

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 229

[Docket No. 080721862-8864-01]

RIN 0648-AW51

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

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

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

**SUMMARY:** The National Marine Fisheries Service (NMFS) proposes to amend the regulations implementing the Harbor Porpoise Take Reduction Plan (HPTRP) to address the increased incidental mortality and serious injury of the Gulf of Maine/Bay of Fundy stock of harbor porpoises (*Phocoena phocoena*) in gillnet fisheries throughout the stock's U.S. range.

**DATES:** Comments on the proposed rule must be received by 5 p.m. EST on August 20, 2009.

**ADDRESSES:** Comments may be submitted on this proposed rule, identified by RIN 0648-AW51, by any one of the following methods:

(1) *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.

(2) *Mail:* Mary Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, Protected Resources Division, 55 Great Republic Drive, Suite 04-400, Gloucester, MA 01930, ATTN: HPTRP Proposed Rule.

(3) *Facsimile (fax) to:* 978-281-9394, ATTN: HPTRP Proposed Rule.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the draft HPTRP Environmental Assessment (EA) and Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this proposed rule may be obtained from the HPTRP Web site (<http://www.nero.noaa.gov/hptrp>) or by writing to Amanda Johnson, NMFS, Northeast Region, Protected Resources Division, 55 Great Republic Drive, Suite 04-400, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:**

Amanda Johnson, NMFS, Northeast Region, 978-282-8463, [amanda.johnson@noaa.gov](mailto:amanda.johnson@noaa.gov); or Melissa Andersen, NMFS, Office of Protected Resources, 301-713-2322, [melissa.andersen@noaa.gov](mailto:melissa.andersen@noaa.gov).

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

The 1994 amendments to the Marine Mammal Protection Act (MMPA) established Section 118, which includes provisions for addressing commercial fishery interactions with marine mammal stocks. The HPTRP was developed pursuant to Section 118(f) of the MMPA to reduce the level of serious injury and mortality of the Gulf of Maine/Bay of Fundy (GOM/BOF) stock of harbor porpoise interacting with Category I and II fisheries (i.e., those with frequent or occasional incidental serious injury or mortality of marine mammals). Under Section 118, take reduction plans (TRPs) are required for all strategic marine mammal stocks that are incidentally seriously injured or killed in Category I or II commercial fisheries. A strategic stock is a stock: (1) For which the level of direct human-caused mortality exceeds the stock's potential biological removal (PBR) level, (2) that is declining and is likely to be listed under the Endangered Species Act of 1973 (ESA) in the foreseeable future, or (3) that is listed as a threatened or endangered species under the ESA, or is designated as depleted under the MMPA. PBR is the maximum number of animals that may be removed from a marine mammal stock annually, not including natural mortalities, while allowing that stock to reach or maintain its optimum sustainable population. Because the current average annual human-related mortality and serious injury of harbor porpoise incidental to Category I and II commercial gillnet fisheries exceeds PBR, the GOM/BOF stock is considered strategic under the MMPA (Waring *et al.*, 2007a).

At the time the 1994 amendments to the MMPA were enacted, the GOM/BOF harbor porpoise stock was considered strategic due to interactions with the

Northeast sink gillnet fishery and the Mid-Atlantic gillnet fishery. As such, NMFS was required by the MMPA to take action by forming a take reduction team to reduce the serious injury and mortality of harbor porpoises in gillnet gear. The MMPA directs take reduction teams to submit recommendations to NMFS to immediately reduce bycatch to below PBR within six months and to achieve the long-term goal of reducing bycatch to insignificant levels approaching a zero mortality and serious injury rate. As stated in Section 118(f)(6)(D) of the MMPA, take reduction teams are not subject to the Federal Advisory Committee Act and are open to the public.

NMFS published a notice in the *Federal Register* on February 12, 1996 (61 FR 5384), establishing the Gulf of Maine Harbor Porpoise Take Reduction Team (GOMTRT) and announcing the first GOMTRT meeting. The GOMTRT included representatives of the Northeast sink gillnet fishery, state fishery management agencies, the Northeast Fishery Management Council (NEFMC), the Atlantic States Marine Fisheries Commission (ASMFC), environmental organizations, academic and scientific organizations, and NMFS. The GOMTRT met five times between February and July 1996 before producing a consensus draft TRP that was submitted to NMFS on August 8, 1996. Additionally, the GOMTRT convened with the understanding that a separate take reduction team would be formed to address harbor porpoise bycatch in the Mid-Atlantic region.

In February 1997, NMFS established the Mid-Atlantic Harbor Porpoise Take Reduction Team (MATRT) to address the incidental serious injury and mortality of harbor porpoises in Mid-Atlantic gillnet fisheries from New York through North Carolina (62 FR 8428, February 25, 1997). The MATRT included representatives of the Mid-Atlantic coastal gillnet fisheries, state fishery management agencies, the Mid-Atlantic Fishery Management Council (MAFMC), the NEFMC, the ASMFC, environmental organizations, academic and scientific organizations, and NMFS. The MATRT submitted a report to NMFS on August 25, 1997, which included both consensus and non-consensus recommendations.

On September 11, 1998, NMFS published a proposed rule (63 FR 48670) to implement the HPTRP, which included both GOMTRT and MATRT recommendations. A final rule implementing the HPTRP to reduce serious injury and mortality of harbor porpoise in both the Gulf of Maine and Mid-Atlantic was published on

December 2, 1998 (63 FR 66464). Shortly following, a correction notice was published to remedy incorrect management area coordinates that were published in the final rule (63 FR 71041, December 23, 1998). On January 11, 2001, NMFS published a final rule (66 FR 2336) amending the HPTRP by exempting Delaware Bay from HPTRP regulations landward of the 72 COLREGS demarcation line.

The current HPTRP regulations are separated into two components—Gulf of Maine (GOM) and Mid-Atlantic. Among other measures, the GOM component regulates sink gillnet gear or gillnet gear capable of catching multispecies through time and area regulations from Maine to Rhode Island during the months of August through May. In four of the six GOM management areas, measures include seasonal gillnet closures during the months of the year when harbor porpoises are most concentrated in these areas. During several other times of the year, the HPTRP management areas require the use of acoustic deterrent devices (pingers) on sink gillnet gear.

The Mid-Atlantic component of the HPTRP regulates gillnet fishing in three management areas through time and area regulations from New York through North Carolina from January through April. In lieu of pinger requirements, the Mid-Atlantic component of the HPTRP established large and small mesh gear specification requirements in which fishermen set gear that is less likely to result in harbor porpoise entanglement. Large mesh gillnets include gillnets with a mesh size of seven to 18 inches (18–46 cm) and small mesh gillnets include gillnets with a mesh size of greater than five to less than seven inches (>13–<18 cm). Gear specification requirements for Mid-Atlantic gillnets include measures specifying a net limit per net string, twine size, net size, number of nets per vessel, and tie-down provisions. The three management areas of the Mid-Atlantic component of the HPTRP also include seasonal gillnet closures to coincide with high abundances of harbor porpoises.

Along with implementation of the HPTRP, regulations implementing restrictions developed under various Fishery Management Plans (FMP) have closed areas to gillnetting and reduced or constrained effort in groundfish, monkfish, and dogfish gillnet fisheries.

#### *Need for Additional Action*

After implementation of the HPTRP in late 1998, the annual average harbor porpoise bycatch decreased from a high of 1,500 animals per year prior to

implementation of the HPTRP to a low of 310 animals per year (Waring *et al.*, 2004). This was below the stock's PBR level, which increased from 483 to 747 animals as reported in the 2001 Stock Assessment Report (Waring *et al.*, 2001).

Up to the 2006 Stock Assessment Report, harbor porpoise serious injury and mortality levels remained below PBR, with a mean annual mortality of 515 animals per year between 2000 and 2004 (Waring *et al.*, 2007b). Although the HPTRP regulations achieved the immediate goal of reducing harbor porpoise bycatch to levels below PBR, these regulations did not achieve the long-term goal of reducing bycatch to insignificant levels approaching a zero mortality and serious injury rate (referred to as the zero mortality rate goal or ZMRG), as required under the MMPA. NMFS defined this insignificance threshold as ten percent of a stock's PBR (50 CFR 229.2). Instead, the yearly observed takes and estimated mortality rates have shown an increasing trend rather than a decreasing trend to bycatch levels approaching the insignificance threshold.

The most recent estimates indicate that, when calculating the average estimated mortality for the period between 2001 and 2005, bycatch exceeded PBR. The 2007 Stock Assessment Report indicates that the current annual estimated harbor porpoise incidental bycatch of 652 animals per year exceeds the current PBR of 610 animals (Waring *et al.*, 2007a). Of the 652 takes, 475 are attributed to the Northeast sink gillnet fishery and 177 to the Mid-Atlantic gillnet fishery.

After preliminary discussions, NMFS originally believed the recent increase in harbor porpoise bycatch was the result of a lack of compliance with the HPTRP requirements. In New England, compliance rates dropped precipitously between 2002 and 2003 (as indicated by the low percentage of observed hauls using the correct number of pingers per string when pingers were required), when fewer than 10 percent of the observed hauls were deployed with the proper number of pingers (Palka *et al.*, 2008). However, after reviewing more recent observer information depicting the locations of gillnet hauls in which harbor porpoise takes were recorded, NMFS concluded that the increase in harbor porpoise takes was a two-pronged problem. It not only involved non-compliance with the current HPTRP requirements, but also involved observed harbor porpoise takes occurring outside of existing HPTRP management areas. These data

prompted NMFS to initiate a targeted HPTRP outreach effort in the fall of 2006. This effort included development of laminated outreach cards summarizing and graphically depicting the HPTRP management areas and requirements for New England and the Mid-Atlantic. In October 2006, the outreach cards and a laminated pinger training authorization were mailed to over 300 fishermen who had previously received pinger training. The pinger training authorization, when kept on board the vessel, allows gillnet fishing with pingers inside the HPTRP management areas and illustrates proper pinger placement.

A large component of the outreach effort involved commercial gillnet industry outreach meetings. Between October and November 2006, NMFS conducted a series of eight voluntary outreach meetings for commercial gillnet fishermen throughout New England from Maine through Rhode Island. The outreach meetings were intended to provide commercial gillnet fishermen with an update on the status of the HPTRP, summarize the existing HPTRP requirements for both New England and the Mid-Atlantic, and provide pinger training where necessary (New England only). The outreach meetings supplemented ongoing efforts by NMFS gear specialists to train local and Federal enforcement personnel. As such, where possible, NMFS and U.S. Coast Guard (USCG) enforcement agents also attended the outreach meetings.

In the fall of 2006, while the outreach meetings were ongoing, an increase in compliance was already evident. Through May 2007, compliance in 2007 increased to nearly 60 percent.

In addition to conducting outreach to gillnet fishermen, NMFS participated in enforcement cruises with state enforcement personnel in Massachusetts and Rhode Island. NMFS held a number of joint meetings with local law enforcement personnel, including eight presentations made in New England between 2003 and 2008. Beginning in 2005, the US Coast Guard (USCG) increased patrols in HPTRP management areas in the Gulf of Maine. During March of 2006, the Massachusetts Environmental Police joined the USCG in their patrols. Increased patrols continued into 2007. In the Mid-Atlantic, NMFS gear specialists held two meetings (in 2003 and 2005) with the Atlantic States Marine Fisheries Commission's Law Enforcement Committee to review the current requirements of the HPTRP.

