magnuson-Stevens Act that satisfies the intent of the MMPA would make preparation of final regulations under the MMPA unnecessary.

The HPTRT's full consensus on the Core Management Plan was contingent on three additional measures. First, that the regime be implemented for only 1 year and that NMFS reconvene the team

in the seventh month after the HPTRP's implementation, and semiannually thereafter, in order to review the effectiveness of the recommended actions and to revise the take reduction plan, if necessary. The proposed regulations to implement the proposed HPTRT would be effective for more than 1 year because of the burden of having to conduct another rulemaking. However, NMFS will consider modifying the regulations based on the HPTRT's recommendations when the team reconvenes. The HPTRT requested that NMFS provide a variety of detailed and updated information regarding fishery effort, by-catch rates, by-catch estimates throughout the species' range (to include Canada and the Mid-Atlantic), and compliance with the plan. NMFS intends to reconvene the HPTRT and will strive to provide the latest and best information, as requested. However, in order to ensure the HPTRT is provided with the requested data and that meetings are productive, the timing of the meetings must allow sufficient time for NMFS to assemble and analyze effort and by-catch data for the period of concern.

The second measure upon which the HPTRT's full consensus on the Core Management Plan was contingent, is that a scientific experiment be conducted during the spring closure in the Mid-Coast Area in 1997 to determine the effectiveness of pingers as a harbor porpoise conservation technique. The team recommended that the experiment last a maximum of 45 days and that it be stopped immediately if 70 harbor porpoises were caught in the course of the experiment. The HPTRT also made several specific recommendations to ensure that the experiment is statistically significant and scientifically valid. This experiment was conducted in March and April of 1997, and an analysis of the results of this experiment is currently underway.

A third measure upon which the HPTRT's full consensus on the Core Management Plan was contingent is that research be conducted on the effects of pingers on harbor porpoise and other marine life. The HPTRT recommended that research be conducted in the Mid-Coast Area from September 15 to October 31 (when pingers would be in use) to begin to address: (1) Whether harbor porpoise are displaced from important habitat areas by pingers, (2) whether the rate of entanglement of porpoise in sink gillnets changes with continued pinger use, and (3) whether pingers affect other marine life. NMFS has contracted with the Woods Hole Oceanographic Institution to conduct this research.

**Implementation Measures**

A second part of the draft HPTRP consists of recommendations for implementing the Core Management Plan. The HPTRT noted that effective implementation of the plan depends on enhanced cooperation between researchers, regulators and fishers, and the plan includes recommendations for increased outreach, training, and cooperative efforts. The team acknowledged the changing nature of fishing activities in response to a variety of recent and on-going fishery management and protected species conservation actions. The recommended implementation measures address the need for more up-to-date and continually updated methods of estimating fishery effort and by-catch throughout the species' range.

*Census of the Gillnet Fleet*

The HPTRT 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. The HPTRT recommended that the census include interviews with fishers and, for the purpose of facilitating NMFS' public outreach efforts, identify points of contact in each port and mailing/phone lists for the fishery participants. The draft HPTRP states that since the reliability of total by-catch estimates is dependent on the quality of the fishery effort data, NMFS should consider adopting a system that uses nets as the measure of effort versus the current landings weighout process. In the interest of achieving a real-time measure of fishing effort, the HPTRT also recommended that NMFS investigate the practicability of dock-side interviews or a computer automated or call-in system to augment the weighout system.

NMFS is concerned that a census of the fleet would only provide a snapshot of fishing activity, and the information collected may be of little value for the purpose of estimating by-catch on a real-time basis. NMFS is currently assessing the usefulness of vessel logbooks for this purpose. However, the development of a reporting system that provides timely, consistent, and thorough measures of fishery effort may require an overhaul of existing reporting mechanisms. NMFS is investigating the feasibility and value of the technological alternatives proposed by the HPTRT. Ideally, improvements in determining fishery effort could be applied across areas and fisheries beyond the scope of this plan as well. NMFS seeks comments on these and

other potential effort assessment and reporting mechanisms.

