

exhaustive and provide them as information to the public.

You should direct questions regarding whether specific activities may constitute a future violation of section 9 to the Field Supervisor of the Service's Jackson Field Office (see **ADDRESSES** section). You may request copies of the regulations regarding listed wildlife from and address questions about prohibitions and permits to the U.S. Fish and Wildlife Service, 1875 Century Blvd., Suite 200, Atlanta, Georgia 30345, or telephone 404/679-7313; facsimile 404/679-7081.

Section 10(a)(1)(B) authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities such as agriculture, forestry, and urban development. A habitat conservation plan (HCP) identifying conservation measures that the permittee agrees to implement to conserve the species, is a requirement to obtaining this permit. A key element of our review of a HCP is a determination of the plan's effect upon the long-term conservation of the species. We would approve a HCP and issue a section 10(a)(1)(B) permit if the plan provides for minimization and mitigation of the impacts of the taking and for not appreciably reducing the likelihood of the survival and recovery of that species in the wild.

### National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

### References Cited

You may request a complete list of all references cited herein, as well as others, from the Jackson Field Office (see **ADDRESSES** section).

### Author

The primary author of this final rule is Linda V. LaClaire, Jackson Field Office (see **ADDRESSES** section) (601/965-4900, ext. 26).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

### PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

| Species                     |                                    | Historic range                | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|-----------------------------|------------------------------------|-------------------------------|------------------------------------------------------|--------|-------------|------------------|---------------|
| Common name                 | Scientific name                    |                               |                                                      |        |             |                  |               |
| *<br>AMPHIBIANS             | *                                  | *                             | *                                                    | *      | *           |                  | *             |
| *<br>Salamander, flatwoods. | *<br><i>Ambystoma cingulatum</i> . | *<br>U.S.A. (AL, FL, GA, SC). | *<br>Entire .....                                    | *<br>T | *<br>658    | *<br>NA          | *<br>NA       |
| *                           | *                                  | *                             | *                                                    | *      | *           |                  | *             |

Dated: March 18, 1999.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 99-7942 Filed 3-31-99; 8:45 am]

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### DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

[Docket No. 990324080-9080-01; I.D. 031599D]

RIN 0648-AM10

### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 28

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework 28 of the Northeast Multispecies Fishery Management Plan (FMP). This final rule allows the use, at specified times, of gillnets in areas otherwise closed to gillnet gear, provided they are equipped with pingers; removes the pinger specifications currently contained in the regulations and references the pinger specifications found in the Harbor Porpoise Take Reduction Plan (HPTRP); extends the Cape Cod South and Massachusetts Bay Closure Areas (March 1-March 30) to December 1-May 31; modifies the Mid-Coast Closure

Area coordinates in the regulations to comport with those specified in the HPTRP; and replaces the framework adjustment procedure requiring the New England Fishery Management Council's (Council's) Harbor Porpoise Review Team to annually review harbor porpoise mortality goals with a procedure using the information and recommendations provided by the HPTRP's Harbor Porpoise Take Reduction Team. The intent of this action is to make the regulations to protect harbor porpoise in the Northeast multispecies fishery, issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) consistent, to the extent allowed by the Magnuson-Stevens Act, with the HPTRP and the regulations issued under the authority of the Marine Mammal Protection Act (MMPA) to implement the HPTRP.

**DATES:** Effective March 29, 1999.

**ADDRESSES:** Copies of Amendment 7 to the FMP, its regulatory impact review (RIR), and the final regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 28 documents are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

**FOR FURTHER INFORMATION CONTACT:** David M. Gouveia, Fishery Management Specialist, 978-281-9280.

**SUPPLEMENTARY INFORMATION:** Framework Adjustment 28 was developed by the Council to make the regulations to protect harbor porpoise in the Northeast multispecies fishery, issued under the authority of the Magnuson-Stevens Act, consistent, to the extent allowed by the Magnuson-Stevens Act, with the HPTRP and the regulations issued under the authority of the MMPA to implement the HPTRP.

The 1994 amendments to the MMPA require the preparation and implementation of take reduction plans for strategic marine mammal stocks that interact with Category I or II fisheries. A fishery is designated by NMFS as a Category I fishery if it has frequent incidental mortality and serious injury of marine mammals while a fishery is designated by NMFS as a Category II fishery if it has occasional serious injuries and mortalities of marine mammals. Based on harbor porpoise bycatch information contained in the marine mammal stock assessment reports, the Northeast multispecies sink gillnet fishery was classified as a Category I fishery and the Mid-Atlantic

coastal gillnet fishery was classified as a Category II fishery.