Outreach and enforcement efforts alone, however, did not address the increased bycatch of harbor porpoises

occurring outside of the existing HPTRP management areas, where harbor porpoise bycatch reduction measures are not in place. Consequently, NMFS determined that it was necessary to reconvene the Harbor Porpoise Take Reduction Team (HPTRT).

#### *HPTRT Reconvened*

The HPTRP utilizes two harbor porpoise take reduction teams (TRT), the Gulf of Maine and Mid-Atlantic TRTs, to address the incidental serious injury and mortality of harbor porpoises that result from incidental interactions with gillnet fisheries. Specifically, the TRTs were charged with developing conservation strategies to reduce the incidental serious injury and mortality of harbor porpoises to levels below the PBR level and approaching ZMRG. The GOMTRT was charged with reducing the serious injury and mortality of harbor porpoises that result from incidental interactions with gillnet fisheries from Maine to Rhode Island, while the MATRT addressed the serious injury and mortality of harbor porpoises that result from incidental interactions with gillnet fisheries from New York through North Carolina. The TRTs were each last convened in 2000 to discuss harbor porpoise/fisheries interactions and potential mitigation measures on a regional level.

However, to address the recent increase in harbor porpoise bycatch, NMFS decided to combine the two TRTs and hold one full HPTRT meeting for three reasons. First, since it had been nearly eight years since either TRT had met, the updated stock abundance and bycatch information presented would be pertinent to both TRTs. Additionally, some members had served on both the GOMTRT and MATRT, and would receive redundant information if two separate meetings were held. Finally, holding one full HPTRT meeting could more efficiently utilize limited resources.

The HPTRT was reconvened for a meeting in December 2007, and a follow-up teleconference meeting was held on January 31, 2008. The proposed modifications to the HPTRP, as well as the other alternatives considered within the draft Environmental Assessment (EA) that accompanies this proposed rule, were developed through these consultations with the HPTRT to reduce mortality and serious injury of harbor porpoises in the Northeast and Mid-Atlantic gillnet fisheries to levels below PBR and approaching ZMRG.

#### *Review of Gulf of Maine Harbor Porpoise Bycatch Information*

In preparation for the HPTRT December 2007 meeting, NMFS analyzed observer data from January 1, 1999, through May 31, 2007 from different geographic areas to identify patterns in the overall increase in harbor porpoise bycatch in the New England and Mid-Atlantic areas and to identify any trends in compliance with HPTRP requirements. NMFS also identified a number of issues contributing to the observed increase in harbor porpoise takes, primarily poor compliance with existing measures and increased bycatch outside of existing management areas.

In the Gulf of Maine region, observed harbor porpoise takes from January 1, 1999, through May 31, 2007, occurred during all months of the year (although the bycatch rates were very low during the summer months) in gear targeting a variety of fish species, including American cod, monkfish, pollock, yellowtail flounder, spiny dogfish, unknown groundfish, and other flounders (Palka *et al.*, 2008). The highest bycatch rates were observed in the Western Gulf of Maine Closure Area (a Northeast Multispecies FMP year-round closure) and in the HPTRP Mid-Coast Management Area (from this point forward, the HPTRP areas will be termed "management areas" rather than "closure areas" unless the area exists solely as a closure). A relatively high bycatch rate (0.040 harbor porpoise takes per metric tons [mtons] landed) was also observed in the currently unregulated Stellwagen Bank Management Area (proposed as a new management area in this proposed rule). Bycatch rates were highest during the following five months, with the rates listed in order from highest to lowest: November, February, December, April, and March (Palka *et al.*, 2008). More specifically, the highest bycatch rates were found in the Massachusetts Bay and Mid-Coast Management Areas during March, the Multispecies FMP Western Gulf of Maine Closure Area and proposed Stellwagen Bank Management Area during February, and the Multispecies FMP Western Gulf of Maine Closure Area and the Massachusetts Bay, Mid-Coast, and proposed Stellwagen Bank Management Areas during November and December (Palka *et al.*, 2008). Notably, the Massachusetts Bay Management Area had a high bycatch rate in the month of November (0.052 harbor porpoise takes/mtons), despite its being closed to gillnet fishing during October and November through the Northeast Multispecies FMP Rolling Closure Area

V restrictions (Palka *et al.*, 2008). These data indicate non-compliance with the current HPTRP requirements, demonstrated through high bycatch rates in the Massachusetts Bay and Mid-Coast Management Areas, as well as takes occurring outside existing management areas, demonstrated through seasonally high bycatch rates in the proposed Stellwagen Bank Management Area. It also demonstrates takes occurring within the year-round Western Gulf of Maine Closure Area under the Multispecies FMP.

In the Gulf of Maine region from January 1, 1999, through May 31, 2007, the number of vessels using at least 90 percent of the required number of pingers in times and areas when pingers were required varied throughout the time period examined. Approximately 75 percent of observed vessels used the proper number of pingers in 1999, which was the first year that the HPTRP requirements were in effect. This number dropped to a low of 10 percent in 2003 and 2004, and rose again to about 60 percent between January and May of 2007 (Palka *et al.*, 2008), possibly as a result of the NMFS targeted outreach efforts in the fall of 2006.

In the New England waters south of Cape Cod (which refers to waters within the Cape Cod South Management Area and waters surrounding this management area), all observed takes from January 1, 1999, through May 31, 2007, occurred during the months of December to May in gear targeting monkfish or winter skate (Palka *et al.*, 2008). The data show an increasing rate of harbor porpoise bycatch in this area between 1999 and 2007, with rates in 2007 (only January through May are included) being the highest. The overall average bycatch rate in this region during this time period was 0.089 harbor porpoise takes/mtons landed. Bycatch rates were highest from February through May, and lowest in December. The bycatch rate in the area south of the Cape Cod South Management Area, which is not currently regulated under the HPTRP, was about 50 percent higher than the bycatch rate observed in the Cape Cod South Management Area itself, where pingers and closures are seasonally required (Palka *et al.*, 2008). Most of the harbor porpoise bycatch occurred in the area south of the Cape Cod South Management Area (from the southern boundary of this management area at 40°40' N. lat. south to 40°00' N. lat., and east to 70°00' W. long.) in which pingers are not required.

Of the 1,665 hauls observed in the Cape Cod South Management Area

during the period and season that pingers are required from January 1, 1999, through May 31, 2007, 47 percent were deployed with 90 percent or more of the required number of pingers. Forty percent did not have any pingers, and the remaining 13 percent had fewer than 90 percent of the required number of pingers (Palka *et al.*, 2008).

#### *Review of Mid-Atlantic Harbor Porpoise Bycatch Information*

In the Waters off New Jersey Management Area, the majority of the observed takes from January 1, 1999, through May 31, 2007, occurred in the Hudson Canyon area in or near the existing Mudhole Management Area, and all occurred in monkfish large mesh gillnet gear from January through April (Palka *et al.*, 2008). During this time, the bycatch rate was 0.233 harbor porpoise takes/mtons landed (Palka *et al.*, 2008). A number of factors appeared to correlate well with increased bycatch rates. Net strings that were greater than 4,000 ft (1,219 m) in total length entangled harbor porpoises three times more often than net strings that were less than 4,000 ft (1,219 m) in total length. All of the harbor porpoise takes occurred in nets with soak times that were greater than 48 hours, even though 37 percent of the observed hauls and 19 percent of the landings were from nets that had soaked for fewer than 48 hours. Nets hauled after more than one week had a bycatch rate five times higher than hauls of nets that soaked for one week (Palka *et al.*, 2008).

Exceeding the allowable net string length—3,900 ft (1,189 m) in the Mudhole Management Area and 4,800 ft (1,463 m) in the Waters off New Jersey Management Area—was the most common occurrence of non-compliance recorded from the Waters off New Jersey Management Area. This was determined by examining the gear characteristics of gillnets with observed harbor porpoise takes. Most of the observed hauls of large mesh nets were out of compliance with at least one of the gear restrictions of the HPTRP, and a majority of harbor porpoise takes occurred in gear that was out of compliance with the HPTRP (Palka *et al.*, 2008). Observer effort for large mesh gillnet hauls in the Waters off New Jersey and Mudhole Management Areas was very low in some years (especially from 2000 through 2003). However, it appears that compliance rates for the Waters off New Jersey Management Area show a pattern similar to that seen in New England. Compliance rates decreased rapidly after the first few years of the HPTRP implementation, and increased in 2007 after HPTRP outreach occurred.

In the Southern Mid-Atlantic Waters, the eight harbor porpoise incidental takes between January 1, 1999, and May 31, 2007, occurred in February, March, or April, the period in which the HPTRP is in effect in these waters (Palka *et al.*, 2008). Half of the observed takes occurred in the shad fine mesh gillnet fishery (mesh size  $\leq 5$  inches [13 cm]), which has since been closed. The four other observed takes occurred in large mesh hauls targeting monkfish or striped bass and all four were out of compliance with the HPTRP. Only 21 percent of all the large mesh hauls observed in this area were fishing in compliance with the current HPTRP regulations and no takes were observed in these hauls. Hauls that were out of compliance used twine sizes that were too small, did not use tie-downs, and/or occurred during the February 15 through March 15 large mesh closure period. No takes were observed in small mesh nets, although 35 percent of these nets were out of compliance, primarily with the HPTRP twine size requirement (Palka *et al.*, 2008).

#### **HPTRT Recommendations**

During the December 2007 meeting, the HPTRT considered and discussed harbor porpoise bycatch and HPTRP compliance information, as well as other information contained within the meeting materials provided. NMFS provided the HPTRT with information about harbor porpoise takes in the Gulf of Maine, southern New England, and Mid-Atlantic areas. The bycatch information was based on observed harbor porpoise injuries and mortalities that occurred after the HPTRP was implemented (January 1, 1999, through May 31, 2007). Details on the locations and timing of observed takes were presented to assist HPTRT discussions.

The follow-up January 2008 meeting (via teleconference) focused on those items that lacked consensus, required clarification, and would benefit from reconfirming the recommended approach. At both meetings, the HPTRT took a regional approach to discussing the information presented, and based their recommendations on the best available information that was presented. For certain topics, NMFS completed additional analyses after the meetings, if needed, and presented the information for consideration by the HPTRT. The HPTRT's recommendations, summarized below, are described in more detail in the draft EA that accompanies this proposed rule.

#### *Recommendations for the Southern New England Region*

For the southern New England area, the HPTRT examined the harbor porpoise bycatch information; locations of observed takes occurred primarily within and south of the Cape Cod South Management Area, as well as to the east of Cape Cod, Massachusetts. The HPTRT recommended the creation of a new management area (termed the Southern New England Management Area, which is proposed as a new management area in this proposed rule), which is a large area located to the south and east of Cape Cod. The HPTRT recommended adding the area east of Cape Cod to this area to address harbor porpoise bycatch within the waters east of Cape Cod. The HPTRT discussed the possibility of creating a new management area solely for the waters east of Cape Cod. However, the bycatch analysis indicated that the harbor porpoise bycatch occurred during the same season as the bycatch occurring in the Cape Cod South Management Area and the area to its south. Therefore, the HPTRT recommended that the waters to the east of Cape Cod be incorporated into the Southern New England Management Area. In this area, the HPTRT recommended that pingers be required from December through May, which coincides with the seasonality of the Cape Cod South Management Area, and would be absorbed by this larger area.