#### *Outreach and Certification Programs*

The HPTRT recommended that NMFS conduct certification programs for all fishers who wish to participate in a pinger fishery. Under the HPTRT's proposed plan, the program would be a forum in which fishers would learn about the take reduction team process, MMPA reporting requirements, and proper pinger use. Also, NMFS could use the sessions to invite further take reduction and plan implementation ideas from fishers. The HPTRT recommended that completion of the certification program by sink gillnet fishers be a prerequisite for the issuance of a certificate authorizing the incidental take of marine mammals under section 118 of the MMPA and for participation in those segments of the fishery wherein pingers are required. While the value of informative workshops is clear, NMFS is not proposing a mandatory certification program at this time, due to the administrative burden it would present to fishers and to the agency. NMFS is proposing instead to prepare informative printed materials that fully describe the use of pingers and the elements of the take reduction plan. NMFS also proposes to conduct a series of workshops in conjunction with existing fishery gatherings throughout New England to explain not only components of this take reduction plan but also of the existing and forthcoming measures to protect endangered large whales from entanglements in fixed fishing gear. NMFS requests comments on this approach to public outreach and training of fishery participants.

Under the HPTRT's proposed certification program, there is a recommendation that NMFS establish specifications for pingers, their use and maintenance, and various NMFS' reporting requirements. NMFS concurs with the recommendations and has included the following definition incorporating such pinger specifications in the proposed rule: A pinger is an acoustic deterrent device that, when immersed in water, broadcasts a  $10\pm$  kHz sound ( $\pm 2$  kHz) at 132 dB ( $\pm 4$  dB) re 1 micropascal at 1 meter, that lasts 300 milliseconds ( $\pm 15$  milliseconds), and repeats every 4 seconds ( $\pm .2$  seconds). An operational and functioning pinger must be attached at the end of each string of sink gillnets and at the bridle of every net within a string of nets. The HPTRT's recommendations regarding reporting of marine mammal takes within 48 hours, the requirement to carry an observer if

so requested by NMFS, and submittal of weekly trip reports are addressed under separate regulations found at 50 CFR 229.6, 229.7, and 648.7.

#### *Takes of Harbor Porpoise in Canadian and US Mid-Atlantic Waters*

The HPTRT recognized that its area of concern did not reflect the full range of the harbor porpoise and that takes incidental to fishing operations occur throughout its range in Canadian waters and along the US Mid-Atlantic coast. In hopes of ensuring that the Canadian Department of Fisheries and Oceans (DFO) implements measures in the northern range of the harbor porpoise commensurate with the HPTRP, the team recommended that NMFS consult extensively with DFO. Specifically, the HPTRT recommends that NMFS seek DFO's comments on the plan, urge DFO to develop a complementary plan, review with DFO the progress of the HPTRP and any Canadian take reduction strategies, and outline a schedule for meetings between NMFS, representatives of the HPTRT, DFO, and representatives of the DFO's Harbor Porpoise Advisory Team to jointly review population and by-catch data. NMFS has a collegial relationship with DFO and values the exchange of data and ideas that such a relationship affords. In the interest of continuing that relationship, NMFS will request that DFO consider the HPTRT's recommendations.

In U.S. Mid-Atlantic waters, harbor porpoises are taken in a number of coastal fisheries. These takes occur in significant numbers, and NMFS convened the Mid-Atlantic Take Reduction Team in March 1997 to address the matter. During the HPTRT's deliberations, information was not available on the number of takes that occur in the Mid-Atlantic, and therefore, the HPTRT was not able to take into account the significance and magnitude of these extra-regional takes. When NMFS reconvenes the HPTRT, the latest and best information on porpoise by-catch in the Mid-Atlantic will be considered, and an equitable PBR level allocation scheme will be developed for each segment of the fishery. To provide the necessary coordination between the teams and consistency across the regions, NMFS, at the recommendation of the HPTRT, has included several members of the HPTRT on the Mid-Atlantic Take Reduction Team and will strive to ensure that data on by-catch and effort in both areas will be shared with both teams. NMFS requests comments on its plans for addressing takes of harbor porpoises throughout the full range of the species.

#### *Enforcement Priority*

To meet the goals of significantly reducing by-catch of harbor porpoises, the HPTRT recommended that NMFS give enforcement of the HPTRP a high priority. Further, the HPTRT recommended that NMFS provide the team and other interested parties the opportunity to review and comment on enforcement guidelines.

The NMFS Enforcement Division will enforce the final regulations implementing the plan. The policies and priorities of the NMFS Enforcement Division are constantly evolving to provide the best possible response to changing regulations, seasonality of fisheries, levels of compliance, sensitivity of resources, and a number of other factors. Given the dynamic and broad range of conditions and contingencies with which the NMFS Enforcement Division must contend, it would be impractical and highly unusual for NMFS to develop and seek public comment on an enforcement plan focused on this specific take reduction plan. In an effort to enhance communications and to facilitate enforcement of the take reduction plan, Special Agents from the NMFS Enforcement Division will attempt to attend upcoming HPTRT meetings. Also, the HPTRT and other interested parties are encouraged to submit written comments to the NMFS Enforcement Division at any time.