In response to MMPA mandates, on December 2, 1998 (63 FR 66464), NMFS issued regulations implementing the HPTRP. The HPTRP contains measures to reduce harbor porpoise takes in the Gulf of Maine Northeast multispecies gillnet fishery and the Mid-Atlantic coastal gillnet fishery. Regulations issued under the authority of the Magnuson-Stevens Act to implement the FMP also contain measures to achieve harbor porpoise mortality reduction goals. However, some of the FMP implementing regulations are inconsistent with the HPTRP and the regulations issued to implement the HPTRP. This action would eliminate the inconsistencies in the Magnuson-Stevens Act FMP implementing regulations, to the extent allowed by the Magnuson-Stevens Act, by allowing the use, at specified times, of gillnets in areas currently closed to gillnet gear, provided they are equipped with pingers; removing the pinger specifications currently contained in the regulations and referencing the pinger specifications found in the HPTRP; extending the Cape Cod South and Massachusetts Bay Closure Areas (March 1-March 30) to December 1-May 31; modifying the Mid-Coast Closure Area coordinates in the regulations to comport with those specified in the HPTRP; and replacing the framework adjustment procedure requiring the Council's Harbor Porpoise Review Team to annually review harbor porpoise mortality goals with a procedure using the information and recommendations provided by the HPTRP's Harbor Porpoise Take Review Team. Because of the limitations of NMFS authority in regulating fishing vessels without Federal permits that fish exclusively in state waters, the multispecies regulations cannot mirror state regulations on fishing activity as specified in the HPTRP and HPTRP implementing regulations.

#### Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the regulations, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis, and with an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public

comment, the Council may recommend to the Administrator, Northeast Region, NMFS, that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is necessary.

The public was provided the opportunity to comment on the management measures contained in Framework 28 at the Council's January 28, 1999, and February 24, 1999, meetings. Documents summarizing the Council's proposed action and the analysis of biological and economic impacts of this and alternative actions were available for public review one week prior to the final February 24, 1999, meeting, as is required under the framework adjustment procedures. Written comments could be submitted up to and during that meeting. No comments were received.

#### Classification

This rule makes the regulations protecting harbor porpoise in the Northeast multispecies fishery in the FMP implementing regulations consistent, to the extent allowed by the Magnuson-Stevens Act, with the HPTRP and the regulations implementing the HPTRP. Notice and opportunity for public comment were provided to discuss the management measures implemented by this final rule. In addition, this framework needs to be filed with the Office of the Federal Register as soon as possible in order to allow gillnet vessels to fish in the Mid-Coast Closure Area, as allowed under the HPTRP. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), finds for good cause, under 5 U.S.C. 553(b)(B), that additional prior notice and additional opportunity for public comment are unnecessary and contrary to the public interest.

Because Framework Adjustment 28 relieves more stringent measures by providing industry the opportunity to fish with gillnet gear equipped with pingers in areas currently closed to gillnet gear, under 5 U.S.C. 553(d)(1), it is not subject to a 30-day delay in effectiveness.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. A Final Regulatory Flexibility Analysis (FRFA) was prepared as part of the referenced Environmental Assessment for the HPTRP. Although the FRFA indicates that the HPTRP is significant because of the increased operating costs caused by

the HPTRP, this analysis is not applicable to this framework action. This action merely results in eliminating a more stringent measure in order to achieve consistency with the HPTRP.

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

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 29, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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

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

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

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

2. In § 648.14, paragraphs (a)(90) and (c)(10) are revised to read as follows:

##### § 648.14 Prohibitions.

(a) \* \* \*

(90) Use, set, haul back, fish with, fail to remove, or possess on board a vessel, unless stowed in accordance with § 648.81(e)(4), sink gillnets and other gillnet gear capable of catching multispecies, with the exception of pelagic gillnets (conforming to all requirements for the use of such gillnets in § 648.81(f)(2)(ii)) or gillnet gear equipped with pingers (as described in § 229.33(b) of this title), in the areas and for the times specified in § 648.87 (a) and (b), except as provided in § 648.81(f)(2)(ii) and § 648.87 (a) and (b), or unless otherwise authorized in writing by the Regional Administrator.

\* \* \* \* \*

(c) \* \* \*

(10) Enter, fail to remove sink gillnets and other gillnet gear capable of catching multispecies from, or be in the areas, and for the times, described in § 648.87 (a) and (b), except as provided in § 648.81(d), and (f)(2), and in § 648.87(a)(1)(ii), (a)(2)(ii), and (a)(3)(ii).