During the December 2007 meeting, the HPTRT discussed possible ways of reducing harbor porpoise takes that are occurring within existing HPTRP management areas. Rather than recommending an immediate closure of current HPTRP management areas due to poor pinger compliance in the past, the HPTRT recommended a management strategy that would establish "consequence" closure areas. Consequence closure areas are specified areas of high harbor porpoise bycatch that would become seasonally closed if the observed average bycatch rates over two consecutive management seasons indicate that harbor porpoise exceed a specified target bycatch rate. The HPTRT's rationale for recommending consequence closure areas is to decrease harbor porpoise bycatch within HPTRP management areas by increasing compliance with the HPTRP through targeted outreach and education efforts.

The consequence closure area concept was first recommended by the HPTRT for the region south of Cape Cod. Harbor porpoise takes in commercial gillnet gear have been observed seasonally within, as well as south of, the Cape

Cod South Management Area, and to the east of Cape Cod. The HPTRT recommended creating the Southern New England Management Area and requiring pingers there, but also needed to address consequences for non-compliance with the HPTRP pinger requirements. After some deliberation, the HPTRT recommended creating a consequence area that included the existing Cape Cod South Management Area as well as its expansion to the south (termed the Cape Cod South Expansion Consequence Closure Area, proposed management area in this proposed rule). This area is located entirely within the proposed Southern New England Management Area.

The HPTRT discussed the conditions under which the Cape Cod South Expansion Consequence Closure Area would become closed. For the seasonality of the closure, the HPTRT recommended that, once triggered, the area would be closed from February through April, as these three months had the highest bycatch rates of the months between December and May. From January 1, 1999, through May 31, 2007, the bycatch rate in the region south of Cape Cod in February was 0.160 harbor porpoise takes/mtons, 0.065 harbor porpoise takes/mtons in March, and 0.145 harbor porpoise takes/mtons in April (Palka *et al.*, 2008). The HPTRT also discussed the trigger mechanism by which the consequence area would close and recommended using the bycatch rate. Initially, a target bycatch rate of 0.03 harbor porpoise takes/mtons was agreed upon, which represents a bycatch rate with 90 percent pinger compliance. After further analysis after the meeting, NMFS determined that the bycatch rate reflecting 90 percent compliance with the pinger requirements in place for the entire Southern New England Management Area would be 0.023 harbor porpoise takes/mtons.

During the January 2008 meeting, the HPTRT recommended a second consequence closure area east of Cape Cod, termed the Eastern Cape Cod Consequence Closure Area. Establishing a consequence closure area here would provide an incentive for gillnet fishermen fishing east of Cape Cod to comply with the new seasonal pinger requirements established for the Southern New England Management Area, as the observed annual bycatch rates would be calculated for the entire Southern New England Management Area. The target bycatch rate and closure time period, if triggered, for the Eastern Cape Cod Consequence Closure Area would be the same as the Cape Cod South Expansion Closure Area.

Therefore, if the target bycatch rate of 0.023 harbor porpoise takes/mtons for the Southern New England Management Area is exceeded after two consecutive management seasons (December through May), both the Cape Cod South Expansion Consequence Closure Area and the Eastern Cape Cod Consequence Closure Area would be closed to gillnet fishing each year from February through April.

#### *HPTRT Recommendations for the Gulf of Maine Region*

For the Gulf of Maine region, the HPTRT provided NMFS with a suite of consensus recommendations for reducing harbor porpoise bycatch and increasing compliance with the HPTRP in this region. These recommendations included: (1) Closing the currently unregulated Stellwagen Bank Management Area during February and require pingers in December and January; (2) expanding the pinger requirements in the Massachusetts Bay Management Area to include the month of November; (3) expanding the northeastern boundary of the Southern New England Management Area on the east side of Cape Cod and implementing targeted closures if allowable bycatch rates are exceeded; (4) codifying the Multispecies FMP year-round Western Gulf of Maine Closure Area under the HPTRP; (5) eliminating the Offshore Management Area; and (6) expanding efforts by states and others to foster and certify fishermen in the use of pingers as a method of reducing harbor porpoise bycatch.

During the December 2007 meeting, the HPTRT discussed non-compliance within existing HPTRP management areas in the Gulf of Maine, but did not discuss a consequence closure area strategy in this region, although implementing an immediate closure in the Mid-Coast Management Area was discussed. In the Gulf of Maine region, observed takes of harbor porpoises between January 1, 1999 and May 31, 2007, in the Mid-Coast Management Area (0.052 harbor porpoise takes/mtons), indicate a high bycatch rate and poor compliance with the seasonal pinger requirements (September 15 through May 31), particularly during the fall months and in the western half of the area (Palka *et al.*, 2008). Additionally, harbor porpoise takes in gillnet gear have been observed seasonally in the northern portion of the Massachusetts Bay Management Area and throughout the proposed Stellwagen Bank Management Area.

Prior to the January 2008 HPTRT meeting, the states of Maine, New Hampshire, and Massachusetts

submitted a proposal to NMFS for review by the HPTRT for a suggested suite of conservation measures for the Gulf of Maine. The proposal included the use of a consequence closure area similar to the strategy employed for the Southern New England Management Area. The proposed area encompasses the entire Stellwagen Bank Management Area and portions of the Mid-Coast (west of 70°15' W. long.) and Massachusetts Bay (north of 42°15' N. lat.) Management Areas. This area, called the Coastal Gulf of Maine Consequence Closure Area, is bounded on the west by the coastlines of Maine, New Hampshire, and Massachusetts, on the south by 42°15' N. lat., and on the east by 70°15' W. long. If triggered, the timing of the consequence closure area was suggested as October and November annually, as these two months have a high bycatch rate in the Mid-Coast Management Area (0.066 and 0.121 harbor porpoise takes/mtons, respectively) (Palka *et al.*, 2008). The proposal was discussed during the January 2008 meeting and supported by the HPTRT and was recommended to NMFS.

The HPTRT recommended that the target bycatch rate for the Gulf of Maine region would be distinct from the bycatch rate that applies to the Southern New England Management Area to ensure that the bycatch rate applied is consistent with the broad area's past HPTRP compliance. It was not possible to calculate the target bycatch rate for the three Gulf of Maine management areas prior to the January 2008 meeting, and as such a target bycatch rate was not determined at that time. Following the meeting, NMFS calculated the target bycatch rate from observed compliant hauls, averaging the rates for the three management areas, and calculated an average rate of 0.031 harbor porpoise takes/mtons. Following the January 2008 meeting, those HPTRT members that responded to follow-up materials sent by NMFS recommended the use of this rate.

#### *HPTRT Recommendations for the Mid-Atlantic Region*

For the Mid-Atlantic region, HPTRT discussions during the December 2007 meeting centered on the high number of harbor porpoise takes occurring within the Waters off New Jersey Management Area. Many options were discussed for addressing the increased harbor porpoise bycatch within this area, including expanding or shifting the existing Mudhole Management Area to encompass the locations of observed harbor porpoise takes. As a result of the meeting, the HPTRT recommended

creating a new management area with an annual closure period for large and small mesh gillnet gear from February 1 through March 15.

Additionally, the HPTRT recommended a change to the gear modification requirements such that the tie-down spacing for large mesh gillnet gear would be increased from the current 15 ft (4.6 m) to no more than 24 ft (7.3 m) apart along the floatline. This change would not affect the profile of gillnets in the water column and thus not increase harbor porpoise bycatch.

The HPTRT also recommended a number of non-regulatory measures, mostly related to compliance monitoring and education/outreach efforts, which is discussed in further detail later in the preamble.

#### *Other HPTRT Consensus Recommendations*

In addition to the discussions focusing on potential new conservation measures for New England and Mid-Atlantic gillnet fisheries, the HPTRT also emphasized the necessity of a scientific research provision within the HPTRP. At the December 2007 meeting, NMFS provided a description of a suggested scientific research component that could be added to the HPTRP that would allow research within the HPTRP management areas provided researchers obtain a scientific research permit. The HPTRT recommended including this provision in the HPTRP. Additionally, NMFS provided a description of technical corrections, clarifications, and other modifications to the HPTRT at its December 2007 meeting. By consensus, the HPTRT recommended the adoption of these corrections, clarifications, and other modifications with little discussion.

#### *Preferred Alternative for Modifications to the HPTRP*

As a result of HPTRT discussions and recommendations provided to NMFS after the two HPTRT meetings (December 2007 and January 2008), NMFS developed and analyzed five alternatives in the draft EA, including a "No Action" or status quo alternative, to modify the HPTRP.

All five of the alternatives are described and analyzed in the draft EA prepared to accompany this proposed rule (NMFS, 2009). The array of alternatives developed for the draft EA include many of the concepts and strategies discussed by the HPTRT. Out of the five alternatives considered, NMFS has identified one Preferred Alternative (Alternative 4, the proposed action) for amending the HPTRP. Although one alternative has been

identified as the preferred, NMFS is seeking comments on all of the alternatives. NMFS proposes to implement the preferred alternative.

The Preferred Alternative described in this proposed rule is intended to address the bycatch of the GOM/BOF stock of harbor porpoises that is currently above the PBR level in New England and Mid-Atlantic waters. The Preferred Alternative further pursues the conservation goals established by the MMPA to reduce harbor porpoise bycatch to below the PBR, approaching insignificant levels.

The Preferred Alternative includes a suite of measures for both New England and the Mid-Atlantic. Many of the proposed modifications described in this rule are a result of consensus recommendations made by the HPTRT during their two recent meetings. For New England, NMFS proposes expanding seasonal and temporal requirements in current HPTRP management areas, incorporating additional management areas, and establishing "consequence" closure areas should a specified target bycatch rate be exceeded by the observed average bycatch rate in certain management areas over the course of two consecutive management seasons. In the Mid-Atlantic, NMFS proposes establishing an additional management area and modifying the current tie-down requirement for large mesh gillnet gear. Additionally, NMFS is including a provision within both the New England and Mid-Atlantic regulations to allow research to be conducted within the HPTRP management areas when the research is authorized through a NMFS scientific research permit. Also, since finalizing the HPTRP in December 1998 (63 FR 66464, December 2, 1998), NMFS has identified a number of necessary technical corrections to the regulations. Finally, in some sections of the current HPTRP regulatory text there are ambiguities that need clarification. As such, this proposed rule addresses these corrections, clarifications, and other necessary modifications.

#### *New England Component*

In the New England component of the HPTRP, NMFS proposes to include a suite of conservation measures to augment the existing HPTRP to reduce the serious injury and mortality of harbor porpoises to levels below PBR (Figure 1). In three existing HPTRP management areas, modifications are not warranted because the most recent harbor porpoise bycatch data indicate that existing measures are sufficient. Management areas for which modifications are not proposed include

the Northeast Closure, Cashes Ledge Closure, and Offshore Management Areas.

Some occurrences of increased harbor porpoise bycatch are associated with areas that are not currently regulated under the HPTRP. However, bycatch is also documented within existing HPTRP management areas. In select HPTRP management areas, the proposed action expands the areas and seasons during which pingers are required. These areas and seasons correspond to the locations and times of recently observed harbor porpoise serious injuries and mortalities from interactions with commercial gillnet gear. This proposed action would also incorporate the concept of "consequence" closure areas.