#### *Baitnets and Other Gillnets*

The HPTRT recognized that certain gillnet fisheries that are not regulated and/or not subject to the requirements of the Federal observer program may occur in waters covered by the take reduction plan and may pose a by-catch risk to harbor porpoises. The team noted that the HPTRP is focused on the sink gillnet fishery and, with the intent of ensuring that the gillnet fisheries that may be exempted from regulations or monitoring do not set nets in time-areas closed for the protection of harbor porpoises, the HPTRT recommended that NMFS restrict all gillnets, with the exception of baitnets, as provided in the HPTRP. The exception for baitnets recognizes the use of small mesh pelagic gillnets to harvest bait for the tuna and lobster fisheries. Framework Adjustment 16 to the New England Multispecies FMP defines a baitnet as a single pelagic gillnet, not more than 300 ft (90.9 m) long nor more than 6 ft (1.8 m) deep, with a maximum mesh size of 3 in (7.6 cm), and requires that the net be attached to the boat and fished in the upper two-thirds of the water column (50 CFR 648.81(f)(2)(ii)). The HPTRT

assumed that these small mesh nets, which are constantly monitored, pose little risk to harbor porpoises. Accordingly, the proposed regulations would be applicable to all fishers who use sink gillnets or other gillnets capable of catching multispecies except for a single pelagic gillnet as described in 50 CFR 648.81(f)(2)(ii). Furthermore, under the authority of the MMPA, the proposed regulations would apply to fisheries operating in both state and Federal waters. NMFS will request that the NEFMC consider the measures herein and prepare regulations implementing the measures under the Magnuson-Stevens Act as a Framework Adjustment to the Multispecies FMP. Should the NEFMC do so, the language restricting all gillnets capable of catching multispecies, with the exception of baitnets, would likely remain in the regulatory text. However, under the Magnuson-Stevens Act, the regulation would not have quite as broad effect as under the MMPA. Fishers who do not hold a Federal fishery permit and who fish in state waters would not be subject to the regulations under the Magnuson-Stevens Act. NMFS seeks comments from the public on this regulatory implementation strategy.

**Data Collection and Management Recommendations**

Throughout its proceedings, the HPTRT examined the available data on harbor porpoise abundance, by-catch estimates, fishing effort, and pinger use. In the draft HPTRP, the team identified additional research needs, adjustments to existing data collection methods, and changes to database management and reporting.

The draft HPTRP included several recommendations regarding the conduct and analysis of harbor porpoise abundance surveys. NMFS will follow the recommendations to the extent that good scientific practice and resources allow. To learn more about the harbor porpoise and its environment, the team recommended that NMFS conduct studies of migration with respect to salinity, water temperatures, and other oceanographic variables. NMFS will consider these research needs when the agency reviews priorities for resources allocation.

The HPTRT made several recommendations regarding NMFS' management of observers and use of data collected by observers. NMFS will comply with the recommendations to the extent that good scientific practice and available resources allow.

Finally, the HPTRT identified several long-term research goals. The team

recommended that NMFS: (1) Conduct or support a study of by-catch rates with respect to variations in gillnet gear and fishing practices; (2) join with fishers and conservation engineers to develop gear modifications to reduce interactions with harbor porpoises; and (3) investigate ambient noise levels and transmission conditions for the various harbor porpoise management areas. NMFS will consider these long-term research goals when establishing funding priorities. NMFS will request that the HPTRT revisit and refine these recommendations at future meetings of the HPTRT. NMFS seeks comments on the research needs and priorities to address the problem of harbor porpoise by-catch in gillnets.

**Classification**

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed regulations, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities as follows:

The economic impacts of this proposed rule are minimal and could be offset by reductions in marine mammal entanglement and subsequent reductions in fisher's costs due to net damage or loss. As a worst-case scenario, if fishers were unable to use fishing grounds other than those proposed for closures, or were unable to purchase pingers to use fishing grounds that are closed except to vessels with pingers, the total economic loss experienced as a result of this rule could be as high as \$882K per year for the entire fishery. If vessels were to purchase pingers, total net losses (surplus minus the cost of pingers) could be as high as \$436K per year for the entire fishery. Individual vessel costs to equip gillnets with pingers would be approximately \$4K (80 pingers at \$50/pinger). If fishers were able to displace fishing effort and use pingers to access otherwise closed areas, economic impact on the fishery could be as low as \$171K per year for the entire fishery. For the 1995 fishing year, there were 378 gillnet category permits issued out of a total number of 4738 multispecies permits, or 8.0 percent. Because the number of vessels affected by this proposed action account for less than 20 percent of the small business entities in the northeast multispecies fishery, the proposed action will not have a significant economic impact on a substantial number of small entities and a Regulatory Flexibility Analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA (AA) has preliminarily determined, based on an EA prepared under the National Environmental

Policy Act, that implementation of these regulations would not have a significant impact on the human environment. A copy of the EA prepared for this rule is available for comment upon request (see ADDRESSES).