\* \* \* \* \*

3. In § 648.87, paragraphs (a) and (c) are revised to read as follows:

##### § 648.87 Gillnet requirements to reduce or prevent marine mammal takes.

(a) Areas closed to gillnet gear capable of catching multispecies to reduce harbor porpoise takes. Section 648.81(f) sets forth a closed area restriction to reduce the take of harbor porpoise

consistent with the harbor porpoise mortality reduction goals. Further, all persons owning or operating vessels in the EEZ portion of the areas and times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section must remove all of their sink gillnets and other gillnet gear capable of catching multispecies, with the exception of pelagic gillnets (conforming to all requirements for the use of such gillnets in § 648.81(f)(2)(ii)) or gillnet gear equipped with pingers (as described in § 229.33(b) of this title), and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnets and other gillnet gear capable of catching multispecies, with the exception of pelagic gillnets (conforming to all requirements for the use of such gillnets in § 648.81(f)(2)(ii)) or gillnet gear equipped with pingers (as described in § 229.33(b) of this title) in the EEZ portion of the areas and for the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnets and other gillnet gear capable of catching multispecies, with the exception of pelagic gillnets (conforming to all requirements for the use of such gillnets in § 648.81(f)(2)(ii)) or gillnet gear equipped with pingers (as described in § 229.33(b) of this title), from the areas and for the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section, and, may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnets and other gillnet gear capable of catching multispecies, with the exception of pelagic gillnets (conforming to all requirements for the use of such gillnets in § 648.81(f)(2)(ii)) or gillnet gear equipped with pingers (as described in § 229.33(b) of this title) in the areas and for the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) *Mid-coast Closure Area.* (i) From September 15 through May 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Mid-coast Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as provided in paragraph (a)(1)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

#### MID-COAST CLOSURE AREA

| Point     | N. latitude | W. longitude |
|-----------|-------------|--------------|
| MC1 ..... | 42°30'      | (1)          |
| MC2 ..... | 42°30'      | 70°15'       |
| MC3 ..... | 42°40'      | 70°15'       |
| MC4 ..... | 42°40'      | 70°00'       |
| MC5 ..... | 43°00'      | 70°00'       |
| MC6 ..... | 43°00'      | 69°30'       |
| MC7 ..... | 43°30'      | 69°30'       |
| MC8 ..... | 43°30'      | 69°00'       |
| MC9 ..... | (2)         | 69°00'       |

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Maine shoreline.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Mid-coast Closure Area, as defined under paragraph (a)(1)(i) of this section, from September 15 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements found at § 229.33(b) of this title.

(2) *Cape Cod South Closure Area.* (i) From December 1 through May 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Cape Cod South Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as provided in paragraph (a)(2)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

#### CAPE COD SOUTH CLOSURE AREA

| Point      | N. latitude | W. longitude |
|------------|-------------|--------------|
| CCS1 ..... | (1)         | 71°45'       |
| CCS2 ..... | 40°40'      | 71°45'       |
| CCS3 ..... | 40°40'      | 70°30'       |
| CCS4 ..... | (2)         | 70°30'       |

<sup>1</sup> RI Shoreline.

<sup>2</sup> MA Shoreline.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Cape Cod South Closure Area, as defined under paragraph (a)(2)(i) of this section, from December 1 through the last day of February and April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements found at § 229.33(b) of this title.

(3) *Massachusetts Bay Closure Area.* (i) From December 1 through May 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Massachusetts Bay Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as

provided in paragraph (a)(3)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

#### MASSACHUSETTS BAY CLOSURE AREA

| Point     | N. latitude | W. longitude |
|-----------|-------------|--------------|
| MB1 ..... | 42°30'      | (1)          |
| MB2 ..... | 42°30'      | 70°30'       |
| MB3 ..... | 42°12'      | 70°30'       |
| MB4 ..... | 42°12'      | 70°00'       |
| MB5 ..... | (2)         | 70°00'       |
| MB6 ..... | 42°00'      | (2)          |
| MB7 ..... | 42°00'      | (1)          |

<sup>1</sup> Massachusetts shoreline.

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

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Massachusetts Bay Closure Area, as defined under paragraph (a)(3)(i) of this section, from December 1 through the last day of February and April 1 through May 31 of each fishing year, provided

that pingers are used in accordance with the requirements found at § 229.33(b) of this title.

\* \* \* \* \*

(c) *Framework adjustment.* (1) The Harbor Porpoise Take Reduction Team will provide the NEFMC with the best available information on the status of Gulf of Maine harbor porpoise, including estimates of abundance and estimates of bycatch in the sink gillnet fishery.

(2) After receiving and reviewing the Harbor Porpoise Take Review Team's findings and recommendations, the NEFMC shall determine whether adjustments or additional management measures are necessary to avoid inconsistencies with the Harbor Porpoise Take Reduction Plan. If the NEFMC determines that adjustments or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings.

(3) The NEFMC shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the categories specified under § 648.90(b)(1).

(4) If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the factors specified in § 648.90(b)(2).

(5) The Regional Administrator may accept, reject, or with NEFMC approval, modify the NEFMC's recommendation, including the NEFMC's recommendation to issue a final rule, as specified under § 648.90(b)(3).

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