In southern New England, observed interactions between harbor porpoises and gillnet gear have been occurring in a currently unregulated area south of the existing Cape Cod South Management Area, as well as within this management area. To address this, the proposed action would establish the Southern New England Management Area, in which pingers would be required seasonally in a large area to the south and east of Cape Cod, Massachusetts from December through May (Figure 1). This area would include all waters in which harbor porpoise bycatch was observed (generally from the Cape Cod South Management Area south to 40° 00' N. lat.), as well as sufficient surrounding waters to prevent potential future shifts in fishing effort to nearby areas where takes would likely occur.

In the Gulf of Maine, harbor porpoise takes have been observed in the unregulated area between the HPTRP Massachusetts Bay Management Area and the Northeast Multispecies FMP Western Gulf of Maine Closure Area (year-round closure) between December and May. As such, this area, termed the Stellwagen Bank Management Area, would be created under the HPTRP as a pinger management area from November through May (Figure 1). The HPTRT's recommendation on the management strategy for this area differs from the proposed conservation measures for this area in this proposed rule. The proposal drafted by the states of Maine, New Hampshire, and Massachusetts suggested requiring pingers from December through May in this area, similar to the Massachusetts Bay Management Area, without including the March gillnet closure. The states believed that new pinger requirements in a currently unregulated area should sufficiently reduce harbor porpoise takes, and that an immediate gillnet closure was not warranted at this time. Although the proposal received

strong support from the HPTRT, NMFS is proposing in this action a the seasonal period for pinger requirements in the Stellwagen Bank Management Area that includes November for consistency with the proposed addition of November to the pinger requirements in the Massachusetts Bay Management Area.

NMFS proposes to amend the seasonal requirements in the Massachusetts Bay Management Area to include the month of November. Currently, pingers are required in the Massachusetts Bay Management Area from December through May, with the exception of March, during which time gillnet fishing is prohibited. The March closure is in place due to the high abundance of harbor porpoises in the area during this time. Pingers are required during the months before and after the closure to further reduce harbor porpoise bycatch and to reduce the likelihood of harbor porpoises habituating to the sound of pingers.

One of the Massachusetts Bay Management Area's latitudinal boundaries, located at 42°12' N. lat., leaves a small gap of unregulated waters between it and the southern boundary of the Northeast Multispecies FMP Western Gulf of Maine Closure Area, which is bounded on the south by 42°15' N. lat. This proposed rule would modify the Massachusetts Bay Management Area to move this boundary north to 42°15' N. lat. to eliminate the small gap of unregulated waters (Figure 1).

In addition to focusing on harbor porpoise bycatch located in unregulated waters, this proposed rule would address harbor porpoise takes that are occurring within existing HPTRP management areas through the HPTRT-recommended consequence closure area concept. Although pinger compliance was high after implementation of the HPTRP in 1998 (63 FR 66464, December 2, 1998), since that time compliance with pinger requirements in New England has declined. With increased outreach and enforcement efforts beginning in the fall of 2006, observer information indicated that compliance began to rise again, as evidenced through a calculation of the percentage of observed gillnet hauls that used the correct number of pingers per gillnet string in management areas when pingers were required.

In New England, NMFS is proposing three consequence areas that are based on the recommendations provided by the HPTRT: Two in southern New England and one in the Gulf of Maine (Figure 2). The Cape Cod South Expansion and East of Cape Cod Consequence Closure Areas would be

triggered if the observed average bycatch rate in the Southern New England Management Area exceeded the target bycatch rate of 0.023 harbor porpoise takes/mtons after two consecutive management seasons (December through May), and would be closed annually to gillnet fishing from February through April. When the consequence closure areas are not closed (December, January, and May), the seasonal pinger requirements of the Southern New England Management Area would remain in effect. The Coastal Gulf of Maine Consequence Closure Area would be triggered if the observed average bycatch rates in the Mid-Coast, Stellwagen Bank, and Massachusetts Bay Management Areas (combined) exceeded the target bycatch rate of 0.031 harbor porpoise takes/mtons after two consecutive management seasons (September 15 through May 31 for the Mid-Coast Management Area, and November 1 through May 31 for the Stellwagen Bank and Massachusetts Bay Management Areas), and would be closed annually to gillnet fishing in October and November. When this area is not closed, the seasonal requirements of the three management areas would remain in effect, including the March gillnet closure in the Massachusetts Bay Management Area.

If any of the consequence closure areas are triggered, they would remain in effect until bycatch levels approach a zero mortality and serious injury rate or until the HPTRT and NMFS develop and implement new conservation measures. If the consequence closure areas are not triggered after the first two management seasons have elapsed, NMFS will continue to monitor the observed bycatch rates in these management areas and adopt a rolling trigger in which the most recent two years of bycatch information would be averaged and compared on an annual basis to the specified bycatch rates for each management area.

All impacts of the consequence closure areas have been evaluated in the draft EA. If it is necessary to establish the consequence closure areas in the future based on the most recent two years of observed harbor porpoise bycatch data, NMFS would establish the appropriate consequence closure areas via appropriate rulemaking in the **Federal Register**.

#### **Mid-Atlantic Component**

To address the high harbor porpoise bycatch in the Mid-Atlantic region, this proposed rule would create an additional management area within the Waters off New Jersey Management Area, which would include more

stringent gear restrictions and a closure period (Figure 3). This additional management area is located to the south and east of the current Mudhole Management Area and would encompass many of the recently observed harbor porpoise takes occurring in that region. The proposed management area would be named the Mudhole South Management Area, and the current Mudhole Management Area would be renamed the Mudhole North Management Area. The more stringent gear modification requirements already in effect in the Mudhole North Management Area would also be in effect in the Mudhole South Management Area from January 1 through January 30 and from March 16 through March 31. Also, the large mesh gillnet closure from April 1 through 20 would still apply.

Additionally, this proposed rule would increase the current tie-down spacing for large mesh gillnet gear from the required 15 ft (4.6 m) to no more than 24 ft (7.3 m) apart along the floatline. This change would not affect the profile of gillnets in the water column and thus not increase harbor porpoise bycatch.

#### **Scientific Research**

Currently, the HPTRP regulations make no exemption for scientific research on methods for reducing harbor porpoise bycatch in the HPTRP management areas when the seasonal area requirements are in effect. Since the publication of the HPTRP in 1998 (63 FR 66464, December 2, 1998), subsequent HPTRT meeting recommendations have urged NMFS to promote the advancement of harbor porpoise bycatch reduction research in New England and Mid-Atlantic areas. To better facilitate scientific research on harbor porpoise bycatch reduction, this proposed rule includes a scientific research component to the HPTRP regulations. The proposed modification includes a provision that would allow scientific research on gear and/or fishing practice modifications for reducing harbor porpoise takes to be conducted within the HPTRP management areas during the times the seasonal requirements are in effect so long as the research is authorized through a scientific research permit granted under the MMPA. A scientific research permit would be obtained through the existing permit application process administered by NMFS. The scientific research permit application would be managed by NMFS in the same manner that it currently handles permit applications, which includes a regional review and public comment

period after publication of an announcement in the **Federal Register**.

### Technical Corrections and Clarifications

Since finalizing the HPTRP in December 1998 (63 FR 66464, December 2, 1998), a number of technical errors in the HPTRP regulations have been identified. Furthermore, in some sections of the regulations there are ambiguities that need clarification. This proposed rule addresses these necessary corrections, clarifications, and other modifications, which would also ensure consistent and correct terminology for both the New England and Mid-Atlantic regulations.

In New England, HPTRP management areas are termed "closure areas" though some areas are not completely closed to gillnet fishing at any point during the year. This proposed rule would rename the HPTRP closure areas in both New England and the Mid-Atlantic "management areas," except for areas that exist only as a complete closure (e.g., the Cashes Ledge Closure Area).

Currently, the regulatory text for the Mid-Coast Management Area requirements does not include an exemption for gillnets equipped with pingers as described in each of the other areas requiring pingers. This proposed rule would add text to clarify that gillnet fishing is allowed within this management area as long as pingers are used. Furthermore, this proposed rule would clarify the requirements for "pinger attachment" by including a statement specifying that pingers must be placed every 300 ft (91.4 m) for gillnets that exceed 300 ft (91.4 m) in length. Currently the pinger placement requirement only specifies that pingers must be placed at each end of the net string and at the bridle of each net.

The current eastern boundary of the Offshore Management Area crosses the boundary of the U.S. Exclusive Economic Zone (EEZ). This proposed rule would create three additional coordinates for the eastern edge of the Offshore Management Area so the boundary line follows along the boundary of the EEZ but does not cross it.

For the HPTRP regulations in the Mid-Atlantic, this proposed rule would clarify the number of nets per string allowed within the management areas for both large and small mesh gillnet gear. Currently, only the allowable net length (300 ft or 91.4 m) and floatline lengths are specified. The number of nets per string is implied by dividing the floatline length by the allowable net length, but is not clearly defined in the regulations. For example, the proposed

modifications to the Mid-Atlantic regulations would clearly specify the net limit of 13 large mesh nets when fishing in the Waters off New Jersey Management Area. Also, in the final rule implementing the HPTRP (63 FR 66464, December 2, 1998), the definition for the Waters off New Jersey Management Area is inconsistent with the graphic depiction of the area, and is inconsistent with the "regulated waters" text. This proposed rule would remove the current northern boundary of the Waters off New Jersey Management Area, located at 40°40' N. lat. and would extend the northern boundary to the southern shoreline of Long Island, NY at 40°50.1' N. lat. and 72°30' W. long.

For all HPTRP management areas with coordinates that intersect the shoreline, this proposed rule includes shoreline latitude/longitude coordinates to more clearly specify the boundaries of HPTRP management areas. Additionally, this proposed rule would clarify the geographical enclosure of the Offshore and Cashes Ledge Management Areas by repeating the first area coordinate as the last coordinate. In the Mudhole North Management Area, the current northwestern boundary does not intersect with the shoreline of New Jersey as stated in the current management area description. This proposed rule would correct the geographic boundary of the Mudhole North Management Area by incorporating a coordinate that intersects with the New Jersey shoreline at 40°28.1' N. lat. and 74°00' W. long.

The current southern boundary of the Southern Mid-Atlantic Management Area is the North Carolina/South Carolina border. It is currently defined as 33°51' N. lat., but it does not accurately reflect the actual border. This proposed rule would modify the coordinate to ensure a more accurate reflection of the North Carolina/South Carolina border based on 50 CFR 622.2 (Fisheries of the Caribbean, Gulf, and South Atlantic—Definitions and Acronyms). The new border would be defined as the latitude line corresponding with 33°51.1' N. lat.

This proposed rule would amend the HPTRP exempted waters in Virginia from Chincoteague to Ship Shoal Inlet to be consistent with the exempted waters for this area in the Atlantic Large Whale and the Bottlenose Dolphin Take Reduction Plans. Currently, the exempted area is landward of a line extending south from Chincoteague to Ship Shoal Inlet, and this line crosses the three nautical mile state waters line. The exempted waters in Virginia from Chincoteague to Ship Shoal Inlet would become the waters landward of the 72

COLREGS demarcation lines between these two inlets.