**List of Subjects in 50 CFR Part 229**

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

Dated: July 30, 1997.

**Rolland A. Schmittin,**

*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 subpart C, new § 229.33 is added to read as follows:

**§ 229.33 Gulf of Maine harbor porpoise take reduction plan.**

(a) It is prohibited to fish with, set, haul back, possess on board a vessel, unless stowed in accordance with 50 CFR 648.81(e), 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)), from the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section, except as provided in paragraphs (b)(1) through (b)(3) of this section.

(1) *Northeast Closure Area.* From August 15–September 13 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Northeast Closure Area, which 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'	67°48.7'
NE4 .....	44°06.9'	67°52.8'
NE5 .....	44°31.2'	67°02.7'
NE6 .....	(1)	67°02.7'

<sup>1</sup> Maine shoreline.

(2) *Mid-coast Closure Area.* From January 1–January 31, from March 1–

May 15, and from September 15–December 31, except as provided in paragraph (b)(1) of this section; the restrictions and requirements specified in paragraph (a) of this section apply to the Mid-Coast Closure Area, which 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'	70°15'
MC3 .....	42°40'	70°15'
MC4 .....	42°40'	70°00'
MC5 .....	43°00'	70°00'
MC6 .....	43°00'	69°30'
MC7 .....	43°15'	69°30'
MC8 .....	43°15'	69°00'
MC9 .....	(2)	69°00'

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Maine shoreline.

(3) *Massachusetts Bay Closure Area.* From February 1–April 30, except as provided in paragraph (b)(2) of this section, the restrictions and requirements specified in paragraph (a) of this section apply to the Massachusetts Bay Closure Area, which 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)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline.

(4) *Cape Cod South Closure Area.* From February 1–April 30, except as provided in paragraph (b)(3) of this section, the restrictions and requirements specified in paragraph (a) of this section apply to the Cape Cod South Closure Area, which 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'
CCS2 .....	40°40'	71°45'
CCS3 .....	40°40'	70°30'
CCS4 .....	(2)	70°30'

<sup>1</sup> Rhode Island shoreline.

<sup>2</sup> Massachusetts shoreline.

(b) For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz ( $\pm$  2 kHz) sound at 132 dB ( $\pm$  4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds ( $\pm$  15 milliseconds), and repeating every 4 seconds ( $\pm$  .2 seconds). 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.

(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 December 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–April 30 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 February 1 through the last day of February and from April 1–April 30 of each fishing year, provided that pingers are used in accordance with the requirements of paragraph (b) of this section.

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket No. 970801188–7188–01; I.D. 070797C]

RIN 0648–AJ45

##### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limit for *Chionoecetes Opilio* Crab

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

**ACTION:** Proposed rule; proposed change to 1997 final groundfish harvest specifications; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 40 to the

Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This rule would establish a prohibited species catch (PSC) limit for *Chionoecetes opilio* in a new *C. opilio* Bycatch Limitation Zone (COBLZ) of the Bering Sea. Upon attainment of a *C. opilio* bycatch allowance apportioned to a particular trawl fishery category, the COBLZ would be closed to directed fishing for species in that trawl fishery category. This measure is necessary to protect the *C. opilio* stock in the Bering Sea, which has declined to a level that presents a conservation problem. This measure is intended to accomplish the objectives of the FMP with respect to the management of the Bering Sea and Aleutian Islands management area (BSAI) groundfish fishery.

**DATES:** Comments on the proposed rule must be received by September 29, 1997.

**ADDRESSES:** Comments should be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendment may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809.

**FOR FURTHER INFORMATION CONTACT:** Kim S. Rivera, 907–586–7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

The U.S. groundfish fisheries of the BSAI in the exclusive economic zone are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is implemented by regulations for the fisheries off Alaska at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council has submitted Amendment 40 for Secretarial review and a Notice of Availability (NOA) of the FMP amendment was published on July 15, 1997 (62 FR 37860). Comments on this proposed rule are invited and must be received on or before September 29, 1997. Public comments on the FMP amendment and the proposed rule must be received on or before September 15, 1997, to be