Finally, NMFS proposes to remove the net tagging requirement for large and small mesh gillnet gear in the Mid-Atlantic. A net tagging program was not implemented after the final HPTRP was published in late 1998 (63 FR 66464, December 2, 1998).

### Monitoring HPTRP Effectiveness

NMFS identified a number of issues contributing to the observed increase in harbor porpoise takes, primarily poor compliance with existing measures and increased bycatch outside of existing management areas. To address these issues, NMFS has based this proposed action on recommendations provided by the HPTRT. To support the implementation of this action, NMFS will continue to work with various partners (e.g., USCG, NOAA Office of Law Enforcement, states, NMFS Northeast Fisheries Observer Program) to monitor compliance and to enforce the regulatory components of the HPTRP. NMFS recognizes that compliance with HPTRP requirements is critical to maximizing the effectiveness of the HPTRP. With this considered, NMFS is planning to increase HPTRP monitoring to correspond with the expansion of pinger requirements in New England. The expansion of management areas with pinger requirements will require some fishing vessels that have not been subject to the HPTRP pinger requirements to purchase pingers in order to continue fishing during times and in areas where pingers are required. The total pinger cost for materials and labor for vessels fishing in New England can range from \$5,953 to \$13,969 depending on the number of nets being fished. More discussion on the impacts of the proposed action can be found in the Classification section.

NMFS has the resources necessary to monitor and ensure compliance with the HPTRP. These resources include: observer information for calculating bycatch rates, continued enforcement efforts, and education/outreach. To assist in achieving this goal, NMFS has purchased pinger detector devices to monitor the presence of pingers on set gillnet gear during the times when pingers are required under the HPTRP. NMFS has coordinated with the states of Maine, Massachusetts, and Rhode Island by distributing pinger detectors to state enforcement personnel, providing them with the ability to monitor pinger compliance under the HPTRP. NMFS will continue to use this technology in conjunction with observer information

to continually monitor the level of pinger compliance in New England.

In addition, during their recent meetings, the HPTRT reached consensus on a number of non-regulatory components that NMFS will pursue outside of the rulemaking process. After a final rule has been published, NMFS will collaborate with the New England states of Maine, New Hampshire, Massachusetts, and Rhode Island to conduct annual workshops with gillnet fishermen to further compliance with the HPTRP regulations and to provide information on recent compliance and harbor porpoise bycatch data. The HPTRT state representatives also agreed to work within their state regulations to codify the HPTRP gear requirements in their individual state laws. This could potentially provide a mechanism for future increased joint enforcement efforts between the states and NMFS, and will provide an effective means for increasing compliance.

Additionally, NMFS supports the states' efforts to develop and implement an education and enforcement effort to increase HPTRP compliance. The HPTRT and NMFS agreed that it is critical to the success of these proposed conservation measures for members of the commercial gillnet fishing industry to thoroughly comprehend the mechanisms of the consequence closure areas should compliance continue to remain low in the Gulf of Maine and southern New England. The states may also explore the possibility of certifying commercial gillnet fishermen and their gear to further increase compliance, although the details of this were not considered during the HPTRT meetings. Finally, in an effort to monitor the HPTRP to determine if consequence closure area implementation is warranted, NMFS will provide the HPTRT members with annual compliance and bycatch information in New England based on observed harbor porpoise serious injuries and mortalities.

The HPTRT also reached consensus on a number of non-regulatory components targeting the Mid-Atlantic, which include collaborating with Mid-Atlantic states to conduct annual workshops with gillnet fishermen to attempt to increase compliance with the HPTRP regulations and to provide information on recent compliance and harbor porpoise bycatch data. Additionally, an analysis of observed harbor porpoise interactions with gillnet gear in the Mid-Atlantic indicated that increased soak times may lead to an increase in harbor porpoise bycatch (Palka *et al.*, 2008). NMFS supports Mid-Atlantic States' efforts to develop

and implement an education and enforcement effort to increase compliance and to stress the need to reduce the soak times of gillnets, although this is not a required measure. The Mid-Atlantic States may also explore the possibility of certifying commercial gillnet fishermen and their gear to further increase compliance, although the details of this were not considered during the HPTRT meetings. Finally, in an effort to monitor the HPTRP, NMFS will keep the HPTRT members informed of annual compliance information in the Mid-Atlantic based on observed harbor porpoise serious injuries and mortalities.

#### Classification

The Office of Management and Budget (OMB) has determined that this action is significant for the purposes of Executive Order 12866.

If a member of the public requests a scientific research permit for conducting research with fishing gear within a HPTRP management area, an existing information collection requirement, approved under OMB Control No. 0648-0084, would apply. The public reporting burden for completing an application for a scientific research permit is estimated to average 32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or fax to (202) 395-7285. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

NMFS has prepared an initial regulatory flexibility analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and its legal basis are contained in the preamble of this proposed rule. This proposed rule does not include any reporting or recordkeeping requirements, or compliance requirements other than those described in the preamble. No duplicative, overlapping, or conflicting Federal rules

have been identified. A summary of the analysis follows.

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Act size standards for small fishing businesses. The fisheries affected by this proposed rule are the Northeast sink gillnet and Mid-Atlantic gillnet fisheries. These fisheries are currently regulated under the HPTRP to reduce the serious injury and mortality of harbor porpoises, and the proposed action implements additional restrictions. The population of vessels affected by this proposed action includes all commercial gillnet vessels fishing in federal waters from the U.S./Canada border to North Carolina, as well as vessels fishing in state waters that are managed under the HPTRP.

The proposed action incorporates additional measures to the existing HPTRP. For New England (Maine through Rhode Island), new measures include (1) Additional pinger requirements, (2) the establishment of new management areas, and (3) the incorporation of consequence closure areas should the observed average bycatch rate in certain management areas exceed a specified target bycatch rate averaged over the course of two consecutive management seasons. For the Mid-Atlantic (New York through North Carolina), new measures include (1) the establishment of a new management area, which includes a seasonal closure, and (2) a modification to the large mesh gillnet tie-down spacing requirement (which is not included in the analysis because it would not incur additional costs to gillnet fishermen).

Other regulatory components, discussed above, are included within the new measures, such as the addition of a provision that would allow research within HPTRP management areas and incorporate technical clarifications and corrections where needed. None of these provisions contribute any additional costs to gillnet vessels regulated by the HPTRP and thus are not included in the analysis.

For the analysis of impacts, the data used are from calendar year 2006 to correspond to the last full year of data used in the harbor porpoise bycatch analysis described previously in the preamble. In 2006 and under the current HPTRP, there were 975 gillnet vessels that landed an estimated 23,276 metric tons, generating approximately \$40,643,000 in revenue. NMFS uses a Closed Area Model to distribute an individual vessel's fishing effort over time and space, optimizing its distribution to maximize individual

profits. The model is able to account for possible changes in fishing effort based on regulation changes while predicting behavior that would maximize profits. These possible changes in effort are determined by a vessel's fishing history as well as the history of similar vessels that land in the same port. The model predicts the most profitable fishing choice based on the measures of the proposed actions outlined in this proposed rule.

In the event of an area closure to gillnet fishing, a vessel could choose not to fish at all or could fish in another location. Similarly, where management areas that require pingers are established, vessels that had previously fished in that area could either choose to purchase pingers and continue fishing in that area, or to not purchase pingers and move their fishing activities to areas that do not require pingers. Note that for the purposes of this analysis, vessels that had previously fished in areas that require pingers under the current HPTRP are assumed to already possess pingers and thus would not incur additional costs due to expanded pinger requirements in any of the alternatives.

Pinger costs are calculated as the cost per pinger unit, and include the cost of the pinger, batteries, and installation. The cost is based on the number of nets per vessel and therefore is calculated based on the maximum allowable number of nets. The total pinger cost for materials and labor for vessels fishing in New England or the Mid-Atlantic can range from \$5,953 to \$13,969. Naturally, vessels with fewer nets have lower pinger costs.

The proposed action incorporates the potential for future closures. As such, the analysis examines four scenarios for the proposed action, based on the potential for implementation of consequence closure areas. The first scenario examines impacts of additional HPTRP conservation measures (e.g., establishment of new pinger and closure areas) prior to the trigger of any consequence closure area (Pre-closure). The second scenario examines the impacts if only the Coastal Gulf of Maine Consequence Closure Area is implemented (GOM-closure), and the third scenario analyzes the impacts if only the Cape Cod South Expansion and Eastern Cape Cod Consequence Closure Areas are implemented (SNE-closure). The fourth scenario investigates the impacts should all three consequence closure areas be implemented simultaneously, which would occur if both target bycatch rates are exceeded (GOM/SNE-closures).

(1) The Pre-closure scenario would have the smallest impact on the gillnet industry out of the four scenarios that are possible under this proposed action. The model assumes that for Gulf of Maine ports (Maine to South of Boston), 82 to 98 percent of these vessels already own pingers. Therefore, the expanded requirements for the use of pingers are not expected to result in significant impacts. The majority of the affected vessels under this scenario at the regional, or port, level originate from port groups East of Cape Cod to New Jersey due to the creation of the Southern New England Management Area with new pinger requirements and the Mudhole South Management Area, which incorporates a seasonal closure. In addition, the impact of the Pre-closure scenario in terms of landings is small. For the East of Cape Cod through New Jersey port groups, percent change in landings vary between a one percent increase (East of Cape Cod) and a one percent reduction. Percent reductions in revenues for these port groups range from a one to three percent reduction, with the highest (three percent) in the New York port group.

Revenues for affected vessels under the Pre-closure scenario vary for small vessels (less than 40 ft [12.2 m]), versus large vessels (40 ft [12.2 m] and greater). Revenues for small vessels would be reduced between one and six percent (approximately \$800 to \$4,700), where revenues for large vessels would be reduced between one and seven percent (approximately \$2,600 to \$7,200). At the industry (i.e., small entity) level, the Pre-closure scenario can be expected to affect 10 percent of gillnet vessels in the fleet, which is 101 vessels. This equates to less than one percent reduction in landings and revenues. Less than a one percent (6 metric tons) decline in industry landings is expected, which equates to an approximate \$183,000 decrease in revenues.

(2) The GOM-closure scenario would implement the Coastal Gulf of Maine Consequence Closure Area as a result of non-compliance with the HPTRP in three Gulf of Maine management areas. As such, this scenario would most heavily affect Gulf of Maine port groups, which include Maine to South of Boston. At the regional level, the impact on port group landings varies by port group. The New Hampshire port group, demonstrating a 14 percent reduction in landings, and North of Boston port group, with a six percent decrease, would feel most of the impacts. Slight landings reductions would be apparent from South of Cape Cod through New Jersey due to the creation of the Southern New England and Mudhole

South Management Areas. Percent reductions in revenues for these port groups would vary similarly to the percent reductions seen in landings, with the highest being an 11 percent reduction for the New Hampshire port group, a five percent reduction for the North of Boston port group, and a one percent reduction in each of four port groups, including Maine, South of Cape Cod, New York, and New Jersey.

Similar to the Pre-closure scenario, revenues for affected vessels under the GOM-closure scenario vary by vessel size class. For small vessels, revenues are reduced by less than one percent to 28 percent (approximately \$160 to \$26,400) and by less than one percent to four percent (approximately \$160 to \$7,800) for large vessels. At the industry level, approximately 17.5 percent of the gillnet fleet could be affected by the GOM-closure scenario, which equates to 171 vessels, most being from Gulf of Maine port groups. Under this scenario, a decrease of approximately two percent (466 metric tons) would be expected, amounting to a decline of approximately \$815,000 in revenues.

(3) The SNE-closure scenario would implement two consequence closure areas resulting from non-compliance in the Southern New England Management Area: The Cape Cod South Expansion and Eastern Cape Cod Consequence Closure Areas. As such, the South of Cape Cod port group would be most heavily affected, as 64 percent of landings in this port group are caught in the Cape Cod South Expansion Consequence Closure Area. Reductions in landings for the South of Cape Cod port group could be as high as six percent. In addition, closure of the Eastern Cape Cod Consequence Closure Area would affect vessels originating from the East of Cape Cod port group, with an approximately two percent reduction in landings. Other affected port groups from New Hampshire through New Jersey could expect up to an approximately three percent reduction in landings. Percent reductions in revenues for these port groups vary similarly to the percent reductions seen in landings, with the highest reduction of ten percent in the South of Cape Cod port group.

The range of revenue reductions for affected vessels varies for small versus large vessels, with expected reductions of one to ten percent (approximately \$1,300 to \$8,100) for small vessels and reductions of one to 25 percent (approximately \$1,500 to \$15,300) for large vessels. At the industry level, approximately 21.1 percent of gillnet vessels could be affected, which equates to 206 vessels, with the largest group

being from the South of Cape Cod port group. Under this scenario, a decrease in landings of two percent (378 metric tons) could be expected, totaling approximately \$1.2 million decline in revenues.

(4) The GOM/SNE-closure scenario would result from non-compliance in both the Gulf of Maine and Southern New England areas, and would trigger the closure of all three consequence closure areas. Port groups most heavily affected by this scenario include Gulf of Maine ports from Maine to South of Boston (resulting from implementation of the Coastal Gulf of Maine Consequence Closure Area) and the South of Cape Cod and East of Cape Cod port groups (resulting from implementation of the Cape Cod South Expansion and Eastern Cape Cod Consequence Closure Areas). The New Hampshire and South of Cape Cod port groups would experience the highest reductions in revenues, with 11 percent (approximately \$293,000) and 10 percent (approximately \$734,000) declines, respectively. Similar percent losses in landings for these port groups would also be expected.

As with the scenarios described previously, the range of revenue reductions for affected vessels varies for small versus large vessels, with expected reductions of two to 28 percent (approximately \$2,600 to \$26,400) for small vessels and reductions of one to 25 percent (approximately \$1,500 to \$15,300) for large vessels. At the industry level, approximately 29.7 percent of gillnet vessels could be affected, which equates to 290 vessels. Under this scenario, a decrease in landings of four percent (838 metric tons) can be expected. An approximately \$2 million decrease in revenues per year could also be expected.

Clearly, the Pre-closure scenario has the least amount of annual impacts of the four proposed action scenarios considered because no consequence closure areas would be triggered. A cost-effectiveness analysis using a ten-year time horizon was conducted to examine the temporal differences in the impacts of the scenarios considered. Costs in future years were discounted at a rate of three percent because the future dollar does not have the same value as today's dollar. The discounted annual costs were summed to provide an estimate of the Present Value of Cost (PVC) over the ten-year time period. The total PVC does not change over the ten-year time period for scenarios that are fully implemented in the first year, such as the Pre-closure scenario if consequence closure areas are never triggered. For the other three

scenarios that involve the triggering of consequence closure areas at any point during the ten-year time period after the third year of implementation of the final rule, the earlier the closure area is implemented, the higher the total PVC would be over the ten-year period. This occurs because a closure costs more than pinger requirements, so delaying the onset of a closure lowers the total cost.

Of the four proposed action scenarios examined, the Pre-closure scenario had the lowest PVC across the ten-year time period: \$1,457,000 for each year, which means that no consequence closure areas are triggered during that time period. For the GOM-closure scenario, if the Coastal Gulf of Maine Consequence Closure Area were triggered in year three, the PVC would be \$5,810,000. However, if it were triggered in year ten, the PVC would be \$1,337,000. Similarly, for the SNE-closure scenario, a consequence closure area implemented in year three would cost \$8,558,000, whereas it would cost \$1,646,000 if implemented in year ten. Finally, for the GOM/SNE-closure scenario, a consequence area implemented in year three would have a PVC value of \$13,585,000, whereas the PVC would be \$2,211,000 if implemented in year ten. Therefore, of the four scenarios presented, the Pre-closure scenario is the most cost-effective overall. This demonstrates the necessity for immediate industry compliance with the HPTRP requirements in order to avoid the trigger of consequence closure areas and thus higher costs. If any or all of the consequence closure areas are triggered, it is more cost-effective if they are triggered later in the ten-year time period rather than sooner.

Besides the proposed action, NMFS examines four additional alternatives in the draft EA. All alternatives, which have related components, are analyzed and compared to Alternative 1 (No Action). They are compared here for their ability to reduce impacts on small entities, which is related to their cost-effectiveness, as well as their ability to reduce harbor porpoise bycatch.

Alternative 1, no action, maintains the status quo requirements under the HPTRP. As such, no additional costs are incurred by the gillnet fleet, as vessels that had previously fished in pinger management areas are assumed to already own pingers. Therefore, this alternative is the least costly of the five. While this alternative would result in the least impacts on small entities, for the reasons identified in the preamble, this alternative was rejected because the status quo HPTRP is no longer achieving the goals of the MMPA. As such, NMFS

is required to take additional action to achieve its mandates under the MMPA.

Alternative 2, immediate closures, would immediately implement the Coastal Gulf of Maine, Cape Cod South Expansion, and Eastern Cape Cod Closure Areas (which are the same areas as the consequence closure areas described for the proposed action), in addition to the Mudhole South Management Area closure. Alternative 3, broad-scale seasonal pinger requirements, would immediately implement pinger requirements in New England and the Mid-Atlantic throughout much of the range of harbor porpoises. Alternative 4 (Preferred) is the proposed action described in this proposed rule. Alternative 5 would implement the components of Alternative 4 (Preferred) with additional modifications, including removal of the Offshore Management Area, incorporation of the Multispecies FMP Western Gulf of Maine Closure Area (year-round) under the HPTRP, and elimination of the February 15 to March 15 large mesh gillnet closure in the Southern Mid-Atlantic Management Area. Similar to Alternative 4, two scenarios were examined for Alternative 5: the first being prior to the trigger of any consequence closure areas (Alternative 5 Pre-closure scenario) and the second being after the trigger of all three consequence closure areas (Alternative 5 GOM/SNE closure scenario).

To estimate the cost-effectiveness of each alternative, the model requires an estimate of the reduction in harbor porpoise bycatch. To examine the biological effects of each of the five alternatives on harbor porpoises, the bycatch analyses discussed in the draft EA provide a minimum and maximum range of outcomes based on fishing effort and predicted bycatch rates. For the economic analyses, a harbor porpoise bycatch estimate is calculated for each alternative by applying the landings from the Closed Area Model to the time-area specific bycatch rate used to predict the maximum harbor porpoise bycatch. An "economic bycatch" estimate is determined by calculating the percent reduction in bycatch by region and season between Alternative 1 and each of the four scenarios of the proposed action and applying the percent reduction to the bycatch estimates (discussed in the draft EA). The economic bycatch estimates are sensitive to the assumptions used in the Closed Area Model as well as the model used to estimate bycatch rates. To summarize, the economic bycatch is another method of calculating a predicted harbor porpoise bycatch

estimate. In 2006, NMFS estimates that 1,063 harbor porpoises were incidentally taken in gillnet gear.

When calculating the economic bycatch, the alternatives would achieve a harbor porpoise bycatch reduction ranging from 54 to 64 percent, or a reduction of 573 to 673 animals (i.e., reducing bycatch from 1,063 animals taken in 2006, to a range of between 390 and 490 animals per year), which achieves an estimate that is below the current PBR of 610 animals. Besides Alternative 1, the “no action” alternative, which would not result in a reduction in harbor porpoise bycatch, Alternative 2 has the smallest reduction in harbor porpoise bycatch, at 54 percent or 573 fewer animals from the status quo 2006 estimate of 1,063 animals. A reduction of 573 animals would bring the total bycatch to 490 animals after implementation of this alternative. Under Alternative 4 (proposed action), the GOM-closure scenario and the GOM/SNE-closure scenario demonstrate similar reductions of 63 percent, with the GOM/SNE-closure scenario showing a slightly higher decline in the number of animals taken at 671, bringing the total bycatch for this alternative scenario to 392 animals.

If the five alternatives were ranked from smallest percent decline in bycatch (least favorable for harbor porpoises) to the highest percent decline (most favorable for harbor porpoises) based on their economic bycatch estimates, the order would be Alternative 2 (54 percent reduction), Alternative 5 Pre-closure scenario (59 percent reduction), Alternative 4 Pre-closure scenario (59 percent reduction), Alternative 4 SNE-closure scenario (60 percent reduction), Alternative 3 (60 percent reduction), Alternative 5 GOM/SNE-closure scenario (63 percent reduction), Alternative 4 GOM-closure scenario (63 percent reduction), and Alternative 4 GOM/SNE-closure scenario (63 percent reduction).

In conclusion, at the regional level, the impacts on the Maine, South of Boston, New Jersey, Virginia, and North Carolina ports are small (less than or equal to plus or minus 3 percent change from Alternative 1) for all the alternatives. From an industry perspective, Alternatives 2, 4 (GOM/SNE-closure scenario), and 5 (GOM/SNE-closure scenario) have the highest annual impacts on revenues whereas Alternatives 3, 4 Pre-closure, and 5 Pre-closure have the lowest annual impacts on revenues. The most cost-effective alternatives from a national perspective are Alternative 3 due to the initial cost of purchasing pingers, as well as

Alternatives 4 and 5 when consequence closure areas are never triggered or are triggered very late in the ten-year time period. Alternative 2 would incur the highest cost of all the alternatives over the ten-year time horizon examined and would provide the least amount of harbor porpoise bycatch reduction of the five alternatives.

The alternatives can be compared on a cost-effectiveness basis where the costs include lost revenues and pinger costs for those that did not have pingers, and the unit of comparison is the cost per unit of bycatch reduction (dollars per animal) where the reductions in harbor porpoise bycatch differ between the alternatives. This is the most conservative measure of costs when a full cost-benefits analysis cannot be completed. If the five alternatives were ranked from those with the least impact on small entities to those with the most impact based on the costs incurred per animal, the order would be: Alternative 5 Pre-closure scenario (\$45 per animal), Alternative 4 Pre-closure scenario (\$124 per animal), Alternative 3 (\$162 per animal), Alternative 4 GOM-closure scenario (\$882 per animal), Alternative 4 SNE-closure scenario (\$1,341 per animal), Alternative 5 GOM/SNE-closure scenario (\$1,973 per animal), Alternative 4 GOM/SNE-closure scenario (\$2,054 per animal), and Alternative 2 (\$2,985 per animal). The discounted costs summed over the ten-year time horizon (known as the present value of costs) would not change for Alternatives 2, 3, 4 Pre-closure, and 5 Pre-closure. These costs, however, would decrease over the ten-year time horizon should consequence closure areas be implemented in the future under the closure scenarios for Alternatives 4 (Preferred) and 5.

#### References

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

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

Dated: July 14, 2009.

#### Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 229 is proposed to be amended as follows to implement the Preferred Alternative:

#### PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for 50 CFR part 229 continues to read as follows:

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

#### § 229.2 [Amended]

2. In § 229.2, the definitions of “Mudhole”, “Southern Mid-Atlantic waters”, and “Waters off New Jersey” are removed.

3. In § 229.3, paragraphs (q) and (r) are removed, and paragraphs (m), (n), (o), and (p) are revised to read as follows:

#### § 229.3 Prohibitions.

\* \* \* \* \*

(m) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the areas and for the times specified in § 229.33(a), unless the vessel owner or operator complies with closure or pinger provisions specified in § 229.33(a)(1) through (8). This prohibition does not apply to the use of a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(n) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove gillnet gear from the areas and for the times as specified in § 229.34(b)(1)(i), (b)(2)(i), (b)(3)(i), or (b)(4)(i).

(o) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in § 229.34(b) unless the gear complies with the specified gear restrictions set forth in the provisions of paragraphs (b)(1)(ii) or (iii), (b)(2)(ii) or (iii), (b)(3)(ii) or (iii), or (b)(4)(ii) or (iii).

(p) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in areas where pingers are required, as specified under § 229.33 (a)(2) through (5) and (a)(7), unless the operator on board the vessel during fishing operations possesses and retains on board the vessel a valid pinger training authorization issued by NMFS as specified under § 229.33(c).

\* \* \* \* \*

4. Section 229.33 is revised to read as follows:

**§ 229.33 Harbor Porpoise Take Reduction Plan Regulations—New England.**

(a) *Restrictions*—(1) *Northeast Closure Area*—(i) *Area restrictions*. From August 15 through September 13, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Northeast Closure Area. This restriction does not apply to a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries*. The Northeast Closure Area is bounded by straight lines connecting the following points in the order stated:

**NORTHEAST CLOSURE AREA**

| Point     | N. lat.  | W. long.                 |
|-----------|----------|--------------------------|
| NE1 ..... | 44°27.3' | 68°55.0' (ME shoreline). |
| 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 ..... | 44°45.8' | 67°02.7' (ME shoreline). |

(2) *Mid-Coast Management Area*—(i) *Area restrictions*. From September 15 through May 31, it is prohibited to fish

with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Mid-Coast Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries*. The Mid-Coast Management Area is the area bounded by straight lines connecting the following points in the order stated:

**MID-COAST MANAGEMENT AREA**

| Point     | N. lat.  | W. long.                 |
|-----------|----------|--------------------------|
| MC1 ..... | 42°30.0' | 70°50.1' (MA shoreline). |
| MC2 ..... | 42°30.0' | 70°15.0'                 |
| MC3 ..... | 42°40.0' | 70°15.0'                 |
| MC4 ..... | 42°40.0' | 70°00.0'                 |
| MC5 ..... | 43°00.0' | 70°00.0'                 |
| MC6 ..... | 43°00.0' | 69°30.0'                 |
| MC7 ..... | 43°30.0' | 69°30.0'                 |
| MC8 ..... | 43°30.0' | 69°00.0'                 |
| MC9 ..... | 44°17.8' | 69°00.0' (ME shoreline). |

(iii) *Closing procedures*. According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the western portion of the Mid-Coast Management Area (west of 70°15' W. long.) from October through November annually by incorporating it into the Coastal Gulf of Maine Consequence Closure Area if, after two consecutive management seasons, the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings is exceeded by the average observed bycatch rate for the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas combined.

(3) *Massachusetts Bay Management Area*—(i) *Area restrictions*. From November 1 through February 28/29 and from April 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area. These restrictions do not apply to

a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries*. The Massachusetts Bay Management Area is bounded by straight lines connecting the following points in the order stated:

**MASSACHUSETTS BAY MANAGEMENT AREA**

| Point     | N. lat.  | W. long.                 |
|-----------|----------|--------------------------|
| MB1 ..... | 42°30.0' | 70°50.1' (MA shoreline). |
| MB2 ..... | 42°30.0' | 70°30.0'                 |
| MB3 ..... | 42°15.0' | 70°30.0'                 |
| MB4 ..... | 42°15.0' | 70°00.0'                 |
| MB5 ..... | 42°00.0' | 70°00.0'                 |
| MB6 ..... | 42°00.0' | 70°01.2' (MA shoreline). |
| MB7 ..... | 42°00.0' | 70°04.8' (MA shoreline). |
| MB8 ..... | 42°00.0' | 70°42.2' (MA shoreline). |

(iii) *Closing procedures*. According to paragraphs (d)(1), (3), and (4) of this section, NMFS shall close a portion of the Massachusetts Bay Management Area (north of 42°15' N. lat.) from October through November annually if, after two consecutive management seasons, the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings is exceeded by the average observed bycatch rate for the Massachusetts Bay, Mid-Coast, and Stellwagen Bank Management Areas combined.

(4) *Stellwagen Bank Management Area*—(i) *Area restrictions*. From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Stellwagen Bank Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries*. The Stellwagen Bank Management Area is bounded by straight lines connecting the following points in the order stated:

**STELLWAGEN BANK MANAGEMENT AREA**

| Point     | N. lat.  | W. long. |
|-----------|----------|----------|
| SB1 ..... | 42°30.0' | 70°30.0' |
| SB2 ..... | 42°30.0' | 70°15.0' |
| SB3 ..... | 42°15.0' | 70°15.0' |
| SB4 ..... | 42°15.0' | 70°30.0' |
| SB1 ..... | 42°30.0' | 70°30.0' |

(iii) *Closing procedures.* According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the Stellwagen Bank Management Area from October through November annually if, after two consecutive management seasons, the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings is exceeded by the average observed bycatch rate for the Stellwagen Bank, Mid-Coast, and Massachusetts Bay Management Areas combined.

(5) *Southern New England Management Area—(i) Area restrictions.* From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Southern New England Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Southern New England Management Area is bounded by straight lines connecting the following points in the order stated:

**SOUTHERN NEW ENGLAND MANAGEMENT AREA**

| Point      | N. lat.                                    | W. long.                 |
|------------|--|--------------------------|
| SNE1 ..... | Western boundary as specified <sup>1</sup> |                          |
| SNE2 ..... | 40°00.0'                                   | 72°30.0'                 |
| SNE3 ..... | 40°00.0'                                   | 69°30.0'                 |
| SNE4 ..... | 42°15.0'                                   | 69°30.0'                 |
| SNE5 ..... | 42°15.0'                                   | 70°00.0'                 |
| SNE6 ..... | 41°58.3'                                   | 70°00.0' (MA shoreline). |

<sup>1</sup> Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30.0' W. long.

(iii) *Closing procedures.* According to paragraphs (d)(2), (d)(3), and (d)(4) of this section, NMFS shall close two areas (Cape Cod South Expansion Closure Area and Eastern Cape Cod Closure Area) within the Southern New England Management Area from February through April annually if, after two consecutive management seasons, the target harbor porpoise bycatch rate of 0.023 harbor porpoises per metric tons of landings is exceeded by the average

observed bycatch rate for the Southern New England Management Area.

(6) *Cape Cod South Closure Area—(i) Area restrictions.* From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cape Cod South Closure Area. This prohibition does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Cape Cod South Closure Area is bounded by straight lines connecting the following points in the order stated:

**CAPE COD SOUTH CLOSURE AREA**

| Point      | N. lat.  | W. long.                 |
|------------|----------|--------------------------|
| CCS1 ..... | 41°19.6' | 71°45.0' (RI shoreline). |
| CCS2 ..... | 40°40.0' | 71°45.0'                 |
| CCS3 ..... | 40°40.0' | 70°30.0'                 |
| CCS4 ..... | 41°20.9' | 70°30.0'                 |
| CCS5 ..... | 41°23.1' | 70°30.0'                 |
| CCS6 ..... | 41°33.1' | 70°30.0' (MA shoreline). |

(iii) *Closing procedures.* According to paragraphs (d)(2), (d)(3), and (d)(4) of this section, NMFS shall close the Cape Cod South Closure Area and an area to its south (Cape Cod South Expansion Closure Area) from February through April annually if, after two consecutive management seasons, the target harbor porpoise bycatch rate of 0.023 harbor porpoises per metric tons of landings is exceeded by the average observed bycatch rate for the Southern New England Management Area.

(7) *Offshore Management Area—(i) Area restrictions.* From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Offshore Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Offshore Management Area is bounded by straight lines connecting the following points in the order stated:

**OFFSHORE MANAGEMENT AREA**

| Point      | N. lat.  | W. long. |
|------------|----------|----------|
| OFS1 ..... | 42°50.0' | 69°30.0' |

**OFFSHORE MANAGEMENT AREA—Continued**

| Point      | N. lat.  | W. long.                 |
|------------|----------|--------------------------|
| OFS2 ..... | 43°10.0' | 69°10.0'                 |
| OFS3 ..... | 43°10.0' | 67°40.0'                 |
| OFS4 ..... | 43°05.8' | 67°40.0' (EEZ boundary). |
| OFS5 ..... | 42°53.1' | 67°44.5' (EEZ boundary). |
| OFS6 ..... | 42°47.3' | 67°40.0' (EEZ boundary). |
| OFS7 ..... | 42°10.0' | 67°40.0'                 |
| OFS8 ..... | 42°10.0' | 69°30.0'                 |
| OFS1 ..... | 42°50.0' | 69°30.0'                 |

(8) *Cashes Ledge Closure Area—(i) Area restrictions.* During the month of February, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cashes Ledge Closure Area. This restriction does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Cashes Ledge Closure Area is bounded by straight lines connecting the following points in the order stated:

**CASHES LEDGE CLOSURE AREA**

| Point     | N. lat.  | W. long. |
|-----------|----------|----------|
| CL1 ..... | 42°30.0' | 69°00.0' |
| CL2 ..... | 42°30.0' | 68°30.0' |
| CL3 ..... | 43°00.0' | 68°30.0' |
| CL4 ..... | 43°00.0' | 69°00.0' |
| CL1 ..... | 42°30.0' | 69°00.0' |

(b) *Pingers—(1) Pinger specifications.* For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (plus or minus 2 kHz) sound at 132 dB (plus or minus 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (plus or minus 15 milliseconds), and repeating every 4 seconds (plus or minus 0.2 seconds).

(2) *Pinger attachment.* An operating and functional pinger must be attached at each end of a string of gillnets and at the bridle of every net, or every 300 feet (91.4 m or 50 fathoms), whichever is closer.

(c) *Pinger training and authorization.* The operator of a vessel may not fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in closed areas where pingers are required as specified under

paragraph (b) of this section, unless the operator has satisfactorily received pinger training and possesses and retains on board the vessel a valid pinger training authorization issued by NMFS.

(d) *Annual review for consequence area actions.* (1) *Coastal Gulf of Maine Closure Area.* (i) *Establishment.* If, after two consecutive management seasons, the calculated average observed bycatch rate of the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas exceeds the target bycatch rate of 0.031 harbor porpoises per metric tons of landings, the Coastal Gulf of Maine Closure Area shall be established.

(ii) *Restrictions.* From October 1 through November 30, it will be prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Coastal Gulf of Maine Closure Area. This prohibition will not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). When not closed during October and November, the requirements of the Mid-Coast (as described in paragraph (a)(2) of this section), Massachusetts Bay (as described in paragraph (a)(3) of this section), and Stellwagen Bank (as described in paragraph (a)(4) of this section) Management Areas will remain in effect.

(iii) *Area boundaries.* The Coastal Gulf of Maine Closure Area is bounded by straight lines connecting the following points in the order stated:

**COASTAL GULF OF MAINE CLOSURE AREA**

| Point      | N. lat.  | W. long.                 |
|------------|----------|--------------------------|
| CGM1 ..... | 43°33.0' | 70°15.0' (ME shoreline). |
| CGM2 ..... | 42°15.0' | 70°15.0'                 |
| CGM3 ..... | 42°15.0' | 70°46.0' (MA shoreline). |

(2) *Cape Cod South Expansion and Eastern Cape Cod Closure Areas—(i) Establishment.* If, after two consecutive management seasons, the calculated average observed bycatch rate of the Southern New England Management Area exceeds the target bycatch rate of 0.023 harbor porpoises per metric tons of landings, the Cape Cod South Expansion Closure Area and the Eastern Cape Cod Closure Area shall be established.

(ii) *Restrictions.* From February 1 through April 30, it will be prohibited to fish with, set, haul back, possess on board a vessel unless stowed in

accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cape Cod South Expansion Closure Area and the Eastern Cape Cod Closure Area. This prohibition will not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). When not closed during February through April, the requirements of the Southern New England Management Area, as described in paragraph (a)(5) of this section, will remain in effect.

(iii) *Area boundaries.* (A) The Cape Cod South Expansion Closure Area is bounded by straight lines connecting the following points in the order stated:

**CAPE COD SOUTH EXPANSION CLOSURE AREA**

| Point       | N. lat.  | W. long.                 |
|-------------|----------|--------------------------|
| CCSE1 ..... | 41°19.6' | 71°45.0' (RI shoreline). |
| CCSE2 ..... | 40°00.0' | 71°45.0'                 |
| CCSE3 ..... | 40°00.0' | 70°00.0'                 |
| CCSE4 ..... | 40°30.0' | 70°00.0'                 |
| CCSE5 ..... | 40°30.0' | 70°30.0'                 |
| CCSE6 ..... | 41°20.9' | 70°30.0'                 |
| CCSE7 ..... | 41°23.1' | 70°30.0'                 |
| CCSE8 ..... | 41°33.1' | 70°30.0' (MA shoreline). |

(B) The Eastern Cape Cod Closure Area is bounded by straight lines connecting the following points in the order stated:

**EASTERN CAPE COD CLOSURE AREA**

| Point      | N. lat.  | W. long.                 |
|------------|----------|--------------------------|
| ECC1 ..... | 41°58.3' | 70°00.0' (MA shoreline). |
| ECC2 ..... | 42°15.0' | 70°00.0'                 |
| ECC3 ..... | 42°15.0' | 69°30.0'                 |
| ECC4 ..... | 41°40.0' | 69°30.0'                 |
| ECC5 ..... | 41°40.0' | 69°56.8' (MA shoreline). |

(3) *Notification.* Upon determining that establishing a consequence closure area as described in paragraphs (d)(1) and (d)(2) of this section is necessary, NMFS will notify, in advance of the closure, the Harbor Porpoise Take Reduction Team as well as gillnet permit holders through mail notification. NMFS will also publish notification in the **Federal Register** and post information on the Harbor Porpoise Take Reduction Plan Web site related to the establishment of the closure area(s).

(4) If any or all of the closure areas discussed in paragraphs (d)(1) and (d)(2) are implemented, NMFS will monitor harbor porpoise bycatch rates throughout the New England region. The provisions set forth in paragraphs (d)(1) and (d)(2) shall remain in effect

each year after implementation until bycatch levels approach a zero mortality and serious injury rate or NMFS, in collaboration with the Harbor Porpoise Take Reduction Team, develops and implements new measures.

(e) *Research permits.* An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS' existing permit application process administered by NMFS.

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

(1) NMFS determines that pinger operating effectiveness in the commercial fishery is inadequate to reduce bycatch below the stock's PBR level.

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

5. Section 229.34 is revised to read as follows:

**§ 229.34 Harbor Porpoise Take Reduction Plan Regulations—Mid-Atlantic.**

(a)(1) *Regulated waters.* The regulations in this section apply to all waters in the Mid-Atlantic bounded on the east by 72°30' W. long. at the southern coast of Long Island, NY at 40°50.1' N. lat. and on the south by the North Carolina/South Carolina border (33°51.1' N. lat.), except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* The regulations within this section are not applicable to waters landward of the first bridge over any embayment, harbor, or inlet, or to waters landward of the following lines:

**New York**

- 40°45.70' N., 72°45.15' W. to 40°45.72' N., 72°45.30' W. (Moriches Bay Inlet)
- 40°37.32' N., 73°18.40' W. to 40°38.00' N., 73°18.56' W. (Fire Island Inlet)
- 40°34.40' N., 73°34.55' W. to 40°35.08' N., 73°35.22' W. (Jones Inlet)

**New Jersey/Delaware**

- 39°45.90' N., 74°05.90' W. to 39°45.15' N., 74°06.20' W. (Barnegat Inlet)
- 39°30.70' N., 74°16.70' W. to 39°26.30' N., 74°19.75' W. (Beach Haven to Brigantine Inlet)
- 38°56.20' N., 74°51.70' W. to 38°56.20' N., 74°51.90' W. (Cape May Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line

(International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Delaware Bay)

Maryland/Virginia

38°19.48' N., 75°05.10' W. to 38°19.35' N., 75°05.25' W. (Ocean City Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Chincoteague to Ship Shoal Inlet)

37°11.10' N., 75°49.30' W. to 37°10.65' N., 75°49.60' W. (Little Inlet)  
 37°07.00' N., 75°53.75' W. to 37°05.30' N., 75°56' W. (Smith Island Inlet)

North Carolina

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Restrictions*—(1) *Waters off New Jersey Management Area*. The Waters off New Jersey Management Area is bounded by straight lines connecting the following points in the order stated:

WATERS OFF NEW JERSEY MANAGEMENT AREA

| Point      | N. lat.  | W. long.                 |
|------------|----------|--------------------------|
| WNJ1 ..... | 40°50.1' | 72°30.0' (NY shoreline). |
| WNJ2 ..... | 38°47.0' | 72°30.0'                 |
| WNJ3 ..... | 38°47.0' | 75°05.0' (DE shoreline). |

(i) *Closure*. From April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Waters off New Jersey Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear*. From January 1 through April 30, except during April 1 through April 20 as described in paragraph (b)(1)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Waters off New Jersey Management Area unless the gear complies with the specified gear

characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Waters off New Jersey Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length*. The floatline is not more than 4,800 ft (1,463.0 m).

(B) *Twine size*. The twine is at least 0.035 inches (0.90 mm) in diameter.

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

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

(E) *Number of nets per string*. The total number of nets or net panels in a net string does not exceed 16.

(F) *Tie-down system*. The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear*. From January 1 through April 30, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Waters off New Jersey Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Waters off New Jersey Management Area with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length*. The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size*. The twine is at least 0.031 inches (0.81 mm) in diameter.

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

(D) *Number of nets*. The total number of individual nets or net panels for a vessel, including all nets on board the

vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string*. The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system*. Tie-downs are prohibited.

(2) *Mudhole North Management Area*. The Mudhole North Management Area is bounded by straight lines connecting the following points in the order stated:

MUDHOLE NORTH MANAGEMENT AREA

| Point     | N. lat.  | W. long.                 |
|-----------|----------|--------------------------|
| MN1 ..... | 40°28.1' | 74°00.0' (NJ shoreline). |
| MN2 ..... | 40°30.0' | 74°00.0'                 |
| MN3 ..... | 40°30.0' | 73°20.0'                 |
| MN4 ..... | 40°05.0' | 73°20.0'                 |
| MN5 ..... | 40°05.0' | 74°02.0' (NJ shoreline). |

(i) *Closures*. From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large or small mesh gillnet gear from the Mudhole North Management Area. In addition, from April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Mudhole North Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear*. From January 1 through April 30, except during February 15 through March 15 and April 1 through April 20 as described in paragraph (b)(2)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Mudhole North Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Mudhole North Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length*. The floatline is not more than 3,900 ft (1,188.7 m).

(B) *Twine size*. The twine is at least 0.035 inches (0.90 mm) in diameter.

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

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

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From January 1 through April 30, except during February 15 through March 15 as described in paragraph (b)(2)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Mudhole North Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Mudhole North Management Area with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

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

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

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(3) *Mudhole South Management Area.* The Mudhole South Management Area is bounded by straight lines connecting the following points in the order stated:

**MUDHOLE SOUTH MANAGEMENT AREA**

| Point     | N. lat.  | W. long. |
|-----------|----------|----------|
| MS1 ..... | 40°05.0' | 73°31.0' |
| MS2 ..... | 40°05.0' | 73°00.0' |

**MUDHOLE SOUTH MANAGEMENT AREA—Continued**

| Point     | N. lat.  | W. long. |
|-----------|----------|----------|
| MS3 ..... | 39°51.0' | 73°00.0' |
| MS4 ..... | 39°51.0' | 73°31.0' |
| MS1 ..... | 40°05.0' | 73°31.0' |

(i) *Closures.* From February 1 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large or small mesh gillnet gear in the Mudhole South Management Area. In addition, from April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Mudhole South Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From January 1 through April 30, except during February 1 through March 15 and April 1 through April 20 as described in paragraph (b)(3)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Mudhole South Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Mudhole South Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m).

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

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

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

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the

floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From January 1 through April 30 of each year, except during February 1 through March 15 as described in paragraph (b)(3)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Mudhole South Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Mudhole South Management Area with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

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

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

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(4) *Southern Mid-Atlantic Management Area.* The Southern Mid-Atlantic Management Area is bounded by straight lines connecting the following points in the order stated:

**SOUTHERN MID-ATLANTIC MANAGEMENT AREA**

| Point      | N. lat.  | W. long.                 |
|------------|----------|--------------------------|
| SMA1 ..... | 38°47.0' | 75°05.0' (DE shoreline). |
| SMA2 ..... | 38°47.0' | 72°30.0'                 |
| SMA3 ..... | 33°51.1' | 72°30.0'                 |
| SMA4 ..... | 33°51.1' | 78°32.5' (NC/SC border). |

(i) *Closures.* From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from

the Southern Mid-Atlantic Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From February 1 through April 30, except during February 15 through March 15 as described in paragraph (b)(4)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Southern Mid-Atlantic Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Southern Mid-Atlantic Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m) in length.

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

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

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the

vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From February 1 through April 30, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Southern Mid-Atlantic Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Southern Mid-Atlantic Management Area with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is no longer than 2,118 ft (645.6 m).

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

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

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

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 7.

(F) *Tie-down system.* Tie-downs are prohibited.

(c) *Research permits.* An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS' existing permit application process administered by NMFS.

(d) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the **Federal Register** if NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications are not reducing bycatch to below the stock's PBR level.

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